



Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 4 October 2018¹

Case C-420/16 P

**Balázs-Árpád Izsák,
Attila Dabis
v**

European Commission

(Appeal — Citizens' initiative 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' inviting the Commission to submit a legislative proposal integrating the national minority regions into the EU cohesion policy — Application for registration — Rejection by the Commission — Article 4(2)(b) of Regulation (EU) No 211/2011 — Manifestly outside the framework of the Commission's powers — Manifest nature — Burden of proof — Article 174 TFEU — Article 167 TFEU — Article 19(1) TFEU)

I. Introduction

1. In the present case Mr Balázs-Árpád Izsák and Mr Attila Dabis are seeking the annulment of the judgment of the General Court of the European Union of 10 May 2016, *Izsák and Dabis v Commission* (T-529/13, EU:T:2016:282) ('the judgment under appeal') dismissing their action for annulment of Commission Decision C(2013) 4975 final of 25 July 2013 relating to the application for registration of the European citizens' initiative 'Cohesion policy for the equality of the regions and sustainability of the regional cultures', submitted to the European Commission on 18 June 2013 ('the decision at issue' or 'the refusal decision').

2. The central issue raised by this appeal concerns the interpretation of the ground on which the General Court confirmed the Commission's decision to refuse to register the proposed European citizens' initiative ('the proposed ECI'), namely that it is 'manifestly outside the framework of the Commission's powers to propose a legal act of the Union for the purpose of implementing the Treaties', within the meaning of Article 4(2)(b) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative ('Regulation No 211/2011').²

3. First of all, I think that, in view of the wording of some of the grounds of appeal, which is in some instances general, most of them are either inadmissible or unfounded.

¹ Original language: French.

² OJ 2011 L 65, p. 1.

4. However, as I shall explain in my analysis, I consider that the first and third grounds of appeal, taken together, should be upheld. The General Court was wrong to reject in their entirety the heads of claim based on a misinterpretation of Article 4(2)(c) TFEU, Article 174 TFEU and Article 3(5) of 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),³ read in the light of recital 10 of that regulation, and to uphold the contested decision refusing to register the proposed ECI. I consider that the judgment under appeal should therefore be set aside to that extent.

II. The background to the dispute, the decision at issue and the judgment under appeal

5. On 18 June 2013 Mr Balázs-Árpád Izsák and Mr Attila Dabis ('the appellants'), in association with five other persons, submitted to the Commission a proposed ECI entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures'. The objective of the proposed ECI was that 'the cohesion policy of the EU should pay special attention to regions with national, ethnic, cultural, religious or linguistic characteristics that are different from those of the surrounding regions'.⁴

6. On 25 July 2013, after recalling the wording of Article 4(2) of Regulation No 211/2011 and examining in particular the provisions of the TFEU referred to in the proposed ECI, and also 'all other possible legal bases', the Commission refused to register the appellants' proposed ECI on the ground that it manifestly fell 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 accordance with Article 4(2)(b) and (3) of Regulation No 211/2011.⁵

7. On 27 September 2013 the appellants brought an action before the General Court for annulment of the decision at issue. The single plea in the action, composed of several heads of claim, sought a declaration that the Commission had infringed Article 4(2)(b) of Regulation No 211/2011. The heads of claim alleged, first, an incorrect interpretation of Article 4(2)(c) TFEU, Article 174 TFEU and Article 3(5) of Regulation No 1059/2003, read in the light of recital 10 of that regulation, second, an incorrect interpretation of Article 167 TFEU, third, an incorrect interpretation of the first paragraph of Article 19 TFEU, fourth, an erroneous consideration of information not referred to in Article 4(1) and (2) of Regulation No 211/2011 and, fifth, a misuse of powers and an infringement of the principle of good administration.⁶

8. In the judgment under appeal, the General Court examined the different heads of claim put forward by the appellants in their single plea before dismissing the action and ordering the appellants to pay the costs.

III. Procedure before the Court and forms of order sought by the parties

9. On 28 July 2016 the appellants lodged an appeal against the judgment under appeal. In their forms of order, Mr Izsák and Mr Dabis claim that the court should, principally, set aside the judgment under appeal in its entirety, rule on the substance and annul the contested decision and, in the alternative, refer the case back to the General Court if the Court considers that the state of the proceedings does not permit it to give judgment, and order the Commission to pay the costs.

³ OJ 2003 L 154, p. 1.

⁴ See paragraph 2 of Annex II to the proposed ECI.

⁵ Paragraph 9 of the judgment under appeal.

⁶ Paragraph 39 of the judgment under appeal.

10. The Commission contends that the Court should dismiss the appeal and ordered the appellants to pay the costs.

11. The Romanian and Slovak Governments, which are interveners in the proceedings, contend that the Court should dismiss the appeal brought by the appellants and order them to pay the costs.

12. The Hungarian Government, which is also an intervener in the proceedings, contends that the Court should set aside the judgment under appeal and rule on the substance or, if the Court considers that the conditions for this are not satisfied, refer the case back to the General Court for judgment.

13. In their request for a hearing, the appellants also produced three additional grounds of appeal and, on the basis of those grounds, or others put forward in the appeal, seek for the judgment under appeal to be set aside. The Commission replied, in writing, in its observations that the additional grounds were, primarily, inadmissible and, in the alternative, unfounded.

14. The parties, except the Slovak Government which was not represented, stated their views at the hearing before the Court which was held on 3 April 2018.

IV. Legal analysis

Preliminary observations

15. In support of their appeal, the appellants have raised five grounds of appeal and, in their aforementioned request for a hearing, three other additional grounds. The first ground alleges infringement of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and Article 92(1) of the Rules of Procedure of the General Court of 4 March 2015 (‘the Rules of Procedure of the General Court’).⁷ The second ground alleges infringement of Article 11(4) TEU, and of Article 4(2)(b) of Regulation No 211/2011. The third ground alleges infringement of Article 4(2)(c) TFEU and Article 174 TFEU. The fourth ground alleges infringement of Articles 7 and 167 TFEU, Article 3(3) TEU, Article 22 of the Charter, and the provisions relating to the prohibition of discrimination. The fifth ground alleges misinterpretation of the concept of abuse of law when the General Court ruled on the costs. The three additional grounds allege infringement of the principle of good administration, infringement of the principle of equal treatment and, finally, failure to register the proposed ECI partially.

16. Although the appeal is based on five grounds and three additional grounds, I consider that it is appropriate to focus this Opinion on the analysis of the second, third and fourth grounds. Moreover, I think it is necessary to reorganise the appeal by joining the first and third grounds which, in essence, deal with the burden of proof, which, in the judgment under appeal, was borne by the appellants.

17. At the outset, it should be noted that all the grounds of the appeal revolve around the condition in Article 4(2)(b) of Regulation No 211/2011 and the review conducted by the General Court of the Commission’s assessment of what is manifestly outside the framework of its powers.

18. In that regard, it should be noted that, as is apparent from recital 4 and the last subparagraph of Article 4(1) of Regulation No 211/2011, the Commission, in the context of that registration procedure, must provide assistance and advice to the organisers of a European citizens’ initiative (‘ECI’ or ‘citizens’ initiative’), in particular as regards the registration criteria. It should also be pointed out that, as stated in recital 10 of that regulation, the decision on the registration of a proposed ECI,

⁷ OJ 2015 L 105, p. 1, amended on 13 July 2016 (OJ 2016 L 217, pp. 71, 72 and 73).

within the meaning of Article 4 of that regulation, must be taken in accordance with the principle of good administration, which entails, in particular, the obligation for the competent institution to conduct a diligent and impartial examination which, moreover, takes into account all the relevant features of the case. These requirements, that are inherent in the principle of good administration, apply generally to the actions of the EU administration in its relations with the public and, therefore, also in the context of the right to submit an ECI as an instrument of citizen participation in the democratic life of the European Union.⁸

19. It should be borne in mind that, in accordance with the objectives pursued by that instrument, as set out in recitals 1 and 2 of Regulation No 211/2011 and consisting, inter alia, in encouraging participation by citizens and in making the Union more accessible, the condition for registration laid down in Article 4(2)(b) of that regulation must be interpreted and applied by the Commission, when it receives a proposed ECI, in such a way as to ensure easy accessibility to the ECI.⁹ It is also apparent from the objectives of recital 2 of that regulation that the procedures and conditions required for the ECI should be clear, simple, user-friendly and proportionate to the nature of the ECI. The procedures and conditions required should strike a judicious balance between rights and obligations.¹⁰

20. 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, *is manifestly outside the scope of the powers*¹¹ under which the Commission may present a proposal for a legal act of the Union for the purposes of the implementation of the Treaties, that the Commission is entitled to refuse to register that proposed ECI pursuant to Article 4(2)(b) of that regulation.¹²

21. It is in the light of those considerations that the grounds of appeal should be examined.

A. The first and third grounds of appeal, relating to infringement of Article 4(2)(c) TFEU and Article 174 TFEU and to the allocation of the burden of proof

1. The judgment under appeal

22. At the end of paragraph 81 of the judgment under appeal, the General Court found that the appellants had not provided evidence that the implementation of the EU cohesion policy, both by the European Union and by the Member States, endangered the specific characteristics of national minority regions.¹³ Moreover, the General Court held, in paragraph 85 of the judgment under appeal, that the appellants had not shown that the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions could be regarded as a severe and permanent demographic handicap within the meaning of the third paragraph of Article 174 TFEU.

⁸ See, to that effect, judgment of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraphs 46 to 48).

⁹ See, to that effect, judgment of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraph 49).

¹⁰ See, to that effect, recital 2 of Regulation No 211/2011.

¹¹ Emphasis added.

¹² See, to that effect, judgment of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraph 50).

¹³ In the proposed ECI, the organisers defined ‘national minority regions’ as a term covering several regions and geographic districts, including geographical areas with no administrative competences, that are distinguishable from their neighbouring areas by their national, ethnic, cultural, religious or linguistic characteristics.

23. The General Court then proceeded, in paragraph 86 of the judgment under appeal, to analyse the third paragraph of Article 174 TFEU¹⁴ and Article 121(4)¹⁵ of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006¹⁶ ('Regulation No 1303/2013'), and found that those provisions do not include in the concept of 'handicap' handicaps which result from the specific ethnic, cultural, religious or linguistic characteristics of national minority regions.

24. The General Court added, in paragraph 87 of the judgment under appeal, that 'even supposing that such characteristics may be analysed as specific demographic data of the regions in question, it has not been established that they systematically constitute a handicap for the economic development of those regions in relation to the surrounding regions'. The General Court did indeed recognise that linguistic differences may be the source of increased transaction costs or of certain employment difficulties. However, it considered that they may also give the regions certain comparative advantages, such as a certain tourist attraction or multilingualism.

2. Summary of the arguments of the parties

25. The first ground of appeal should, in my view, be reworded, since, in essence, the appellants maintain that the General Court, without first informing them of the extent of the burden of proof, ruled as previously stated in paragraphs 81 and 85 of the judgment under appeal, and then rejected the appellants' claim owing to a lack of evidence, in paragraph 89 of the judgment under appeal. The third ground is an extension of the first ground.

26. In the first place, the appellants, supported essentially by the Hungarian Government, claim that, before delivering the judgment under appeal, the General Court did not inform the parties that they had to adduce evidence of the fact that the implementation of the EU cohesion policy, both by the Union and by the Member States, endangered the specific characteristics of national minority regions (paragraph 81 of the judgment under appeal) and that the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions could be regarded as a demographic handicap (paragraph 85 of the judgment under appeal). Consequently, in paragraph 87 of the judgment under appeal, the General Court relied on assumptions. Whereas, in paragraph 86 of the judgment under appeal, the General Court considered that the list in the third paragraph of Article 174 TFEU was exhaustive, in paragraph 87 it implicitly acknowledged that it could be extended. The General Court's statement of reasons was ambiguous.

¹⁴ According to the third paragraph of Article 174 TFEU, 'among the regions concerned, particular attention shall be paid to ... regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions'.

¹⁵ That article provides: '(4) the coverage of areas with severe and permanent natural or demographic handicaps defined as follows: (a) island Member States eligible under the Cohesion Fund, and other islands except those on which the capital of a Member State is situated or which have a fixed link to the mainland; (b) mountainous areas as defined by the national legislation of the Member State; (c) sparsely (i.e. less than 50 inhabitants per square kilometre) and very sparsely (less than 8 inhabitants per square kilometre) populated areas; (d) the inclusion of the outermost regions as referred to in Article 349 TFEU'.

¹⁶ OJ 2013 L 347, p. 320.

27. In the second place, the appellants allege, in essence, that the General Court infringed Article 47 of the Charter¹⁷ and the principle that both sides must be heard, and Article 92(1) of the Rules of Procedure of the General Court.¹⁸ According to the appellants, who cite inter alia the judgment of 21 February 2013, *Banif Plus Bank* (C-472/11, EU:C:2013:88, paragraph 29),¹⁹ in order to meet the requirements associated with the right to a fair hearing, it is important for the parties to be aware of and to be able to discuss in adversarial proceedings both the facts and the points of law which are crucial.

28. In the third place, the General Court also wrongly refused to take into account the statistical data presented in the applications to intervene of Județul Covasna (Romanian province of Covasna) and Obec Debrád (Slovak municipality of Debrád) (together ‘the applications to intervene at first instance’) showing that national minority regions suffer a demographic handicap.

29. The Commission and the Romanian and Slovak Governments state that the heads of claim are unfounded. According to the Commission, it is in principle for the person alleging facts in support of a claim to adduce evidence of those facts.

30. The Commission points out that, in paragraphs 80 to 89 of the judgment under appeal, the General Court did not deal, in essence, with the circumstances referred to in paragraph 80 and 85 of that judgment as facts, within the meaning of the rules governing the burden of proof and the taking of evidence. Instead, it undertook an interpretive analysis of the relevant rules of law and concluded, in paragraph 84 of the judgment, that neither Article 2 TEU, nor Article 21(1) of the Charter, nor any other provision of EU law aiming to prevent discrimination, in particular the provisions based on membership of a national minority, could, within the framework of the EU cohesion policy, allow the Commission to propose a legal act of the Union the purpose and content of which would have corresponded to those of the proposed act.

31. The Commission applied in the present case the interpretation adopted by the General Court in the judgment of 19 April 2016, *Costantini v Commission* (T-44/14, EU:T:2016:223, paragraphs 16 to 18). In those paragraphs, in essence, the General Court recalled that, in accordance with Article 5 TEU, the principle of conferral governs the limits of EU competences and that, under Article 13(2) TEU, each institution is to act within the limits of the powers conferred on it in the Treaties. That is the context of Article 4(2)(b) of Regulation No 211/2011. It follows from the wording of that provision that, in order to assess whether the proposed ECI manifestly falls outside the framework of its powers, the Commission holds an initial examination of the information available to it, given that it is apparent from Article 10(1)(c) of that regulation, that provision is made for a more comprehensive examination to be carried out if the proposed ECI is registered.

3. Analysis

32. In the first place, I consider that the head of claim relating to the admissibility of the evidence contained in the applications to intervene at first instance is manifestly unfounded. It should be pointed out that that evidence contains statistical data which already appeared in the applications to intervene at first instance, applications which the President of the First Chamber of the General Court dismissed by order of 18 May 2015, *Izsák and Dabis v Commission* (T-529/13, EU:T:2015:325, not

¹⁷ Article 47 of the Charter, entitled ‘Right to an effective remedy and to a fair trial’, provides:

‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.’

¹⁸ That article states that: ‘The General Court shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved.’

¹⁹ The citation appears to refer to paragraph 30 of the judgment of 21 February 2013, *Banif Plus Bank* (C-472/11, EU:C:2013:88).

published). That evidence is now annexed to this appeal. In this case, as the applications to intervene at first instance were rejected, the General Court cannot be criticised for not taking into account the statistical data contained in those applications in its decision on the merits, namely the judgment under appeal. Nor can that evidence be taken into account at the appeal stage, since the Court can review only the validity of the decision of the General Court in the light of the points of fact and of law falling within the subject matter of the case before the General Court.²⁰

33. In the second place, the heads of claim relating, in essence, to the infringement of Article 92(1) of the Rules of Procedure of the General Court should be rejected. Under Article 92(1) of the Rules of Procedure of the General Court: ‘the General Court shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved’. However, the appellants have misinterpreted Article 92(1) of those rules, because the General Court is under no obligation to convene applicants in order to specify the evidence which they must provide. The General Court *may*, by way of measures of organisation of procedure,²¹ adopt the measures of inquiry of its own motion referred to in Article 91 of the Rules of Procedure. However, it is apparent from the case-law, with which I agree, that the General Court is the sole judge of any need to supplement the information available to it in the case before it.²² ‘Moreover, the measures of inquiry ordered by the General Court ... in accordance with Article 91 ... lie within the discretion of the General Court. It is therefore free to decide whether or not to order such measures.’²³

34. The appellants’ claim that the General Court should have asked them to provide additional evidence of their allegations should therefore be rejected.

35. On the other hand, in the third and last place, I consider that the ground of appeal relating, in essence, to infringement of Article 4(2)(c) TFEU²⁴ and Article 174 TFEU and to the allocation of the burden of proof which is the subject of Article 4(2)(b) of Regulation 211/2011 should be upheld.

36. I would point out that, under Article 4(3) of Regulation No 211/2011, the Commission is to refuse to register the proposed ECI if, in particular, the condition set out in Article 4(2)(b) of that regulation is not fulfilled. As the appellants rightly point out, it is apparent from a literal interpretation of the regulation that the Commission may refuse to register the proposed ECI only on grounds of a manifest ‘lack’ of power.²⁵ The adverb ‘manifestly’ leads initially to a first general examination making it possible to rule out proposed ECIs which do not manifestly fall within the scope of any of the provisions of the Treaties enabling it to found EU jurisdiction,²⁶ while provision is made for a more comprehensive examination to be carried out if the proposed ECI is registered.²⁷

20 First paragraph of Article 58 of the Statute of the Court of Justice of the European Union.

21 In accordance with Article 88(1) of the Rules of Procedure of the General Court. Emphasis added.

22 See, by analogy, judgments of 22 November 2007, *Sniace v Commission* (C-260/05 P, EU:C:2007:700, paragraphs 77 and 78), and of 3 February 2005, *Comafrika and Dole Fresh Fruit Europe v Commission* (T-139/01, EU:T:2005:32, paragraph 171): ‘the evidence in the file and the explanations tendered at the hearing are sufficient to enable it to give judgment in the present case’. Furthermore, as is stated in paragraph 21 of the judgment under appeal, as pointed out by the Romanian Government in its observations, on the basis of the evidence presented by the appellants the General Court decided, by way of the measures of organisation of procedure provided for in Article 89(3)(b) of the Rules of Procedure of the General Court, to request the main parties to give their views in writing on certain aspects of the case.

23 See, to that effect, order of 8 February 2018, *HB v Commission* (C-336/17 P, EU:C:2018:74, paragraph 26).

24 According to that article: ‘2. Shared competences between the Union and the Member States applies in the following principal areas: ... (c) economic, social and territorial cohesion ...’.

25 According to the Larousse Dictionary, the adjective ‘manifest’ means: The nature, reality and authenticity of which is obvious.

26 The consequence of the limitation ‘manifestly outside the framework of the Commission’s powers’ is that the proposed ECI cannot concern either a field which exceeds the competences of the Union or a subject matter, for example the common foreign and security policy, which does indeed fall within the competence of the Union but for which the Commission does not have the power to submit a proposal. Under Article 17(2) TEU, the Commission is the institution which ultimately has the power to initiate legislation and will initiate the legal act if the proposed ECI fulfils all the conditions for registration and the substantive requirements of Regulation No 211/2011. See also the article by Villani, U., in D’Alessio, M.T., Kronenberger, V., and Placco, V. (dir.), *De Rome à Lisbonne: les juridictions de l’Union européenne à la croisée des chemins. Mélanges en l’honneur de Paolo Mengozzi*, Bruylant, Brussels, 2013, p. 202.

27 See, to that effect, the judgment of 19 April 2016, *Costantini and Others v Commission* (T-44/14, EU:T:2016:223, paragraph 17) and paragraph 60 of the judgment under appeal.

37. In order to satisfy the negative condition laid down in Article 4(2)(b) of Regulation No 211/2011, organisers must specify in the proposed ECI that it falls within the framework of the powers of the Commission by suggesting provisions which they consider relevant for founding the Commission's competence. The Commission, and then the General Court, on the other hand, must verify that that negative condition is indeed fulfilled.

38. This therefore means that, first, if there is any doubt concerning the aim and objectives of the proposed ECI which *potentially* falls within the scope of the Commission's powers, the Commission should register the proposed ECI. Second, if that proposal falls outside the competences of the Commission but the Commission has not established that this is manifestly so, the proposed ECI may be registered. Third, the proposed ECI must fall within the framework of the Commission's powers, but the organisers cannot be required to demonstrate that it *manifestly falls* within the framework of the Commission's powers.

39. That said, it is necessary to assess the review conducted by the General Court in the judgment under appeal as to whether the proposed ECI fell 'manifestly outside the framework of the Commission's powers'.

40. First, in paragraph 60 of the judgment under appeal, the General Court rightly pointed out that, under Article 4(2)(b) of Regulation No 211/2011, the Commission must conduct an initial examination of the information available to it in order to assess whether the proposed ECI does not manifestly fall outside the framework of its powers. In paragraph 61 of the judgment under appeal, the General Court stated that it was required to determine in the present case whether the Commission had correctly applied the condition laid down in Article 4(2)(b) of Regulation No 211/2011.

41. Those assessments are not disputed by the appellants and it should be noted that they are similar to those formulated by the General Court in the judgment in *Costantini v Commission* (T-44/14, EU:T:2016:223, paragraphs 16 to 18), to which the Commission refers in its pleadings.

42. Although there is no objection to those principles which must guide both the Commission and General Court, they do not provide a solution on the substance of the case, contrary to what the Commission contends in its response to the appeal.

43. Second, the General Court, in paragraphs 64 to 71, assessed the validity of the decision at issue in the light of the provisions alleged to have been misinterpreted by the appellants at first instance.²⁸ On the basis of those considerations, in paragraph 72 of the judgment under appeal, the General Court concluded, on the basis of the statutory framework, that the Commission was entitled to adopt the view, in the decision at issue, that 'Articles 174 [TFEU] 176 [TFEU], 177 [TFEU] and 178 TFEU cannot constitute legal bases to adopt the proposed ... act'. In paragraphs 73 to 76 of that judgment, when considering the Commission's analysis in that decision, the General Court upholds the contested decision and concludes that 'the EU legislature could not, without infringing Article 4(2) TEU,²⁹ adopt an act which ... would define national minority regions, capable of benefiting from special attention within the framework of EU cohesion policy, on the basis of autonomous criteria and, therefore, without regard to the political, administrative and institutional status quo existing in the Member States in question'.

²⁸ These are the heads of claim alleging misinterpretation of Article 4(2)(c) TFEU, Article 174 TFEU and Article 3(5) of Regulation No 1059/2003, read in the light of recital 10 of the regulation.

²⁹ That article provides: 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect that essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State'.

44. However, third, the General Court qualifies its analysis by pointing out, in paragraph 77 of the judgment under appeal, that ‘in any event’, even supposing that ‘national minority regions may correspond to administrative units existing in the Member States in question or aggregations of such units, the Court notes that the preservation of the specific ... characteristics of those regions is not an aim which could justify the adoption of a legal act of the Union on the basis of [Article 174 TFEU]’. According to the General Court, the objectives of Article 174 TFEU do not correspond to the objectives of the proposed ECI, that is to say the preservation of the characteristics of national minority regions, since the measures adopted on the basis of that article are designed to promote a harmonious whole throughout the European Union and, in particular, to reduce disparities between the levels of development of the various regions and the backwardness of the least favoured regions by granting them special attention. In paragraph 79 of the judgment under appeal, the General Court recognises that the appellants allege that the current implementation of the cohesion policy does not fulfil its objectives. However, in paragraph 85 of the judgment under appeal, the General Court states that the appellants have not shown that the characteristics of the national minority regions could be regarded as a severe and permanent handicap within the meaning of the third paragraph of Article 174 TFEU. While considering that level of proof to be insufficient, the General Court, in paragraph 86 of the judgment under appeal, ruling in the light of the wording of the third paragraph of Article 174 TFEU and Article 121(4) of Regulation 1303/2013,³⁰ concludes that it cannot be deduced from secondary legislation or from the provision of the Treaties that ‘the concept of a “serious and permanent demographic handicap” within the meaning of the third paragraph of Article 174 TFEU could include the specific ethnic, cultural, religious or linguistic characteristics of national minority regions’.

45. Fourth, in paragraph 87 of the judgment under appeal, the General Court states that ‘even supposing that such characteristics may be analysed as specific demographic data of the regions in question, it has not been established that they *systematically*³¹ constitute a handicap for the economic development of those regions in relation to the surrounding regions’. The General Court does admit that ‘differences, inter alia linguistic, between those regions and the surrounding regions may be at the source of certain increased transaction costs or of certain employment difficulties’. However, it considers that ‘the specific characteristics of those regions may also bring them certain comparative advantages, such as a certain touristic attraction or multilingualism’.

46. In paragraph 89 of the judgment under appeal, the General Court concludes that ‘in the absence of any conclusive evidence put by the [appellants], there is therefore no reason for supposing that the specific ethnic, cultural, religious or linguistic characteristics of national minority regions systematically hinder their economic development in relation to that of the surrounding regions so that those characteristics could be regarded as a “serious and permanent demographic handicap” within the meaning of the third paragraph of Article 174 TFEU’.

47. The whole of the General Court’s reasoning reveals, in my view, a misinterpretation of the third paragraph of Article 174 TFEU, together with a reversal of the burden of proof on the Commission, to the detriment of the appellants.

48. In that regard, I would point out that Article 174 TFEU provides that ‘in order to promote its overall harmonious development, the Union is to develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of

³⁰ See footnote 15.

³¹ Emphasis added.

the least favoured regions. Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.’

49. Indeed, as the appellants correctly claimed, it is apparent from the wording of the third paragraph of Article 174 TFEU that it lists non-exhaustively the regions concerned by using the words ‘such as’.

50. In paragraph 86 of the judgment under appeal, the General Court held that the list of the regions concerned was exhaustive, whereas, in paragraph 72 of that judgment, referring to the contested decision, the General Court confirmed the Commission’s assessment that it was the list ‘of handicaps’ which was exhaustive.

51. As regards the list of handicaps, the third paragraph of Article 174 TFEU lists two types, namely ‘natural handicaps’ or ‘severe and permanent demographic handicaps’. However, the exhaustive nature of the type of handicap does not mean that the national minority regions cannot satisfy the second handicap mentioned in that provision. As stated above, the list of eligible regions is not exhaustive, as the use of the words ‘such as’ shows. Nevertheless, by holding that the list of regions referred to by the third paragraph of Article 174 TFEU is exhaustive, the General Court destroys any chance for national minority regions to claim eligibility for the policies stemming from Article 174 TFEU.

52. In the absence of such a misinterpretation, it cannot be precluded that the proposed ECI falls within the framework of the Commission’s powers. As I have already pointed out in point 38 of this Opinion, where the proposed ECI potentially falls within the Commission’s powers, the Commission must register it.

53. That error is all the more obvious because the General Court upheld the refusal decision, stating that the proposed ECI sought to redefine the concept of ‘region’, without regard to the political, administrative and institutional situation prevailing in the Member States — a situation which the cohesion policy should respect — even though the third paragraph of Article 174 TFEU includes ‘cross-border regions’ in the category of regions affected by that policy.

54. By using that terminology, the third paragraph of Article 174 TFEU could potentially constitute a legal basis for reinforcing the cohesion of regions beyond national borders.

55. In those circumstances, contrary to what the General Court held in paragraph 72 of the judgment under appeal, the third paragraph of Article 174 TFEU may constitute an appropriate legal basis for registering the proposed ECI. As I have already stated in point 38 of this Opinion, that mere possibility is enough to satisfy the condition in Article 4(2)(b) of Regulation No 211/2011.

56. It follows that, contrary to what the General Court held in paragraphs 81, 85, 87 and 89 of the judgment under appeal, it was not for the appellants to show that the characteristics of the national minority regions could constitute a severe and permanent demographic handicap within the meaning of the third paragraph of Article 174 TFEU, but rather for the Commission to adduce evidence that the proposed ECI manifestly fell outside the framework of its powers.

57. The fact that the proposed ECI may potentially fall within the framework of the Commission’s powers is sufficient.

58. I would add that the content of the proposed ECI is relatively limited in terms of format. It is apparent from Annex II to Regulation No 211/2011, entitled ‘Required information for registering a proposed citizens’ initiative’, that the subject matter of the proposal must contain a maximum of 200 characters and the description of its objectives a maximum of 500 characters. That information is compulsory. As an option, the organisers may also, if they so wish, provide additional information and submit a draft legal act which would be attached in the annexes.

59. The proposed ECI is also limited in substance, because, as previously pointed out,³² it is organised by citizens who are ‘non-specialists in EU law’ and cannot master all the areas and policies of the Union. Compared with European and national institutions, the organisers do not have all the information, resources and means which would have enabled them, in the present case, to furnish proof of the handicap suffered by those regions, of the fact that the implementation of the EU cohesion policy endangered the specific characteristics of national minority regions, and of the systematic nature of that handicap for their economic development, in stronger support of their proposed ECI.

60. In the light of these considerations, it would be particularly unreasonable and disproportionate to make the organisers responsible for that burden of proof.³³

61. Moreover, I wonder what proof was required from the appellants, since the General Court proceeded on the false premiss that the list of regions referred to by the third paragraph of Article 174 TFEU was exhaustive.

62. It is apparent from all these considerations that I consider that the first and third grounds of appeal taken together should be upheld.

B. The second ground of appeal, alleging infringement of Article 11(4) TEU and Article 4(2)(b) of Regulation No 211/2011

63. The second ground of appeal is divided into two parts. The first part alleges an error of law by the General Court which erroneously summarised the content of the proposed ECI. The second part relates to the General Court’s failure to state reasons and infringement of Article 11(4) TEU and Article 4(2)(b) of Regulation No 211/2011.

1. The first part of the second ground, relating to the erroneous interpretation of the content of the proposed ECI

(a) Summary of the arguments of the parties

64. First of all, the appellants maintain that the content and additional information of the proposed ECI were incorrectly summarised by the General Court in paragraphs 73 and 74 of the judgment under appeal. The appellants claim that, by upholding the Commission’s arguments, the General Court attributed to the proposal an incorrect content which does not follow from the proposed ECI submitted by the organisers. The General Court therefore unlawfully dismissed the appellants’ action.

³² See, to that effect, my Opinion in *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:175, point 2).

³³ See, to that effect, Organ, J., ‘Decommissioning Direct Democracy — A Critical Analysis of Commission Decision-Making on the Legal Admissibility of European Citizens Initiatives Proposals’, *European Constitutional Law Review*, 2014 No 10, pp. 422-443.

In their reply, lodged *before* the rectification order of 20 June 2017, *Izsák and Dabis v Commission* (T-529/13, EU:T:2017:429, not published, ‘the rectification order of 20 June 2017’), the appellants maintain their claim irrespective of the language version of the judgment under appeal, to which the Court refers.³⁴

65. Second, according to the appellants, the proposed ECI complies with Article 11(4) TEU³⁵ as it satisfies the first condition thereof, namely that the initiative must be taken on a matter for which citizens *consider* that a legal act of the Union is necessary for the purpose of implementing the Treaties. The proposed ECI also satisfies the second condition, namely that the Commission must have powers enabling it to submit an appropriate proposal pursuant to Article 11(4) TEU and registration is not precluded by Article 4(2)(b) of Regulation No 211/2011.³⁶ The appellants explained in detail that the Commission, by relying on the concept of ‘shared competence’, could have submitted a proposal falling within the competence of the Union, as deriving from the founding Treaties, and at the same time corresponding to the proposed ECI submitted by the organisers. The organisers did not expect the content of the proposed ECI to require the Member States to define that concept or to draw up the list of regions. That is not even necessary because the cohesion policy falling within the shared competence of the Union and the Member States, first, allows the Union to define the concept of ‘national minority regions’ and the broad outline of the legal framework applicable to those regions, second, allows the Member States to designate those of their territorial entities it wishes to be covered by that concept as defined by the legal act in question, by supplementing it, and, finally, third, to designate by name in the annex to the Commission’s legal act the regions considered by the Member States to be national minority regions.

66. The Commission, supported by the Romanian and Slovak Governments, maintains that this part must be rejected as unfounded or in any event ineffective.

(b) Analysis

67. This part seems to me partly manifestly unfounded and partly manifestly inadmissible.

68. In the first place, the appellants maintain that the content and additional information of the proposed ECI were summarised incorrectly in paragraphs 73 and 74 of the judgment under appeal.

69. In that regard, it should first of all be stated that the appellants do not identify any element of the judgment under appeal to support their claim concerning paragraph 74 of the judgment under appeal.³⁷

70. As regards the second sentence of paragraph 73 of the judgment under appeal, it should be pointed out that it was an error in the version of the judgment in the language of the case, Hungarian, which was corrected by the rectification order of 20 June 2017.

³⁴ I observe that, according to the corrected paragraph of the Hungarian language version of the judgment under appeal, it is the act proposed in the proposed ECI, and not by the Member States as the original paragraph of the Hungarian version of the judgment under appeal assumed, which was to define the concept of ‘national minority region’ and to draw up a list of national minority regions.

³⁵ That article provides that ‘not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European 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’.

³⁶ That article states that ‘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’.

³⁷ In paragraph 74 of the judgment under appeal, the General Court merely summarised the criteria on the basis of which, according to the proposed ECI, the national minority regions were to be defined.

71. Before that correction, the Hungarian version of the second sentence of paragraph 73 of the judgment under appeal stated that ‘the proposed act was, inter alia, to *oblige* the Member States to *respect* their commitments with regard to national minorities, ..., to *define* the concept of “national minority regions”, which would also be covered by a “region” within the meaning of Articles 174 [TFEU] to 178 TFEU, *and to lay down* a list naming the national minority regions ...’.³⁸

72. The Hungarian version of the judgment under appeal differed from all the other language versions on this point in that it suggested that the proposed ECI called not on the Union, in the proposed act, but on the Member States to define the concept of ‘national minority regions’ and to lay down a list of national minority regions.³⁹

73. Although it is true that the rectification order of 20 June 2017 was made during the written procedure conducted in this appeal, the appellants nevertheless, following the adoption of that order, maintained their head of claim against the second sentence of paragraph 73 of the judgment under appeal, in the Hungarian language version, even though the manifest error contained in the version was rightly corrected by that order.

74. However, that head of claim alleging an incorrect summary of the content of the proposed ECI, as it appeared in the original Hungarian language version of the second sentence of paragraph 73 of the judgment under appeal, clearly cannot succeed since it is based on an erroneous factual finding.

75. To conclude on the first point of the first part, I would point out, for whatever purpose it may serve, that the appellants’ argument that the uniformity of the case-law of the Court and the principle of legal certainty would be compromised if the Court gave priority to a language version other than that of the language of the case, the only authentic version, is factually incorrect, since, in that language, only the version of the second sentence of paragraph 73 of the judgment under appeal as corrected by the rectification order of 20 June 2017, is authentic.

76. Second, the appellants maintain that the General Court’s finding that the Commission was entitled to consider that Articles 174 and 176 to 178 TFEU cannot constitute legal bases for adopting the proposed act is based on an erroneous interpretation of Article 11(4) TFEU and of Article 4(2)(b) of Regulation No 211/2011. First, the citizens considered that a legal act is required. Second, since the envisaged act is part of the cohesion policy it falls, according to the appellants, within the shared competence. Therefore, the legal act proposed in the proposed ECI does not oblige the Member States to define that concept or to draw up the list of regions.

77. Admittedly, it is apparent from the wording of the first subparagraph of Article 11(4) TEU, that organisers ‘[may invite] 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’. However, the second subparagraph of Article 11(4) TEU lays down certain conditions required for presenting an ECI to the Commission, by leaving it to the regulation provided for by the first paragraph of Article 24 TFEU — Regulation No 211/2011 — to establish comprehensive rules governing ECI procedures and conditions.

³⁸ Emphasis added.

³⁹ Moreover, as the Commission pointed out, the paragraph in question referred to paragraph 7 of the judgment under appeal, containing a summary of the proposed ECI faithfully reproducing its content.

78. Furthermore, it should be noted that it is settled case-law that, in an appeal, the Court's jurisdiction is, in principle, confined to review of the findings of the law on the pleas argued at first instance.⁴⁰ The appeal is limited to points of law and must be based on grounds alleging the lack of competence of the General Court, breaches of procedure before the General Court adversely affecting the interests of the appellant, or infringement of EU law by the General Court.

79. The General Court has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess the evidence adduced.

80. As the Commission maintains, the Court's interpretation of the contested decision is based on a finding and an assessment of facts, save where the facts have been distorted, and does not therefore constitute a point of law which is subject, as such, to review by the Court.⁴¹

81. However, not only does the appeal not specify the paragraphs in the judgment in which the General Court erred in law, confining itself in general to raising arguments 'contrary to the view adopted in the judgment under appeal', above all it alleges that the organisers were not expecting the proposed act to require the Member States to define the concept of 'national minority region' or to draw up the list of regions, without that being necessary since the cohesion policy falls within the shared competence of the Union and the Member States. In this way, the appellants are attempting to call in question a finding and an assessment of facts.

82. That complaint must therefore be rejected as inadmissible. It follows that the first part of the second ground is in part unfounded and in part inadmissible.

2. The second part of the second ground, alleging failure to state reasons and infringement of Article 11(4) TEU and Article 4(2)(b) of Regulation No 211/2011

83. The second part of the second ground of appeal relates to the General Court's obligation to state reasons and to infringement of Article 11(4) TEU and Article 4(2)(b) of Regulation No 211/2011.

(a) Summary of the arguments of the parties

84. In the second part of the second ground, the appellants, supported by the Hungarian Government, allege in essence that the judgment under appeal infringes Article 4(2)(b) of Regulation No 211/2011. It is apparent from a literal interpretation of that regulation that the Commission can refuse to register the citizens' initiative only if it has a manifest 'lack' of powers in the area.

85. The wording of Regulation No 211/2011 therefore implies that the proposed ECI may be presented in various forms from the point of view of the competence of the Union. First, if it is possible to find without a more in-depth analysis that the proposed ECI does not fall within the competence of the European Union, that is to say that it was not related to the areas of exclusive or shared EU competences defined in the Treaties, the Commission should refuse to register it. Second, if the proposed ECI does not fall within the competence of the European Union, but this can only be

⁴⁰ See, to that effect, judgments of 26 January 2017, *Masco and Others v Commission* (C-614/13 P, EU:C:2017:63, paragraph 32); of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraph 55); of 30 April 2014, *FLSmidth v Commission* (C-238/12 P, EU:C:2014:284, paragraph 42); and of 22 May 2014, *ASPLA v Commission* (C-35/12 P, EU:C:2014:348, paragraph 39).

⁴¹ See, to that effect, my Opinion in *Safa Nicu Sepahan v Council* (C-45/15, EU:C:2016:658, point 72), and see, to that effect, judgments of 15 June 2017, *Spain v Commission* (C-279/16 P, EU:C:2017:461, paragraph 36), and of 3 December 2015, *PP Nature-Balance Lizenz v Commission* (C-82/15 P, not published, EU:C:2015:796, paragraphs 26 and 27).

established after an in-depth analysis, or where it is not manifest, the Commission should nevertheless register it. However, if the necessary signatures have been collected, the Commission should refuse to take further action until the end of the procedure set out in Article 10 of Regulation No 211/2011, stating the reasons why it does not have the necessary powers.

86. According to the appellants, in its decision refusing to register the ECI, the Commission stated that ‘the *in-depth*⁴² examination of the provisions of the Treaties that you suggested and of all other possible legal bases has led to this conclusion’. If the subject matter of the proposed ECI fell ‘manifestly 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 appellants cannot see the need for an in-depth examination, since the proposed ECI was manifestly outside the Commission’s powers.

87. Consequently, the appellants consider that the General Court infringed the obligation to state reasons laid down in Article 117(m)⁴³ of the Rules of Procedure of the General Court, in so far as it did not rule on the interpretation of the manifest nature of the lack of powers.

88. The Commission, supported by the Romanian and Slovak Governments, submits that this part and this ground as a whole must be rejected as unfounded.

(b) Analysis

89. First of all, as pointed out in points 78 and 79 of this Opinion, the head of claim relating to the scope of the Commission’s assessment in the refusal decision, having regard, first, to the provisions considered relevant and to all other possible legal bases and, second, to the scope of the assessment of the proposed ECI when it falls manifestly outside the framework of the Commission’s powers, is an analysis which is not an assessment of the legal solution given to the pleas debated before the court of first instance, but a factual assessment.

90. It seems to me impossible to assess that head of claim without calling into question a finding and an assessment of a factual nature. Therefore, that head of claim is inadmissible.

91. Moreover, the principal head of claim of the second part of the second ground of appeal concerning the scope of the General Court’s reasoning in the judgment under appeal is both ineffective and inadmissible.

92. The appellants maintain, in essence, that the General Court infringed the obligation to state reasons laid down in Article 117(m) of the Rules of Procedure of the General Court. According to the appellants, the General Court only partially assessed the proposed ECI as being outside the framework of the Commission’s powers, while omitting to rule on whether it was ‘*manifestly outside the framework of the powers*’.

93. According to settled case-law, it is necessary to distinguish the obligation to state reasons as an essential procedural requirement, which may be raised in a plea alleging that inadequate or even no reasons are stated for a decision, from review of the merits of the reasons stated, which falls within the review of the act’s substantive legality and requires the Court to determine whether the grounds on which the act is founded are vitiated by an error. The two reviews differ in nature and give rise to separate assessments by the Court.⁴⁴

⁴² Emphasis added.

⁴³ That article provides that ‘a judgment shall contain: ... (m) the grounds for the decision’.

⁴⁴ See, to that effect, judgment of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraph 42 and the case-law cited).

94. To the extent that the infringement of the obligation to state reasons concerns the paragraphs of the judgment under appeal which I suggest should be annulled in the context of the analysis of the first and third grounds, that infringement is irrelevant. If, as I suggest, the Court upholds those two grounds, it will necessarily have examined the merits of the reasoning relating to the assessment of whether the proposed ECI was ‘manifestly outside the framework of the Commission’s powers adopted by the General Court’.

95. In so far as this part concerns the other grounds of the judgment under appeal, the appellants have not specified the paragraphs in the judgment under appeal affected by the failure to state reasons.

96. Therefore, the second part of the second ground must be rejected and, consequently, the second ground as a whole is in part inadmissible and in part unfounded.

C. The fourth ground of appeal, alleging infringement of Articles 7 and 167 TFEU, Article 3(3) TEU, Article 22 of the Charter and the provisions relating to the prohibition of discrimination

1. The judgment under appeal

97. In paragraphs 91 to 104 of the judgment under appeal, the General Court examined the appellants’ argument that the Commission wrongly held that the proposed ECI fell manifestly outside the framework of its powers, since it did not contribute to the objectives pursued by the EU cultural policy, referred to in Article 167 TFEU. After recalling, in paragraph 95 to 97 of the judgment under appeal, the provisions of the Treaties that the organisers considered relevant and cited in the proposed ECI, the General Court analysed, in particular, the scope of Article 167(2), (3) and (5) TFEU and the objectives of that article. In paragraphs 101 to 104 of the judgment under appeal, to which this ground of appeal applies, the General Court analysed and developed the arguments confirming the Commission’s refusal decision. Accordingly, the General Court held that Article 167 TFEU could not serve as a basis for the adoption of a legal act of the Union in pursuit of the aim and content of the proposed ECI. The objective of the proposed ECI⁴⁵ goes far beyond merely contributing to the flowering of the cultures of the Member States, while respecting their national and regional diversity, or merely highlighting the common cultural heritage, and is not linked directly to one of the objectives specifically referred to in Article 167(2) TFEU. According to the General Court, the appellants acknowledged in their application that the aim of the proposed ECI was not to protect cultural diversity, even if the proposed act might have such a consequence.

98. Paragraphs 105 to 114 of the judgment under appeal relate to the infringement of Article 19(1) TFEU.⁴⁶ Paragraphs 105 to 109 of the judgment under appeal summarise the arguments of the parties and the content of the contested decision. The appellants allege an erroneous interpretation of Article 19(1) TFEU. In paragraphs 111 to 114 of the judgment under appeal, the General Court examined the scope of Article 19(1) TFEU.

⁴⁵ The objective of the proposed ECI is the preservation of national minority regions through their specific ethnic, cultural, religious or linguistic characteristics, to the extent of recognising the autonomous status of such regions, for the purposes of implementing EU cohesion policy.

⁴⁶ That article provides: ‘1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’

2. Summary of the arguments of the parties

99. First, the appellants, supported by the Hungarian Government, criticise the General Court for having misinterpreted when it endorsed, in paragraphs 101 to 104 of the judgment under appeal, the Commission's argument that the regulation proposed in the proposed ECI would not contribute to the attainment of any of the objectives pursued by the EU cultural policy. On the contrary, they consider that the proposal would contribute to the consistency of EU policies and actions, as required by Article 7 TFEU,⁴⁷ by promoting an approach to ensure that the cohesion policy takes cultural diversity into account, as required by Article 167 TFEU, and to ensure its sustainability.

100. Moreover, according to the appellants, the General Court conducted 'an analysis *in abstracto* of the provisions relied on'⁴⁸ in this subpart [of the appeal], outside the context of the cohesion policy, which is wrong'.

101. Furthermore, the appellants criticise the General Court for rejecting, in paragraphs 104 to 114 of the judgment under appeal, the heads of claim based on Article 19(1) and Article 167 TFEU. According to the appellants, 'the General Court did not take into account the risk that the regulatory framework might infringe those provisions, and the other provisions relied on in this subpart [of the appeal]', in a case in which the legislative bodies of the Union are required to amend the rules adopted within the framework of the cohesion policy. In their reply, the appellants maintain their position and contend that the objection to admissibility raised by the Commission against that ground of appeal is unfounded. The appellants also point out that, in the field of culture, the objective of EU action is to encourage cooperation between the Member States. Similarly, under Article 167(4) TFEU, the Union must also take cultural aspects into account in its action under other provisions. The appellants also state that this obligation is reinforced by Article 7 TFEU, which lays down a requirement of consistency between EU policies and actions, and by Article 22 of the Charter, under which the Union, in its actions, must respect cultural, religious and linguistic diversity. The current implementation of the cohesion policy does not contribute to the preservation of cultural diversity required by Article 167 TFEU, and therefore does not comply with Article 7 TFEU on cohesion between EU policies and actions. Consequently, the judgment under appeal is unlawful.

102. The Commission, supported by the Romanian and Slovak Governments, considers that the fourth ground is, primarily, inadmissible and, in the alternative, unfounded.

3. Analysis

103. Like the Romanian and Slovak Governments and the Commission, I consider that this ground of appeal should be declared inadmissible, since the appellants have not raised an error of law or a specific legal argument concerning the reasoning adopted by the General Court in paragraphs 104 to 114 of the judgment under appeal.

⁴⁷ Article 7 TFEU provides: 'The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.'

⁴⁸ The appeal does not indicate which 'provision relied on' is specifically referred to, but the paragraphs of the judgment under appeal (101 to 104) cite Article 167(1), (2) and (3) and Article 3(3) TFEU and Article 22 of the Charter.

104. It should be pointed out that, according to settled case-law, it is apparent from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice⁴⁹ that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal concerned, failing which the appeal or ground of appeal concerned is inadmissible.⁵⁰

105. Thus points 72 to 84 of the appeal present certain elements of the legal framework of the case, but the appellants do not develop specific arguments to identify the error of law which they allege was committed by the General Court in the interpretation of the rules of law alleged to have been infringed or in the legal characterisation of the facts in the light of those rules. Contrary to what the appellants claim in their reply, they have given no substantiated explanation of the legal foundations on which the General Court erred in interpreting, in paragraph 101 of the judgment under appeal, Article 167 TFEU. Moreover, they have not stated specifically how the judgment under appeal infringed the provisions they have listed in their appeal. The bold type applied to certain terms of the provisions in points 81 and 84 of the appeal, without any comment as to the reasons which led the appellants to select those provisions in particular, cannot constitute a legal argument or criticism of the reasoning of the General Court confirming the decision refusing to register the proposed ECI.

106. The appellants merely state, in their second head of claim in point 89 of their appeal, that the General Court misinterpreted the provisions cited in the appeal and that, consequently, the judgment under appeal is unlawful without, however, advancing, in the reasoning relating to the fourth ground of appeal, the slightest legal argument in support of that claim. That claim constitutes in reality a request for a factual re-examination of the claim submitted to the General Court, which falls outside the jurisdiction of the Court of Justice in an appeal.

107. In points 86 and 87 of the appeal, the appellants confine themselves, in essence, to referring to a lack of consistency in the cultural policy on the basis of factual circumstances, without identifying the criticised grounds of the judgment under appeal, merely referring the Court to the proposed ECI, but not developing any specific criticism of the reasoning on which the judgment is based.

108. Furthermore, the appellants draw the wrong conclusion from the judgment of 9 September 1999, *Lucaccioni v Commission* (C-257/98 P, EU:C:1999:402, paragraph 61 et seq.), in their reply. In their view, the appeal is admissible on the grounds that the appellants need only specify the legal basis on which the General Court should have concluded differently because the Court of Justice alone is authorised to interpret EU law. It is true that the Court is the ultimate court with jurisdiction to interpret EU law. However, as the Commission has stated, it is clear from paragraph 62 of the judgment of 9 September 1999, *Lucaccioni v Commission* (C-257/98 P, EU:C:1999:402), that the ‘legal basis’ referred to in that judgment on which the General Court should have reached a different conclusion is clearly distinguishable from the ‘provisions’ the infringement of which was alleged before the General Court.⁵¹ In that regard, the appellants should have explained, first, how the General Court’s assessment relating to the scope of Article 167 TFEU, in paragraph 101 of the judgment under appeal, was affected by an error of law, in so far as it held that the recognition of autonomous status for national minority regions, for the purposes of implementing the EU cohesion policy, is an

⁴⁹ OJ 2012 L 265, p. 1.

⁵⁰ See, to that effect, judgments of 8 June 2017, *Dextro Energy v Commission* (C-296/16 P, not published, EU:C:2017:437, paragraph 60); of 16 February 2017, *Brandconcern v EUIPO and Scooters India* (C-577/14 P, EU:C:2017:122, paragraph 37); and of 3 September 2015, *Inuit Tapiriit Kanatami and Others v Commission* (C-398/13 P, EU:C:2015:535, paragraph 53).

⁵¹ That paragraph provides: ‘Inasmuch as the fourth limb of the plea alleges that the Court of First Instance held that the Commission had not disregarded the procedures set out in Articles 73 and 78 of the Staff Regulations, but does not specify the legal basis on which the Court of First Instance ought to have formed the view that the Commission had infringed those provisions by failing to ask the Invalidity Committee, set up in 1991 on the basis of Article 78 of the Staff Regulations, to deliver an opinion on the possible occupational origin of the appellant’s disease, it must be declared inadmissible.’

objective which goes far beyond merely contributing to the flowering of the cultures of the Member States, while respecting their national and regional diversity. Second, the appellants should also have explained how such recognition is directly linked, contrary to what the General Court held in paragraph 101 of the judgment under appeal, to one of the objectives specifically referred to in Article 167(2) TFEU.

109. Therefore, by merely citing the legal provisions allegedly infringed by the General Court, without specific and precise information concerning the errors of law the General Court was alleged to have committed, the appellants, ultimately, have not advanced any plea of illegality.

110. Third and lastly, as regards the appellants' allegation that the findings in paragraph 101 to 104 of the judgment under appeal are a result of an analysis *in abstracto* of the other provisions relied on 'in this subpart of the appeal', outside the context of the cohesion policy, I find it difficult, first of all, to understand to which exact provisions and to which subpart the appellants are referring,⁵² without risking distorting their words. If they are referring to the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter, which are set out in the proposed ECI and in the contested decision but not in the application lodged before the General Court, to rely on them only at the appeal stage would amount to broadening the scope of the subject matter of the dispute as defined before the General Court. Furthermore, the appellants do not specify in what respect the interpretation *in abstracto* of the General Court led to an erroneous interpretation of Article 167 TFEU and which interpretation *in concreto* the General Court should have used in order not to have allegedly infringed that article. Consequently, this allegation must be regarded as inadmissible.

111. I consider that the fourth ground must therefore be rejected as inadmissible.

D. The fifth ground of appeal, relating to costs

1. The judgment under appeal

112. It is apparent from paragraph 22 of the judgment under appeal that, during the hearing at first instance, the Commission informed the General Court that the appellants had published, on the website of the proposed ECI, the defence which the Commission had lodged in the case at first instance and that, despite the Commission's request, the appellants had refused to remove the defence from the site. It asked the General Court to take account of the appellants' abusive conduct when apportioning costs. The appellants did not contest the Commission's allegations, but claimed that their conduct did not constitute an abuse of law, in the absence of any legislation prohibiting such conduct. They therefore asked the General Court to apply the general rules on costs.

113. In paragraph 129 of the judgment under appeal, the General Court held that, under Article 134(1) of the Rules of Procedure of the General Court, since the appellants had been unsuccessful, they should be ordered to bear their own costs and to pay those of the Commission, without it being necessary to take into account, in that regard, that the appellants had undermined protection of court proceedings, *inter alia* in compromising the principles of equality of arms and the sound administration of justice.⁵³

⁵² In connection with the fourth ground, the appellants cite Article 7, Article 10, Article 19(1) and (2) and Article 167(4) TFEU, then Article 2, Article 3(1) and (6), and the fourth subparagraph of Article 3(3) TEU, and subsequently Article 21(1) and (2) and Article 22 of the Charter, and finally Article 7 of Regulation 1303/2013. However, in the paragraphs of the judgment under appeal to which this complaint refers, mention is made only of Article 3(3) TEU, Article 167(1), (2) and (3) TFEU, and Article 22 of the Charter.

⁵³ See, to that effect and by analogy, judgment of 21 September 2010, *Sweden and Others v API* (C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraphs 85 and 93).

2. Summary of the arguments of the parties

114. The appellants adduce evidence relating to the circumstances of the publication of the Commission's defence on the internet. They also maintain that the finding in paragraph 129 of the judgment under appeal, which shows that the General Court considers that it is an established fact that 'the [appellants] have undermined protection of court proceedings, inter alia in compromising the principles of equality of arms and the sound administration of justice', is incorrect. Under the general principles of the laws of the Member States, there can be no abuse of EU law in the present case.

115. According to the Commission, in any event, separate claims concerning the alleged unlawfulness of the General Court's decision on costs, if they were submitted, are inadmissible. The ground is, primarily, ineffective and should therefore be rejected, and if all the other grounds of appeal have been rejected the claims concerning the alleged unlawfulness of the General Court's decision on costs must be rejected as inadmissible, in accordance with the second paragraph of Article 58 of the Statute of the Court of Justice of the European Union.

116. Whereas the Hungarian and Romanian Governments have not commented on this ground of appeal, the Slovak Government in essence supports the Commission.

3. Analysis

117. It is apparent from the General Court's statement in paragraph 129 of the judgment under appeal that the appellants' conduct did not serve as a basis for the part of the decision relating to the apportionment of costs. The words 'without it being necessary to take account' used by the General Court show that it did not rule on the impact which the appellants' conduct might have on the apportionment of costs.

118. According to the Court's settled case-law, arguments directed against grounds of a decision of the General Court included purely for the sake of completeness cannot lead to the annulment of that decision and are therefore ineffective.⁵⁴

119. Therefore, the fifth ground of appeal must be rejected as ineffective.

E. The additional grounds of appeal relating to infringement of the principle of good administration, error of law in the absence of partial registration, and infringement of the principle of equal treatment

120. By these three grounds, the appellants allege that the General Court, in essence, first, infringed the principle of sound administration, second, erred in law by failing to register in part the proposed ECI, and, third, infringed the principle of equal treatment, on the basis of which they seek to have the judgment under appeal set aside.

121. The Commission maintains that the grounds are new and, therefore, primarily, inadmissible. It considers that they are, in any event, unfounded.

122. I for my part consider that the additional grounds of appeal are unfounded.

⁵⁴ See, to that effect, judgment of 12 February 2015, *Commission v IPK International* (C-336/13 P, EU:C:2015:83, paragraph 33); order of 30 June 2015, *Evropaiki Dynamiki v Commission* (C-575/14 P, not published, EU:C:2015:443, paragraph 20); and judgments of 13 February 2014, *Hungary v Commission* (C-31/13 P, EU:C:2014:70, paragraph 82); and of 22 December 2011, *France v People's Mojahedin Organization of Iran* (C-27/09 P, EU:C:2011:853, paragraph 79).

123. As a preliminary point, it is apparent from settled case-law that, in an appeal, the jurisdiction of the Court of Justice is in principle confined to review of the findings of law on the pleas argued at first instance.⁵⁵ Furthermore, it should be pointed out that, under Article 48(2) of the Rules of Procedure of the General Court and Article 127(1) of the Rules of Procedure of the Court of Justice, applicable to appeals under Article 190(1) of those Rules of Procedure, the introduction of new pleas during proceedings is prohibited unless those pleas are based on matters of law or of fact which come to light during the proceedings.

124. In the present case, the grounds relating to infringement of the principle of sound administration, the absence of partial registration and infringement of the principle of equal treatment are based on matters of fact and of law which came to light during these appeal proceedings with regard to the ECI ‘Minority SafePack — one million signatures for diversity in Europe’ (‘the Minority SafePack ECI’) for the purposes of protecting national and linguistic minorities and for adopting rules at EU level in order to preserve the linguistic and cultural diversity of the Union, and to the ECI entitled ‘Let us reduce the wage and economic differences that tear the EU apart’ which was registered in part by 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!’.⁵⁶

125. The proposed Minority SafePack ECI was initially the subject of a Commission refusal decision.⁵⁷ By 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 annulled the Commission’s refusal decision and, consequently, the Minority SafePack ECI was partially registered.⁵⁸ The ECI calls on ‘the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union’. It follows from the information provided as part of the required information that the objectives pursued by the ECI consisted in calling 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 [within its territory]’ and that 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’. The proposed ECI suggests an amendment to the existing regulation on the basis of Articles 177 and 178 TFEU.⁵⁹

126. In the first place, the ground of appeal relating to the error of law concerning the absence of registration of the ECI is unfounded.

⁵⁵ See, to that effect, judgments of 26 January 2017, *Masco and Others v Commission* (C-614/13 P, EU:C:2017:63, paragraph 32); of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraph 55); of 30 April 2014, *FLSmidth v Commission* (C-238/12 P, EU:C:2014:284, paragraph 42); and of 22 May 2014, *ASPLA v Commission* (C-35/12 P, EU:C:2014:348, paragraph 39).

⁵⁶ OJ 2017 L 134, p. 38. The decision was notified under document C(2017) 3382.

⁵⁷ See, to that effect, Commission Decision C(2013) 5969 final of 13 September 2013.

⁵⁸ See, to that effect, Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens’ initiative entitled ‘Minority SafePack — one million signatures for diversity in Europe’ (notified under document C(2017) 2200) (OJ 2017 L 92, p. 100).

⁵⁹ More specifically, Decision 2017/652, adopted after the judgment of 3 February 2017, *Minority SafePack — one million signatures for diversity in Europe v Commission* (T-646/13, EU:T:2017:59), and registering the Minority SafePack ECI, provides in the fourth and fifth indents of Article 1(2): ‘Statements of support for this proposed [ECI] may be collected, based on the understanding that it aims at proposals from the Commission for:

- a regulation adapting the general rules applicable to the tasks, priority objectives and the organisation of the Structural Funds in such a way that account is taken of the protection of minorities and the promotion of cultural and linguistic diversity provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union,
- a regulation of the European Parliament and of the Council, the subject matter of which is to change the regulation relating to the “Horizon 2020” programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the EU’.

127. According to the appellants' allegations based on the partial registrations of the ECIs referred to in points 124 and 125 of this Opinion, which took place after the judgment under appeal, the possibility of partial registration already existed in 2013, when registration of the present proposed ECI was refused. The fact that all the provisions cited and deemed to be relevant by the organisers do not constitute adequate legal bases for the proposed ECI is irrelevant for partial registration of an ECI.⁶⁰

128. However, in an appeal, the Court is empowered only to establish the unlawfulness of the judgment and cannot require the Commission to adopt a particular conduct. Therefore, if the Court were to uphold the appeal, it will be for the Commission to draw the necessary conclusions.

129. In the second place, the grounds of appeal alleging infringement of the principles of good administration and equal treatment are also unfounded.

130. As noted in recital 10 of Regulation No 211/2011, the decision on the registration of a proposed ECI within the meaning of Article 4 of that regulation must be taken in accordance with the principle of good administration, which entails, in particular, the obligation for the competent institution to conduct a diligent and impartial examination which, moreover, takes into account all the relevant features of the case.⁶¹ However, this ground is not capable of leading to a more extensive analysis, and is therefore ineffective.

131. Admittedly, the objective of the proposed ECI, which constitutes the very essence of the proposed ECI, is in some aspects similar to the content of the Minority SafePack ECI but the proposed ECI is, however, significantly different from that of the proposed Minority SafePack ECI as described in points 124 and 125 of this Opinion. Therefore, it is not possible to allege infringement of the principle of equal treatment for situations which are not comparable. Similarly, the ground relating to infringement of the principle of equal treatment is not capable of leading to a more extensive analysis, and it is therefore ineffective.

132. I propose that the additional grounds of appeal should be rejected as ineffective.

V. The action before the General Court

133. As I stated in point 62 of this Opinion, I consider that the first and third grounds of appeal should be upheld. The judgment under appeal should therefore be set aside to that extent.

134. In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, where the decision of the General Court has been annulled, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

135. I consider that the Court is in a position to rule on the action. It is sufficient to note, in my view, that the Commission erred in law in finding that the proposed ECI fell manifestly outside the framework of the Commission's powers and that the condition in Article 4(2)(b) of Regulation No 211/2011 was not satisfied. I therefore consider that the contested decision should be annulled to that extent. It will be for the Commission to draw the necessary conclusions.

⁶⁰ See, to that effect, Decision 2017/652.

⁶¹ See, to that effect, judgment of 12 September 2017, *Anagnostakis v Commission* (C-589/15 P, EU:C:2017:663, paragraph 47).

VI. Costs

136. At the end of my analysis I propose that the first and third grounds of appeal be upheld.

137. Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

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

139. Since the appellants have applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs.

140. In accordance with Article 184(4) of the Rules of Procedure of the Court, the interveners are to bear their own costs.

VII. Conclusion

141. In the light of the foregoing considerations, I propose that the Court should:

- (1) set aside the judgment of the General Court of the European Union of 10 May 2016, *Izsák and Dabis v Commission* (T-529/13, EU:T:2016:282);
- (2) annul Commission Decision C(2013) 4975 final of 25 July 2013 refusing to register the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and the sustainability of the regional cultures';
- (3) order the European Commission to pay the costs;
- (4) order Hungary, Romania and the Slovak Republic to bear their own costs.