Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

20 January 2022 *

(Appeal – Law governing the institutions – Citizens' initiative – Regulation (EU) No 211/2011 – Article 4(2)(b) – Registration of a proposed citizens' initiative – Condition requiring that that proposed citizens' initiative does not manifestly fall outside the framework of the European Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties – Decision (EU) 2017/652 – Citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe' – Registration in part – Article 5(2) TEU – Principle of conferral – Article 296 TFEU – Obligation to state reasons – Principle *audi alteram partem*)

In Case C-899/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 December 2019,

Romania, represented by E. Gane, L. Lițu, M. Chicu and L.-E. Baţagoi, acting as Agents,

appellant,

the other parties to the proceedings being:

European Commission, represented initially by I. Martínez del Peral and by H. Stancu and H. Krämer, and subsequently by I. Martínez del Peral and by H. Stancu, acting as Agents,

defendant at first instance,

Hungary, represented by M.Z. Fehér and by K. Szíjjártó, acting as Agents,

intervener at first instance,

THE COURT (Fourth Chamber),

composed of K. Jürimäe, President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

* Language of the case: Romanian.

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, Romania asks the Court of Justice to set aside the judgment of the General Court of the European Union of 24 September 2019, *Romania* v *Commission* (T-391/17, EU:T:2019:672, 'the judgment under appeal'), by which the General Court dismissed its action for annulment of 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; 'the decision at issue').

Legal background

2 Recitals 1, 2, 4 and 10 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, and corrigendum OJ 2012 L 94, p. 49) state:

'(1) The [EU] Treaty reinforces citizenship of the [European] Union and enhances further the democratic functioning of the Union by providing, inter alia, that every citizen is to have the right to participate in the democratic life of the Union by way of a European citizens' initiative. That procedure affords citizens the possibility of directly approaching the [European] Commission with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties similar to the right conferred on the European Parliament under Article 225 [TFEU] and on the Council [of the European Union] under Article 241 TFEU.

(2) The procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible. They should strike a judicious balance between rights and obligations.

…

(4) The Commission should, upon request, provide citizens with information and informal advice about citizens' initiatives, notably as regards the registration criteria.

…

(10) In order to ensure coherence and transparency in relation to proposed citizens' initiatives and to avoid a situation where signatures are being collected for a proposed citizens' initiative which does not comply with the conditions laid down in this Regulation, it should be mandatory to register such initiatives on a website made available by the Commission prior to collecting the necessary statements of support from citizens. All

proposed citizens' initiatives that comply with the conditions laid down in this Regulation should be registered by the Commission. The Commission should deal with registration in accordance with the general principles of good administration.'

3 Article 1 of Regulation No 211/2011 provides:

'This Regulation establishes the procedures and conditions required for a citizens' initiative as provided for in Article 11 TEU and Article 24 TFEU.'

4 Article 2 of that regulation provides:

'For the purpose 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;

…

3. "organisers" means natural persons forming a citizens' committee responsible for the preparation of a citizens' initiative and its submission to the Commission.'

5 Article 4(1) to (3) of that regulation provides:

'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.

That information shall be provided in one of the official languages of the Union, in an online register made available for that purpose by the Commission ('the register').

The organisers shall provide, for the register and where appropriate on their website, regularly updated information on the sources of support and funding for the proposed citizens' initiative.

After the registration is confirmed in accordance with paragraph 2, the organisers may provide the proposed citizens' initiative in other official languages of the Union for inclusion in the register. The translation of the proposed citizens' initiative into other official languages of the Union shall be the responsibility of the organisers.

The Commission shall establish a point of contact which provides information and assistance.

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 and the decision at issue

6 The background to the dispute, as set out in the judgment under appeal, may be summarised as follows.

7 On 15 July 2013, the Bürgerausschuss für die Bürgerinitiative Minority SafePack – one million signatures for diversity in Europe (citizens' committee for the citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe') submitted to the European Commission the proposal for a European citizens' initiative ('the ECI') entitled 'Minority SafePack – one million signatures for diversity in Europe' ('the proposed ECI at issue').

8 By Decision C(2013) 5969 final of 13 September 2013, the Commission refused the application for registration of the proposed ECI at issue on the ground that it manifestly fell 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.

9 The citizens' committee for the citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe' brought proceedings before the General Court, which, by its judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59), annulled Commission Decision C(2013) 5969 final on the ground that the Commission had failed to fulfil its obligation to state reasons.

10 On 29 March 2017, the Commission adopted the decision at issue, by which the proposed ECI at issue was registered.

11 Recital 2 of that decision describes the subject matter of the proposed ECI at issue as follows:

'We call upon the [European Union] to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union.'

12 Recital 3 of that decision sets out the objectives pursued by the proposed ECI at issue as follows:

'We call upon the [European Union] to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union. [Those acts] shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support.'

13 Recital 4 of that decision states that the proposed ECI at issue mentions specifically, in the annex thereto, 11 legal acts of the European Union for which the proposed citizens' initiative invites, in essence, proposals from the Commission.

14 It is apparent from recitals 6 to 9 of the decision at issue that the Commission registered the proposed ECI at issue in respect of nine of those EU legal acts, on the ground that their proposal did not manifestly fall outside the framework of its powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties, within the meaning of Article 4(2)(b) of Regulation No 211/2011. By contrast, so far as concerns the other two EU legal acts referred to in the proposed ECI at issue, the Commission concluded that the proposed ECI manifestly fell outside the framework of its powers, within the meaning of that provision.

15 Article 1(2) of that decision lists nine proposals for legal acts covered by the proposed ECI at issue, for which statements of support may be collected.

The procedure before the General Court and the judgment under appeal

16 By application lodged at the Registry of the General Court on 28 June 2017, Romania brought an action for annulment of the decision at issue.

17 In support of its action, Romania raised two pleas in law, the first alleging infringement of Article 5(2) TEU and Article 4(2)(b) of Regulation No 211/2011, and the second alleging infringement of the second paragraph of Article 296 TFEU.

18 By the judgment under appeal, the General Court held, first, that the Commission had not made an error of assessment in concluding, at the stage of registration, that the proposals for legal acts such as those referred to in Article 1(2) of the decision at issue did not manifestly fall outside the framework of the Commission's powers to submit a proposal for an act for the purpose of implementing the Treaties. It also held that the Commission had set out to the requisite legal standard, in the decision at issue, the reasons underlying the registration in part of the proposed ECI at issue.

19 Consequently, the General Court dismissed the action as unfounded, without ruling on the admissibility of the action brought by Romania.

Forms of order sought

20 Romania claims that the Court should:

– set aside the judgment under appeal and annul the decision at issue;

– in the alternative, set aside the judgment under appeal and refer the case back to the General Court;

– order the Commission to pay the costs.

21 The Commission contends that the Court should dismiss the appeal and order Romania to pay the costs.

22 Hungary contends that the Court should dismiss the appeal.

The appeal

23 In support of its appeal, Romania relies on three grounds of appeal, the first alleging infringement of the provisions of the Treaties relating to the competences of the European Union, the second alleging infringement of the second paragraph of Article 296 TFEU and the third alleging procedural irregularities on the part of the General Court during the oral part of the proceedings.

The first ground of appeal, alleging infringement of the provisions of the Treaties relating to the competences of the European Union

Arguments of the parties

24 By its first ground of appeal, Romania complains, in essence, that the General Court erred in law when it interpreted the provisions of the Treaties relating to the competences of the European Union by concluding that the Commission did not err in law in finding that the condition laid down in Article 4(2)(b) of Regulation No 211/2011 was satisfied in this case.

25 In the first place, Romania disputes the General Court's finding, in paragraph 47 of the judgment under appeal, that the proposed ECI at issue seeks both to ensure respect for the rights of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the European Union. On the contrary, that Member State considers that the main objective of the proposed ECI is the protection of the rights of persons belonging to national and linguistic minorities, and that the European Union is not competent in that regard. In that connection, it refers to paragraphs 59 to 63 of its application at first instance.

26 In the second place, Romania submits that the General Court erred in law, in paragraphs 51 to 56 of the judgment under appeal, in that it equated the EU values set out in Article 2 TEU with a specific action or objective within the framework of the competence of the European Union which would result in the Commission's being empowered to submit specific legal acts whose main objective is the protection of the rights of persons belonging to national and linguistic minorities and the enhancement of cultural and linguistic diversity within the European Union.

27 In so doing, the General Court breached both the principle of conferral, enshrined in Article 5(2) TEU, and the principles laid down in the case-law of the Court of Justice concerning the determination of the appropriate legal basis for the adoption of an act of the European Union.

28 First, as regards the breach of the principle of conferral of powers, Romania sets out the complex system created by the Treaties for the exercise of EU competences, as enshrined in Article 5(2) TEU and Article 2(6) TFEU. Thus, according to that principle, the European Union is to act only if certain conditions are met, in particular the condition that the matter in question must fall within one of the areas of EU competence referred to in Articles 3 to 6 TFEU and within the scope of the objectives set by the Treaties for each of those areas.

29 It is clear, however, that the EU values set out in Article 2 TEU do not appear in the chapters of the Treaties relating to the competences of the European Union and play no role in the assessment of the European Union's specific objectives and actions. According to Romania, in the context of proposals for EU legal acts, those values are merely a point of reference and cannot be confused with the areas of EU competence or the European Union's specific objectives. That finding is supported by the wording of Article 4(2)(b) of Regulation No 211/2011, which distinguishes, as regards the assessment to be carried out by the Commission for the purposes of registering proposed ECIs, between powers and objectives on the one hand and values on the other.

30 It follows that the General Court misused the system for the conferral of powers, as provided for in EU primary law, by essentially equating EU values with specific objectives of the European Union, so that the Commission is empowered to submit proposals for specific legal acts deemed to supplement EU action in order to ensure respect for the values set out in Article 2 TEU. According to Romania, it is at the very least necessary, for that purpose, that the rules on the objectives and various EU actions should expressly concern EU values. This is not the case here, since respect for the rights of persons belonging to minorities is not mentioned in any provision of the Treaties relating to the competences, policies, objectives and actions of the European Union.

31 The General Court's analysis extends the competences of the European Union *de jure*, in changing their subject matter and objective by reference to EU values.

32 Furthermore, such an analysis infringes Article 4(2)(b) of Regulation No 211/2011, as interpreted by the Court of Justice. It follows from paragraphs 61 and 62 of the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), that the Commission must confine itself to examining, for the purpose of assessing whether the condition for registration laid down in that provision is satisfied, whether from an objective point of view the proposed measures envisaged in the abstract could be adopted on the basis of the Treaties.

33 Second, as regards the breach of the principles governing the determination of the appropriate legal basis for the adoption of an EU act, as derived from the case-law of the Court of Justice, Romania submits that that determination is of constitutional importance. In that regard, it is necessary, in particular, to establish a direct link between the EU act in question and the provision of the Treaties empowering the European Union to adopt that act. Similarly, the choice of the legal basis must rest on objective factors amenable to judicial review, which include the aim and content of that act.

34 Thus, a proposal for an EU act which aims to ensure respect for the rights of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the European Union may be made only on the basis of a provision of the Treaties which empowers the European Union to act primarily within that area and for that purpose. However, there is no such provision.

35 First, the European Union has no competence in respect of the rights of persons belonging to national minorities.

36 Second, under Article 167(1) and (4) TFEU, the competences of the European Union are limited to supporting, coordinating and supplementing actions to strengthen cultural diversity. That provision cannot serve as a basis for the adoption of an EU legal act whose sole or main objective is cultural diversity.

37 In those circumstances, the General Court erred in law in paragraph 56 of the judgment under appeal.

38 Romania concludes that the legal bases analysed by the General Court in the judgment under appeal are irrelevant in the light of the real objective of the proposed ECI at issue, and none of them can therefore constitute a correct legal basis in the light of the relevant case-law of the Court of Justice.

39 Third, Romania considers that, in view of the error of law committed by the General Court, it is neither necessary nor relevant to examine its reasoning (in paragraphs 60 to 71 of the judgment under appeal) separately for each of the nine proposed legal acts referred to in Article 1(2) of the decision at issue. Romania submits, however, that the part of the judgment under appeal which contains those paragraphs is flawed and sets out, 'by way of example', certain errors which it claims the General Court made in that regard.

40 In essence, Romania claims, in that context that, with regard to the measures relating to language, education and culture, the measures relating to regional policy and the act relating to stateless persons, proposed by the organisers of the ECI at issue, the General Court failed to take into account all the mandatory and additional information provided by those organisers. Had that information been taken into account, it should have led the General Court to conclude that those measures had no basis in the Treaties.

41 The Commission and Hungary contend that the first ground of appeal must be dismissed as unfounded.

Findings of the Court

42 By its first ground of appeal, Romania complains, in essence, that the General Court erred in law by holding, in paragraphs 43 to 72 of the judgment under appeal, that the Commission could justifiably take the view, in the decision at issue, that the condition laid down in Article 4(2)(b) of Regulation No 211/2011 was satisfied in the present case.

43 As a preliminary point, it should be observed that, under Article 4(2)(b) of Regulation No 211/2011, the Commission is to register a proposed ECI provided 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'.

44 The Court of Justice has consistently held that, in accordance with the objectives pursued by the ECI, as set out in recitals 1 and 2 of Regulation No 211/2011 and consisting, inter alia, of encouraging citizen participation and making the European Union more accessible, that registration condition must be interpreted and applied by the Commission, when it receives a proposal for an ECI, in such a way as to ensure easy accessibility to the ECI (see, to that effect,

judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 49, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 53).

45 Accordingly, it is only if a proposed ECI, in view of its subject matter and objectives as reflected in the mandatory and, where appropriate, additional information that has been provided by the organisers pursuant to Annex II to Regulation No 211/2011, 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 that the Commission is entitled to refuse to register the proposed ECI pursuant to Article 4(2)(b) of that regulation (judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 50, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 54).

46 Furthermore, it is also clear from the case-law that, the Commission must confine itself to examining, for the purpose of assessing whether the condition for registration laid down in Article 4(2)(b) of Regulation No 211/2011 is satisfied, whether from an objective point of view the measures in a proposed ECI, envisaged in the abstract, could be adopted on the basis of the Treaties (see, to that effect, judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 62).

47 Accordingly, where, following an initial analysis carried out in the light of the mandatory and, where appropriate, additional information provided by the organisers of an ECI, it is not established that a proposed ECI manifestly falls outside the framework of the Commission's powers, it is for that institution to register that proposed ECI, provided that the other conditions set out in Article 4(2) of Regulation No 211/2011 are satisfied.

48 In the first place, as regards Romania's arguments seeking to challenge the finding made by the General Court in paragraph 47 of the judgment under appeal, it must be observed that it follows, inter alia, from Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the decision which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal. The Court of Justice has repeatedly held, in that regard, that an appeal is inadmissible in so far as, without even including an argument specifically identifying the error of law allegedly vitiating the judgment of the General Court, it merely repeats the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by it. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake on appeal (see, inter alia, judgment of 15 June 2017, *Spain* v *Commission*, C-279/16 P, not published, EU:C:2017:461, paragraph 75 and the case-law cited).

49 It follows that Romania's argument regarding paragraph 47 of the judgment under appeal must be dismissed as manifestly inadmissible, since Romania does not substantiate that argument in any way and merely refers to the application it submitted to the General Court.

50 In the second place, Romania complains, in essence, that in paragraphs 51 to 56 of the judgment under appeal, the General Court equated the EU values, set out in Article 2 TEU, with a specific action or objective falling within the framework of competence of the European Union, and thus allowed the Commission to submit legal acts whose main objective was the protection of the rights of persons belonging to national and linguistic minorities and the strengthening of cultural and linguistic diversity in the European Union.

51 Those paragraphs of the judgment under appeal follow the statement, in paragraphs 47 and 50 of that judgment, of the objectives pursued by the proposed ECI at issue and by the legal acts of the European Union set out in its annex.

52 In particular, the General Court pointed out, in paragraph 51 of the judgment under appeal, that, in accordance with Article 2 TEU, respect for minority rights is one of the values on which the European Union is founded and that, according to the fourth subparagraph of Article 3(3) TEU, the European Union must respect its rich cultural and linguistic diversity and, in paragraph 52 of the judgment under appeal, that, with particular reference to the strengthening of cultural diversity, Article 167(4) TFEU provides that the European Union is to take cultural aspects into account in its action under other provisions of the Treaties in order, inter alia, to respect and promote the diversity of its cultures.

53 The General Court stated, in paragraph 53 of the judgment under appeal, that that does not mean that, by the decision at issue, the Commission conceded that the European Union has general competence to legislate in the field of the protection of the rights of persons belonging to national minorities, but only that respect for the rights of minorities and the strengthening of cultural and linguistic diversity, as values and objectives of the European Union, must be taken into account in EU actions in the areas covered by the proposed ECI at issue.

54 In paragraphs 54 to 56 of the judgment under appeal, the General Court further observed that Romania did not challenge the competence of the European Union to adopt legal acts in the concrete action areas referred to in the legal acts listed in Article 1(2) of the decision at issue in order to achieve the objectives pursued by the relevant provisions of the TFEU. It held that there was therefore nothing to prevent the Commission, as a matter of principle, from submitting proposals for legal acts which are deemed to supplement EU action in the areas for which it is competent in order to ensure respect for the values set out in Article 2 TEU and the rich cultural and linguistic diversity laid down in the fourth subparagraph of Article 3(3) TEU.

55 In so doing, contrary to Romania's submissions, the General Court did not equate the values on which the European Union is founded with the specific EU objectives which enable the European Union to adopt legal acts, and it did not extend the European Union's competences to the extent that it could be held that it could adopt legal acts, without a legal basis, for the purpose of ensuring respect for EU values. By contrast, the General Court held, without committing an error of law in that regard, that, in so far as they have a valid legal basis, acts of the European Union may also seek to ensure respect for the values of the European Union, such as respect for the rights of persons belonging to minorities and for cultural and linguistic diversity.

56 Furthermore, having regard to the case-law cited in paragraph 46 of the present judgment, that initial analysis is without prejudice to the examination of the legal basis of an act adopted, where appropriate, following an ECI and on a proposal from the Commission.

57 In the third place, in so far as Romania argues in its first ground of appeal that the General Court's examination, in paragraphs 60 to 71 of the judgment under appeal, of the nine proposals for legal acts referred to in Article 1(2) of the decision at issue is erroneous, while at the same time merely disputing, by way of example, some of the General Court's assessments and reiterating arguments which it has already put forward before that court, such an argument cannot satisfy the admissibility requirements referred to in paragraph 48 of this judgment, in particular in so far as it thus seeks, in reality, merely to obtain a re-examination of those arguments.

58 Those arguments must therefore be rejected as inadmissible.

59 In the light of the foregoing, the first ground of appeal must be dismissed as in part inadmissible and in part unfounded.

The second ground of appeal, alleging infringement of the second paragraph of Article 296 TFEU

Arguments of the parties

60 By its second ground of appeal, Romania submits, in essence, that the General Court misinterpreted the second paragraph of Article 296 TFEU as regards the Commission's obligation to state reasons.

61 In that regard, Romania complains, in the first place, that the General Court held that the case-law of the Court of Justice and the General Court, according to which fulfilment of the obligation to state reasons assumes even greater importance in cases where the EU institutions have a wide discretion, was not applicable in this case.

62 The General Court erred in holding that the Commission does not have a wide discretion for the purposes of the registration of a proposed ECI. In any event, according to Romania, the Commission cannot register proposals which do not satisfy the conditions set out in Article 4(2)(a) to (d) of Regulation No 211/2011 for the sole purpose of ensuring easy accessibility to the ECI. Romania also states that the Commission's decision on the registration of a proposed ECI constitutes a final decision, and that the Commission cannot therefore confine itself to carrying out a purely formal verification of the proposed ECI.

63 In the second place, the General Court wrongly held, in paragraph 88 of the judgment under appeal, that the Commission could confine itself to setting out in a generic manner the areas in which EU legal acts may be adopted, without raising the fact that the measures to which the proposed ECI at issue refers seek to improve the protection of persons belonging to national and linguistic minorities and to strengthen the European Union's cultural and linguistic diversity.

64 However, such a statement of reasons is not sufficient to enable the person concerned to determine whether the decision at issue is well founded or whether it may be vitiated by a defect which permits its validity to be contested. The inadequacy of such a statement of reasons is particularly problematic in the present case, given that the decision at issue significantly deviates from the previous decision, namely Decision C(2013) 5969 final referred to in paragraph 8 of this judgment, including as regards the possibility of the registration in part of the proposed ECI at issue.

65 It follows, in Romania's view, that the General Court erred in holding that the obligation to state reasons had been fulfilled, since the Commission had not set out the legal considerations of fundamental importance in the scheme of the decision at issue and had, moreover, fundamentally changed its position, without specifying what subsequent developments justified that change.

66 The Commission and Hungary contend that the second ground of appeal must be dismissed as unfounded.

Findings of the Court

67 According to settled case-law concerning the obligation to state reasons under Article 296 TFEU, the statement of reasons must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the act, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 28 and the case-law cited).

68 As is also apparent from settled case-law, the requirement to state reasons must be assessed by reference to the circumstances of the case. It is not necessary for the reasoning to go into all of the relevant facts and points of law, since the question whether the statement of reasons for an act meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 29 and the case-law cited).

69 In the first place, Romania considers that the General Court erred in determining the scope of the Commission's obligation to state reasons by considering that the Commission did not have a wide discretion, within the meaning of the case-law arising, inter alia, from the judgment of 21 November 1991, *Technische Universität München* (C-269/90, EU:C:1991:438, paragraph 14), for the purposes of the registration of a proposed ECI under Article 4(2) of Regulation No 211/2011.

70 In that regard, in paragraph 84 of the judgment under appeal, the General Court held that the Commission did not have a wide discretion for the purposes of the registration of a proposed ECI, as Article 4(2) of Regulation No 211/2011 states that the Commission is to 'register' such a proposal, provided that the conditions set out in Article 4(2)(a) to (d) thereof are fulfilled, that is to say, inter alia, when the proposed ECI does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties. Conversely, if, following an initial analysis, it is clear that that final requirement is not met, the Commission is to 'refuse' to register the proposed ECI as set out in the first subparagraph of Article 4(3) of Regulation No 211/2011.

71 In so doing, the General Court did not err in law. The use of the present indicative in Article 4(2) and (3) of Regulation No 211/2011 and the listing of the conditions for registration in Article 4(2)(a) to (d) show that the Commission does not have a wide discretion as regards the registration of a proposed ECI and that it is, on the contrary, required to register the proposal if it meets all those conditions.

72 Since that consideration alone is capable of justifying the General Court's conclusion that the Commission does not have a wide discretion, it is not necessary to examine Romania's argument, set out in paragraph 62 of the present judgment, which seeks to challenge, in essence, the reasoning set out in paragraph 85 of the judgment under appeal in support of the same conclusion. Even if that argument were well founded, it is not such as to require the judgment under appeal to be set aside.

73 In the second place, Romania complains that, in paragraph 88 of the judgment under appeal, the General Court held that the fact that the Commission 'confine[d] itself to setting out … in a generic manner' the areas in which EU legal acts may be adopted is not contrary to the obligation to state reasons.

74 In that regard, in that paragraph of the judgment under appeal, the General Court held, in essence, that the Commission fulfilled its obligation to state reasons by setting out in a generic manner the areas in which EU legal acts may be adopted and which correspond to the areas in which the organisers of the proposed ECI request that legal acts be adopted.

75 First, contrary to what appears to be argued by Romania, that reasoning does make clear why the Commission considers that the proposed ECI at issue is capable of falling within the scope of its powers to submit a proposal for a legal act of the European Union.

76 Second, at the stage of registration of a proposed ECI, it is not for the Commission to ascertain that proof has been provided of all the factual elements relied on, or that the reasoning behind the proposed ECI and the proposed measures is adequate. The Commission must confine itself to examining, for the purpose of assessing whether the condition for registration in Article 4(2)(b) of Regulation No 211/2011 is satisfied, whether from an objective point of view such measures envisaged in the abstract could be adopted on the basis of the Treaties (see, to that effect, judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 62).

77 Therefore, the General Court did not err in law when it held, in essence, that the statement of reasons for the decision at issue in that regard was not inadequate.

78 Furthermore, in the light of the requirement to state reasons established in the case-law referred to in paragraphs 67 and 68 of the present judgment, the statement of reasons for the decision at issue clearly enabled Romania to ascertain the reasons why the Commission considered that the proposed ECI at issue and, more particularly, the proposals for legal acts referred to in Article 1(2) of that decision, did not manifestly fall outside its powers, and, as is clear from the judgment under appeal, enabled the EU Courts to exercise their power to review that decision.

79 In the light of the foregoing, the second ground of appeal must be dismissed as unfounded.

The third ground of appeal, alleging that the General Court committed procedural irregularities during the oral part of the proceedings

Arguments of the parties

80 By its third ground of appeal, Romania submits that the General Court committed a number of procedural irregularities, in particular during the oral part of the proceedings.

81 Referring to the course of the proceedings before the General Court and, in particular, of the hearing held before it at Romania's request, Romania sets out, inter alia, the specific issues which were covered by the report for the hearing and the measures of organisation of procedure required by the General Court. Romania also states that the discussions that were conducted during the hearing, including the questions put directly by the General Court at that hearing, focused solely

on aspects of the action relating to its admissibility and to the progress made with process of collecting, verifying and certifying statements of support or submitting the proposed ECI to the Commission.

82 Consequently, according to Romania, with the exception of the question of the relevance of the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), which was addressed during the written and oral parts of the proceedings, the parties did not exchange arguments, during the oral part, on many of the aspects relating to the substance of the action, on which the judgment under appeal is based. However, the oral part of the proceedings should be used to clarify and discuss the essential points of the case in order to resolve it. Although it decided to open the oral part of the proceedings in this case, the General Court rendered it nugatory by removing the procedural guarantees attaching to the organisation of that part of the proceedings.

83 The Commission and Hungary contend that the third ground of appeal must be dismissed as unfounded.

Findings of the Court

84 By its third ground of appeal, Romania submits, in essence, that the essential points on which the judgment under appeal is based were not the subject of an exchange of arguments during the oral part of the proceedings.

85 In that regard, it must be borne in mind that the principle *audi alteram partem* entails, as a general rule, the parties to proceedings being given an opportunity to state their views on the facts and documents on which a judicial decision will be based, and to discuss the evidence and observations submitted to the court and the points of law which the court has raised of its own motion and on which it proposes to base its decision. In order to satisfy the requirements relating to the right to a fair trial, it is important for the parties to be able to exchange arguments on both the facts and the points of law which are decisive for the outcome of the proceedings (see, to that effect, judgment of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraphs 52 and 56).

86 In the present case, it is common ground that, in the judgment under appeal, the General Court ruled exclusively on the pleas raised by Romania, on which the parties were able to exchange arguments in the written and oral parts of the proceedings before the General Court. The latter cannot therefore be accused of having disregarded the principle *audi alteram partem* in so far as it did not ask specific questions on each of the arguments put forward.

87 Moreover, Romania has not identified any element essential to the outcome of the proceedings which it did not have the opportunity to examine and on which it was unable to state its views, either in the written part or in the oral part of the proceedings before the General Court.

88 The third ground of appeal must therefore also be dismissed as unfounded.

89 Since none of the grounds of appeal raised by the appellant have been upheld, the appeal must be dismissed in its entirety.

Costs

90 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to costs.

91 Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

92 Since Romania has been unsuccessful and the Commission has applied for costs to be awarded against it, Romania must be ordered to bear its own costs and to pay those incurred by the Commission.

93 Under Article 184(4) of the Rules of Procedure, where the appeal has not been brought by an intervener at first instance, he or she may not be ordered to pay costs in the appeal proceedings unless he or she participated in the written or oral part of the proceedings before the Court. Where an intervener at first instance takes part in the proceedings, the Court may decide that he or she is to bear his or her own costs.

94 Since Hungary took part in the proceedings before the Court, it is appropriate in the circumstances of this case to order Hungary to bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Romania to bear its own costs and pay those incurred by the European Commission;**

3. **Orders Hungary to bear its own costs.**

[Signatures]