Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

10 May 2016*

(Law governing the institutions — European citizens' initiative — Cohesion policy — National minority regions — Refusal of registration — Manifest lack of powers of the Commission — Article 4(2)(b) and (3) of Regulation (EU) No 211/2011)

In Case T-529/13,

Balázs-Árpád Izsák, residing in Târgu Mureș (Romania),

Attila Dabis, residing in Budapest (Hungary),

represented initially by J. Tordáné dr. Petneházy, and subsequently by D. Sobor, lawyers,

applicants,

supported by

Hungary, represented by M. Fehér, G. Szima and G. Koós, acting as Agents,

intervener,

v

European Commission, represented initially by H. Krämer, K. Talabér-Ritz, A. Steiblytė and P. Hetsch, and subsequently by Talabér-Ritz, K. Banks, Krämer and B.-R. Killmann, acting as Agents,

defendant,

supported by

Hellenic Republic, represented by E.-M. Mamouna, acting as Agent,

Romania, represented by R. Radu, R. Hațieganu, D. Bulancea and M. Bejenar, acting as Agents,

Slovak Republic, represented by B. Ricziová, acting as Agent,

interveners,

ACTION for annulment of Commission Decision C(2013) 4975 final of 25 July 2013 refusing to register the applicants' proposal in dispute,

* Language of the case: Hungarian.

THE GENERAL COURT (First Chamber),

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

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 15 December 2015,

gives the following

Judgment

Background to the dispute

1 On 18 June 2013, the applicants, Mr Balázs-Árpád Izsák and Mr Attila Dabis, in association with five other persons, submitted a proposed citizens' initiative ('the proposal in dispute'), entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures', to the European Commission pursuant to Article 11(4) TEU and 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).

2 In an online register made available for that purpose by the Commission ('the register'), the applicants provided the minimum information laid down in Annex II to Regulation No 211/2011 ('the required information') pursuant to Article 4(1) of the regulation, in particular a brief statement of the subject matter and objectives of the proposal in dispute.

3 It was apparent from the information provided by the applicants in the required information that the proposal in dispute aimed to ensure that the cohesion policy of the European Union paid special attention to regions with ethnic, cultural, religious or linguistic characteristics that are different from those of the surrounding regions. For those regions, including geographic areas with no administrative competencies, the prevention of any gap or lag in economic development with the surrounding regions, the sustainment of economic development and the preservation of the conditions for economic, social and territorial cohesion needed to be achieved in a way that ensures their characteristics remain unchanged. For that purpose, those regions required equal opportunities in terms of access to various EU funds and the preservation of their characteristics and their proper economic development needed to be guaranteed, so that the development of the European Union could be sustained and its cultural diversity maintained.

4 In an annex to the information as part of the required information, the applicants provided more detailed information on the subject, objectives and background to the proposal in dispute pursuant to Annex II to Regulation No 211/2011 ('the additional information').

5 First, it was apparent from the additional information that, to the applicants' minds, national minority regions corresponded to regions and geographic areas which did not necessarily have structures with administrative competencies, but in which there were communities with ethnic, cultural, religious or linguistic characteristics different from those of the surrounding regions which formed a local majority or were present there in substantial number, though being only in a minority at national level, and which have expressed their desire (by referendum) to possess autonomous status within the Member State in question ('national minority regions'). Such national minority regions were, according to the applicants, the keepers of ancestral European cultures and languages and represented significant sources of the cultural and linguistic diversity of the European Union and, more broadly, of Europe.

6 Second, the additional information showed that, above all, the purpose of the proposed legal act of the Union ('the proposed act') was to safeguard the equality of the regions and the sustainability of regional cultures by preventing the emergence of any gap or lag in economic development of national minority regions with surrounding regions and preserving the economic social and territorial cohesion of national minority regions in a way that ensures their characteristics remain unchanged. According to the applicants, the coherence policy governed by Article 174 TFEU to Article 178 TFEU should, in order to reflect the fundamental values defined in Article 2 TEU and Article 3 TEU, contribute to preserving the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions, which are endangered by European economic integration, and to the correction of handicaps and discrimination affecting the economic development of those regions. Accordingly, the proposed act sought to give national minority regions the opportunity to access EU cohesion policy funds, resources and programmes equal to that of currently eligible regions, such as those listed in Annex I to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ 2003 L 154, p. 1). Those guarantees should, according to the applicants, include the establishment of autonomous regional institutions vested with powers sufficient to assist national minority regions in preserving their national, linguistic and cultural characteristics as well as their identity.

7 To that end, in the first place, the proposed act was to lay down a definition of a 'national minority region', in reference, first, to the concepts and objectives mentioned in certain instruments of international law, in particular to the definition of 'national minority' set out in Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe adopted on 1 February 1993 on an additional protocol on the rights of minorities to the European Convention on Human Rights, second, to the constitutional traditions common to the Member States, third, to the case-law arising from the application of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, fourth, to Article 3 TEU and Article 167 TFEU and, fifth, to the desire expressed by communities (by referendum) to benefit from autonomous status within the relevant Member State. In the second place, the proposed act was to list, in accordance with the abovementioned definition, existing national minority regions within the European Union, which were then to be included in the common classification of territorial units for statistics ('the NUTS') in Annex I to Regulation No 1059/2003.

8 Moreover, in order to avoid the EU cohesion policy's funds, resources and programmes from being used by national administrative authorities to fund policies detrimental to national minorities, the proposed act sought a declaration that the Member States were bound, without delay, to fulfil their international obligations and commitments regarding national minorities and that infringement of, or non-compliance with, those commitments by any Member State would constitute an infringement of the values laid down in Article 2 TEU, falling under the procedure described in Article 7 TEU and capable of leading the Council of the European Union to suspend certain rights of the Member State in question resulting from the application of the Treaties.

9 On 25 July 2013, the Commission adopted Decision C(2013) 4975 final refusing to register the proposal in dispute ('the contested decision') on the ground that it was apparent from an in-depth examination of the provisions of the Treaties cited in that initiative, and of all the other possible legal bases, that the proposal in dispute fell manifestly outside the framework of its powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.

Procedure and forms of order sought

10 The applicants brought the present action by application lodged at the Registry of the General Court on 27 September 2013.

11 On 3 January 2014, the Commission lodged its defence.

12 By document lodged at the Court Registry on 18 February 2014, the Slovak Republic sought leave to intervene in the present case in support of the form of order sought by the Commission.

13 On 21 February 2014, the applicants lodged a reply.

14 By document lodged at the Court Registry on 3 March 2014, Hungary sought leave to intervene in the present case in support of the form of order sought by the applicants.

15 By documents lodged at the Court Registry on 7 and 12 March 2014 respectively, the Hellenic Republic and Romania sought leave to intervene in the present case in support of the form of order sought by the Commission.

16 On 7 April 2014, the Commission lodged a rejoinder.

17 After receiving the observations of the parties, the President of the First Chamber of the Court granted, by order of 12 May 2014, leave to intervene to the Slovak Republic, Hungary, the Hellenic Republic and Romania.

18 The Slovak Republic, then Hungary and Romania, lodged their statements in intervention on 23 and 25 June 2014. The Hellenic Republic has not lodged a statement in intervention.

19 By documents lodged at the Court Registry on 18 and 23 June and 25 August 2014 respectively, the Județul Covasna (Romanian Province of Covasna), Bretagne réunie and the Obec Debrad' (Slovak County of Debrad') sought leave to intervene in the present case in support of the form of order sought by the applicants.

20 After receiving the observations of the parties, the President of the First Chamber of the Court refused, by order of 18 May 2015, leave to intervene to the Județul Covasna, Bretagne réunie and the Obec Debrad'.

21 On a proposal from the Judge-Rapporteur, the Court decided to open the oral part of the procedure and, by way of the measures of organisation of procedure provided for in Article 89(3)(b) of its Rules of Procedure, requested the main parties to give their views in writing on certain aspects of the case. They complied with those requests within the specified time limits. In their reply, the applicants withdrew their head of claim seeking that the Court order the Commission to register the proposal in dispute and adopt any other measures required by law.

22 The parties presented their oral arguments and answered the oral questions put to them by the Court at the hearing on 15 December 2015, with the exception of the Hellenic Republic, whose representative was not present at the hearing. At the hearing, the Commission informed the Court that the applicants had published the defence that it had lodged in the present case on the website of the proposal in dispute and that, despite its request, the applicants had refused to remove it. It requested the Court to take account of such abusive conduct on the part of the applicants in apportioning costs. The applicants have not contested the allegations of the Commission, but claim that their conduct did not constitute a misuse of powers in the absence of any text prohibiting such conduct. They therefore requested the Court to apply the general rules on costs.

23 Having amended the form of order which they seek (paragraph 21 above), the applicants, supported by Hungary, claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

24 The Commission contends that the Court should:

— dismiss the action as partly inadmissible and unfounded as to the remainder;

— order the applicants and Hungary to pay the costs.

25 Although the Hellenic Republic has not formally sought a form of order, it is appropriate to consider that, as a party intervening in support of the form of order sought by the Commission, it simply endorses that of the Commission.

26 The Slovak Republic, intervening in support of the Commission, contends that the Court should:

— dismiss the action as partly inadmissible and unfounded as to the remainder;

— order the applicants to pay the costs.

27 Romania, intervening in support of the Commission, in essence, adopts the form of order sought by the Commission in so far as it contends that the Court should dismiss the action as partly inadmissible and unfounded as to the remainder.

Law

Admissibility of certain heads of claim

28 At the stage of the reply, the applicants, supported by Hungary, relied, in essence, on the heads of claim based, first, on misuse of powers and infringement of the principle of sound administration and, second, on a misinterpretation of Article 352 TFEU.

29 When requested by the Court to respond to that aspect of the case (paragraph 21 above), the Commission, supported by the Slovak Republic, objected that the head of claim based on a misuse of powers and an infringement of the principle of sound administration was inadmissible in so far as that head of claim had been brought, for the first time, only at the stage of the reply and that it did not satisfy the conditions of admissibility resulting from the provisions of Article 44(1)(c) read in conjunction with Article 48 of the Rules of Procedure of the General Court of 2 May 1991.

30 As regards the head of claim based on a misinterpretation of Article 352 TFEU, the Commission, supported by Romania and the Slovak Republic, also claimed that that head of claim should be dismissed as inadmissible on the ground that it had been brought, for the first time, at the stage of the reply.

31 The applicants retort that they formulated the present heads of claim in response to the arguments presented by the Commission in its defence and submit that those heads of claim amount merely to an amplification of those already set out in their application.

32 The Court notes that, in accordance with Article 44(1)(c) read in conjunction with Article 48(2) of the Rules of Procedure of 2 May 1991, no new plea in law may be introduced after the application has been lodged unless that plea is based on matters of law or of fact which come to light in the course of the procedure. However, a plea which constitutes an amplification of a plea previously made, either expressly or by implication, in the original application and is closely linked to it must be declared admissible (see judgment of 15 October 2008 in *Mote* v *Parliament*, T-345/05, ECR, EU:T:2008:440,

paragraph 85 and the case-law cited). The same applies to a head of claim made in support of a plea in law (see judgment of 19 March 2013 in *In't Veld* v *Commission*, T-301/10, ECR, EU:T:2013:135, paragraph 97 and the case-law cited).

33 To be regarded as an amplification of a plea or a head of claim previously advanced, a new line of argumentation must, in relation to the pleas or heads of claim initially set out in the application, present a sufficiently close connection with the pleas or heads of claim initially put forward in order to be considered as forming part of the normal evolution of debate in proceedings before the Court (see, to that effect, judgment of 26 November 2013 in *Groupe Gascogne* v *Commission*, C-58/12 P, ECR, EU:C:2013:770, paragraph 31).

34 In the present case, it is true that the heads of claim based on a misuse of powers and an infringement of the principle of sound administration and the head of claim based on a misinterpretation of Article 352 TFEU, referred to in paragraph 28 above, were not part of the application.

35 However, the heads of claim based on a misuse of powers and an infringement of the principle of sound administration correspond, in the present case, to an amplification of pleas made in the application and are based on factors which arose during the proceedings before the Court. First, those heads of claim are closely connected to the single plea in law raised, in essence, by the applicants in the application, based on an infringement of Article 4(2)(b) of Regulation No 211/2011 on the ground that the proposal in dispute did not fall 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 heads of claim appear as a new legal analysis of arguments presented in support of that plea in the light of certain arguments advanced by the Commission in its defence, from which it would appear, according to the applicants, that the only ground of the contested decision was that the Commission did not consider it appropriate, as EU law currently stands, to exercise its powers to the effect desired by the applicants. Second, the applicants base the submission of those heads of claim on certain factors which came to light in the proceedings before the Court, namely the arguments advanced by the Commission in its defence that 'EU policies [could] not become political instruments to the detriment of minorities' and that 'the particularities of national minorities [were] capable of being taken into consideration in an appropriate manner during the establishment of the NUTS nomenclature at the level of the Member States'.

36 The heads of claim based on a misuse of powers and an infringement of the principle of sound administration are therefore admissible.

37 By contrast, the head of claim based on a misinterpretation of Article 352 TFEU is not sufficiently connected to the heads of claim set out in the application. Moreover, that head of claim is not based on factors which came to light during the proceedings before the Court, since, independently of the Commission's arguments in its defence, that head of claim could have already been presented in the action. In the contested decision, the Commission had already taken the view that no provision of the Treaties, other than those cited in the proposal in dispute, could have served as a basis for the proposed act, which included Article 352 TFEU.

38 The Court therefore rejects the head of claim based on a misinterpretation of Article 352 TFEU as inadmissible and dismisses, as to the remainder, the pleas of inadmissibility raised by the Commission.

Substance

39 In support of their action for annulment of the contested decision, the applicants, supported by Hungary, rely, in essence, on a single plea in law based on an infringement of Article 4(2)(b) of Regulation No 211/2011 on the ground that the proposal in dispute does not fall 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. In the light of the conclusions drawn in paragraph 38 above, it is appropriate to consider this plea to be composed of several heads of claims alleging, 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 thereof, 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 sound administration.

40 It is appropriate, in the present case, to begin by examining the head of claim based on an erroneous consideration of information not referred to in Article 4(1) and (2) of Regulation No 211/2011.

The head of claim based on an erroneous consideration of information not referred to in Article 4(1) and (2) of Regulation No 211/2011

41 The applicants, supported by Hungary, claim that the Commission erred in taking account, in the contested decision, of the additional information, as defined in paragraph 4 above.

42 The Commission, supported by Romania and the Slovak Republic, contends that the Court should dismiss this head of claim.

43 This head of claim concerns the information on which the Commission may base a decision that the conditions for the registration of a proposed citizen's initiative, laid down in Article 4(2)(b) of Regulation No 211/2011, are not met.

44 Article 4 of Regulation No 211/2011 provides, inter alia, the following:

'1. Prior to initiating the collection of statements of support from signatories for a proposal in dispute, 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 proposal in dispute.

…

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

…

(b) the proposal in dispute 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.

…'

45 Since Article 4 of Regulation No 211/2011 refers directly, in that regard, to Annex II to the regulation, that annex must be regarded as having binding force identical to that of the regulation (see, to that effect and by analogy, judgment of 24 April 1996 in *Industrias Pesqueras Campos and Others* v *Commission*, T-551/93 and T-231/94 to T-234/94, ECR, EU:T:1996:54, paragraph 84).

46 Annex II to Regulation No 211/2011, headed ‘Required information for registering a proposal in dispute’, provides as follows:

‘The following information shall be provided in order to register a proposal in dispute on the Commission’s online register:

1. The title of the proposal in dispute, in no more than 100 characters;

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

3. A description of the objectives of the proposal in dispute on which the Commission is invited to act, in no more than 500 characters;

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

…

Organisers may provide more detailed information on the subject, objectives and background to the proposal in dispute in an annex. They may also, if they wish, submit a draft legal act.’

47 It appears from Article 4 of Regulation No 211/2011 and Annex II thereto that the Commission is to consider the information communicated by the organisers in order to assess whether the proposal in dispute satisfies the conditions laid down, inter alia, in Article 4(2)(b) of that regulation.

48 Contrary to what the applicants submit, the ‘information set out in Annex II’ to Regulation No 211/2011, to which Article 4 of the regulation refers, is not limited to the minimum information which must be provided in the register under that annex.

49 The right under Annex II to Regulation No 211/2011 of the organisers of the proposed initiative to provide additional information, and even a draft legal act of the Union, has as a corollary an obligation for the Commission to consider that information as any other information provided pursuant to that annex, in accordance with the principle of sound administration, including the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgments of 29 March 2012 in *Commission* v *Estonia*, C-505/09 P, ECR, EU:C:2012:179, paragraph 95 and the case-law cited, and of 23 September 2009 in *Estonia* v *Commission*, T-263/07, ECR, EU:T:2009:351, paragraph 99 and the case-law cited).

50 Consequently, irrespective even of whether the required information, provided in the register, was sufficient, the Court finds that, for the purposes of determining whether the proposal in dispute met the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011, the Commission was under a duty to examine the additional information.

51 That conclusion is not called into question by the applicants’ line of argumentation, in essence, that the Commission should not, in the contested decision, have taken account of the additional information which did no more than set out draft acts potentially capable of being proposed by the Commission, but not relating to the proposed act.

52 In that regard, the Court notes that, in the contested decision, the Commission considered on the basis of the additional information that, by the proposal in dispute, the applicants requested it to propose a draft legal act of the Union aiming to safeguard ‘equality of the regions and the sustainability of regional cultures’, which, according to the applicants, necessarily entailed, first, ensuring that the Member States respect their commitments in international law with regard to national minorities and, second, ‘paying special attention to [national minority] regions as part of the EU’s cohesion policy’

through a definition of a 'national minority region' which takes account of the criteria used in the international instruments cited in the proposal in dispute and of the desire expressed by the communities concerned and which lists those regions.

53 The applicants cannot claim that the measures thus outlined in the contested decision were put forward in the additional information as mere examples of draft measures potentially capable of being proposed by the Commission. In the additional information, first of all, they expressly state that 'the legislation should … provide that the Member States must, without delay, fulfil their international commitments regarding national minorities'. Next, the applicants state, by reiterating a request previously formulated on the basis of the required information, that, for the purposes of pursuing the objectives sought by the proposal in dispute, '[the national minority regions] must be granted equal opportunity to access structural and other EU funds, resources and programmes [of the cohesion policy] [and] the sustainability of their characteristics and the appropriate economic development must be guaranteed'. Finally, they clearly refer to a 'concept [of national minority regions] needing to be defined in a legal act of the Union' and state that, 'beyond defining the concept of national minority regions, the legal act of the Union elaborated by the Commission must also identify them by name in an appendix, taking into account the criteria in the listed international documents [in the additional information], and the will of the affected communities'. It appears from the abovementionned passages of the additional information that the proposed measures which the Commission took into account in the contested decision were clearly put forward by the applicants in the additional information as measures which had to appear in the proposed act.

54 The Commission was therefore entitled, in the contested decision, to take those measures into account for the purposes of determining whether the proposal in dispute met the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011.

55 Furthermore, the conclusion reached in paragraph 50 above is not called into question by the parties' line of argumentation relating to whether or not taking into account the additional information in the contested decision was, in the present case, in the applicants' interests.

56 In that regard, the Court notes that it is for the organisers of a proposal in dispute to consider, in every individual case, whether it is in their interest to exercise their right, laid down in Annex II to Regulation No 211/2011, to provide additional information on the subject, objectives and background to the proposal in dispute, given the correlative obligation for the Commission to examine that information for the purposes of determining, inter alia, whether the European citizens' initiative must be registered. However, after the organisers of a proposal in dispute have decided to exercise their right and to provide such additional information, that information must be taken into account by the Commission, without the Commission being entitled nor obliged to ask itself whether or not the taking into account of that information is in the organisers' interests.

57 In the present case, the applicants have provided additional information to the Commission which was therefore under a duty to examine it, regardless of whether or not that was in the applicants' interests.

58 Since the applicants' line of argumentation has been refuted in its entirety, the Court rejects the head of claim based on an erroneous consideration of information not referred to in Article 4(1) and (2) of Regulation No 211/2011.

Preliminary remarks on the other heads of claim raised by the applicants

59 In so far as all the other heads of claim raised by the applicants relate, in essence, to an infringement of Article 4(2)(b) of Regulation No 211/2011 (paragraph 39 above), it should be noted that, in accordance with Article 5 TEU, the limits of EU competences are to be governed by the principle of conferral that, under Article 13(2) TEU, each institution is to act within the limits of the powers conferred on it in the

Treaties, and that it is in that context that Article 4(2)(b) of Regulation No 211/2011 lays down the condition that a proposal in dispute must not fall manifestly 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.

60 It appears from the wording of Article 4(2)(b) of Regulation No 211/2011 that the Commission must carry out an initial assessment of the information at its disposal in order to determine whether the proposal in dispute does not manifestly fall outside the framework of its powers, given that a more exhaustive assessment is provided for in the event of registration of the proposed initiative. Article 10(1)(c) of Regulation No 211/2011 provides that, where the Commission receives a European citizens' initiative, it is, within three months, to set out in a communication its legal and political conclusions on the initiative, the action it intends to take, if any, and its reasons for taking or not taking that action.

61 In order to ascertain whether, in the present case, the Commission correctly applied the condition set out in Article 4(2)(b) of Regulation No 211/2011, it is appropriate to consider whether, as regards the proposal in dispute and in the framework of an initial assessment of the evidence at its disposal, the Commission was manifestly not entitled to propose the adoption of an act of the Union based on the articles of the Treaties, in particular those cited by the applicants in the proposal in dispute.

The heads of claim based on an erroneous interpretation of Article 4(2)(c) TFEU and Article 174 TFEU and of Article 3(5) of Regulation No 1059/2003 read in the light of recital 10 thereof

62 The applicants, supported by Hungary, claim that the Commission rendered the contested decision unlawful by way of an erroneous interpretation in refusing to conclude in that decision that Article 4(2)(c) TFEU and Article 174 TFEU and Article 3(5) of Regulation No 1059/2003, read in the light of recital 10 thereof, were capable of providing it with a legal basis to propose a draft legal act of the Union in relation to the proposal in dispute.

63 The Commission, supported by Romania and the Slovak Republic, claim that the Court should reject these heads of claim.

64 In the contested decision, having defined the content of the proposed act as stated in paragraph 52 above, the Commission observed the following:

'According to [the] request, [certain measures] are necessary in order to pay special attention to [national minority] regions in the context of the EU cohesion policy. However, any measure adopted under the [EU] cohesion policy legal bases of [Article] 177 [TFEU] and [Article] 178 TFEU [is] limited to achieving the objective of strengthening economic, social and territorial cohesion as referred to in Article 174 TFEU. Promoting the conditions of national minorities cannot be understood as helping to reduce "disparities between the levels of development of the various regions" and "backwardness of [the least favoured] regions", as set out in the second paragraph of Article 174 TFEU. In that respect, the list of "disadvantages" set out in the third paragraph of 174 TFEU that trigger an obligation to pay "special attention" to a given region is exhaustive. Therefore Articles 174 [TFEU], 176 [TFEU], 177 [TFEU] and 178 TFEU cannot constitute … bases to adopt the proposed … act.'

65 Furthermore, having stated that its assessment was based not only on the provisions of the Treaties cited in the proposal in dispute but also on 'all other possible legal bases', the Commission concluded the following:

'there is no legal basis in the Treaties which would allow a proposal for a legal act with the content [that the organisers of the proposal in dispute] envisage.'

66 As a preliminary matter, it should be noted that the choice of the legal basis for a legal act of the Union must rest on objective factors amenable to judicial review, which include the aim and content of that measure (see judgments of 11 June 2014 in *Commission* v *Council*, C-377/12, ECR, EU:C:2014:1903, paragraph 34 and the case-law cited, and of 18 December 2014 in *United Kingdom* v *Council*, C-81/13, ECR, EU:C:2014:2449, paragraph 35 and the case-law cited).

67 These heads of claim prompt the question of whether, in the light, inter alia, of the aim and content of the proposed act, that act could be adopted on the basis of the provisions concerning the EU cohesion policy as cited by the applicants in the proposal in dispute.

68 Article 3 TEU mentions, among other objectives pursued by the European Union, the promotion of economic, social and territorial cohesion. Such cohesion ranks among the areas of shared competency between the European Union and the Member States laid down in Article 4(2) TFEU. As the Commission correctly observes, the legal basis for the adoption of a legal act of the Union allowing for the consolidation and development of increased EU action in the area of economic, social and territorial cohesion, inter alia through structural funds, is to be found in all of the provisions of Part Three, Title XVIII, of the TFEU, namely Articles 174 TFEU to 178 TFEU. That also appears from Protocol (No 28) on economic, social and territorial cohesion, annexed to the TEU and the TFEU.

69 It appears from a combined reading of Article 174 TFEU to 178 TFEU that the EU legislature is empowered to adopt measures which aim to promote the harmonious development of all of 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 paying particular attention 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.

70 In accordance with Article 4(2) TEU, which provides inter alia that the Union is to respect the national identity of Member States inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government, the concept of a 'region', within the meaning of Articles 174 TFEU to 178 TFEU, must be defined in accordance with the prevailing political, administrative and institutional status quo. However, there are extensive differences between the existing administrative units within the various Member States, demographically and geographically as well as with regard to their competencies. The adoption of legal acts of the Union in the area of cohesion policy implies that the EU legislature has at its disposal comparative data relating to the level of development of each of those administrative units. As appears from recital 9, Regulation No 1059/2003 therefore laid down a NUTS, which, through the definition of 'territorial units' or of 'NUTS regions', of which the level in the ranking depends on their size in terms of population, allows for comparability of statistics relating to the level of development of the various administrative units existing in the Member States and which therefore constitutes a point of reference for the implementation of EU cohesion policy.

71 In that regard, Article 3 of Regulation No 1059/2003 on the establishment of a common classification of territorial units for statistics lays down, in the version applicable at the time of the facts of the case, the following:

'1. Existing administrative units within the Member States shall constitute the first criterion used for the definition of territorial units.

To this end, "administrative unit" shall mean a geographical area with an administrative authority that has the power to take administrative or policy decisions for that area within the legal and institutional framework of the Member State.

2. In order to establish the relevant NUTS level in which a given class of administrative units in a Member State is to be classified, the average size of this class of administrative units in the Member State shall lie within the following population thresholds:

…

If the population of a whole Member State is below the minimum threshold for a given NUTS level, the whole Member State shall be one NUTS territorial unit for this level.

3. For the purpose of this Regulation, the population of a territorial unit shall consist of those persons who have their usual place of residence in this area.

4. The existing administrative units used for the NUTS classification are laid down in Annex II. Measures designed to amend non-essential elements of this Regulation and adapting Annex II shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(2).

5. If for a given level of NUTS no administrative units of a suitable scale exist in a Member State, in accordance with the criteria referred to in paragraph 2, this NUTS level shall be constituted by aggregating an appropriate number of existing smaller contiguous administrative units. This aggregation shall take into consideration such relevant criteria as geographical, socio-economic, historical, cultural or environmental circumstances.

The resulting aggregated units shall hereinafter be referred to as "non-administrative units". The size of the non-administrative units in a Member State for a given NUTS level shall lie within the population thresholds referred to in paragraph 2.

Some non-administrative units may, however, deviate from those thresholds because of particular geographical, socio-economic, historical, cultural or environmental circumstances, especially in the islands and the outermost regions. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 7(2).'

72 Given the statutory framework set out in paragraphs 68 to 71 above, the Commission was entitled to adopt the view in the contested decision that 'Articles 174 [TFEU], 176 [TFEU], 177 [TFEU] and 178 TFEU cannot constitute legal bases to adopt the proposed … act'.

73 It appears from the proposal in dispute, as described in paragraphs 3 and 5 to 8 above, that the proposed act was to enable national minority regions to be included within the concept of a 'region', within the meaning of Articles 174 [TFEU] to 178 TFEU, and to benefit from special attention within the frame of EU cohesion policy so that their specific ethnic, cultural, religious or linguistic characteristics may be preserved. The proposed act was, inter alia, to oblige the Member States to respect their commitments with regard to national minorities, including in the implementation of EU cohesion policy, 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 capable of benefiting from special attention within the framework of EU cohesion policy so that their specific characteristics be preserved.

74 It appears, in addition, from the proposal in dispute that the national minority regions were to be defined on the basis of autonomous criteria, and therefore independently of the administrative units existing in the Member States. The proposal in dispute states that 'all of the essential elements of the concept [of national minority regions] to be defined in a legal act of the Union already exist in countless international documents adopted by many of the Member States' and refers, in that regard, to 'regions with national, ethnic, cultural, religious or linguistic characteristics that are different from those of the surrounding regions'. According to the proposal in dispute, regions thereby defined

included ‘geographical areas with no administrative competencies’. Consequently, according to the proposal in dispute, for the creation of regions complying with the NUTS, the linguistic, ethnic and cultural boundaries were to be taken into account, along with the will of the autochthonous communities that form the majority of the region’s population, expressed in a prior referendum, and ‘the guarantees [resulting from the proposed act], in line with the … resolution [of the European Parliament on the protection of minorities and anti-discrimination policies in an enlarged Europe] and the will of the communities in question, could become the institutions of regional self-government, that have to be endowed with sufficient competence to help sustain the region’s national, linguistic and cultural characteristics, and [the] identity [of the national minority regions]’. Thus, it appears from the proposal in dispute that the proposed act was to lead to a redefinition of the concept of ‘region’, within the meaning of Articles 174 TFEU to 178 TFEU, by conferring a genuine status to national minority regions, without regard for the political, administrative and institutional status quo existing in the Member States in question.

75 As has been stated in paragraph 70 above, and pursuant to Article 4(2) TEU, the Union must, within the framework of policy cohesion, respect the political, administrative and institutional status quo existing in the Member States. Thus, where, for the purposes of ensuring comparability of regional statistical data, Article 3(5) of Regulation No 1059/2003 provides for regard to be had to criteria such as geographical, socio-economic, historical, cultural or environmental circumstances, this is only for the purposes of grouping, in non-administrative units of a sufficient size in terms of population, the administrative units existing in the Member States in question and with the sole aim of ensuring the comparability of the statistics relating to the level of development of those various administrative units. Moreover, where that provision provides that the population thresholds maybe deviated from because of geographical, socio-economic, historical, cultural or environmental circumstances, this refers only to non-administrative units corresponding themselves to an aggregation of administrative units existing in the Member States in question for purely statistical purposes and without that being able to lead to a modification, in any way, in the political, administrative and institutional framework existing in the Member States in question.

76 It follows that the EU legislature could not, without infringing Article 4(2) TEU, adopt an act which, like the proposed act, 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.

77 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 ethnic, cultural, religious or linguistic characteristics of those regions is not an aim which could justify the adoption of a legal act of the Union on the basis of Articles 174 [TFEU], 176 [TFEU], 177 [TFEU] and 178 TFEU.

78 Under those articles, the EU legislature is empowered only to adopt measures which aim to promote the harmonious development of all of the European Union and, inter alia, to reduce disparities between the levels of development of the various regions and the backwardness of the least-favoured regions, by paying particular attention 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.

79 Indeed, the applicants claim in essence that, first, European integration and, in particular, the implementation of EU cohesion policy do not currently promote a harmonious development of all of the European Union because they endanger the specific characteristics of national minority regions,

which thereby tend to be 'blurred', and that, second, national minority regions suffer from severe and permanent demographic handicaps related to their being a minority of the population at national level, which affects their economic development in comparison with the surrounding regions.

80 Nevertheless, as the Commission correctly submits, the applicants' line of argumentation is based on claims which are in no way substantiated, nor, *a fortiori*, evidenced.

81 First, the applicants have 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.

82 Under Article 2 TEU, the Union is to be founded on respect for human rights, including the rights of persons belonging to minorities. Furthermore, Article 21(1) of the EU Charter of Fundamental Rights prohibits any discrimination based on membership of a national minority. Article 6(1) TEU provides that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights, which is to have the same binding force as the Treaties, and Article 51(1) of the Charter states that its provisions are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing EU law. It follows that, in exercising their shared competency in relation to economic, social and territorial cohesion, the European Union and the Member States may not discriminate against persons and populations due to their membership of a national minority.

83 Moreover, the Court notes that the proposal in dispute did not aim to fight against discrimination to which persons and populations situated in national minority regions are allegedly subject due to their membership of such a minority but to prevent any gap or lag in the economic development of national minority regions with the surrounding regions due to the alleged handicap of such national minority regions' specific ethnic, cultural, religious or linguistic characteristics. In paragraph 5 of the application, the applicants did incidentally admit that the proposal in dispute was not 'aimed' to 'prevent discrimination', even though they did not rule out that the proposed act could have such a 'consequence'.

84 Thus, contrary to what the applicants submit, neither Article 2 TEU, nor Article 21(1) of the Charter of Fundamental Rights, nor any other provision of EU law aiming to prevent discrimination, inter alia, the provisions based on membership of a national minority, could, within the framework of 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.

85 Second, the applicants have not shown that the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions could be regarded as a serious and permanent demographic handicap within the meaning of the third paragraph of Article 174 TFEU.

86 In that regard, although the third paragraph of Article 174 TFEU states that the northernmost regions with very low population density and island, cross-border and mountain regions suffer from severe and permanent natural or demographic handicaps relating to their insularity, their cross-border character, their terrain, their isolation, their low or very low population density, it does not mention regions the ethnic, cultural, religious or linguistic characteristics of which differ from those of the surrounding regions. Article 121(4) 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 1083/2006 (OJ 2006 L 347, p. 320), as cited by the applicants, does not in any way extend in that regard the scope of Article 174 TFEU, since it refers only to island areas, mountainous areas, to

sparsely or very sparsely populated areas and the outermost regions. It cannot therefore be deduced from Article 121(4) of that regulation 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.

87 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. It is true, as the applicants submit, 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, as the Commission correctly submits, the specific characteristics of those regions may also bring them certain comparative advantages, such as a certain touristic attraction or multilingualism.

88 As for legal acts of the Union which aim to promote regional and minority languages, such as the communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 24 July 2003 entitled 'Promoting Language Learning and Linguistic Diversity: an Action Plan 2004-2006' [COM(2003) 449 final] on the promotion of regional and minority languages, such acts do not proceed from the observation that such languages would constitute a handicap for the economic development of the regions in which they are spoken, but on the basis that such languages contribute to the linguistic diversity of the European Union and to multilingualism, which is itself seen as an advantage.

89 In the absence of any conclusive evidence put by the applicants, 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.

90 For all of the foregoing reasons, the Court rejects in their entirety the heads of claim based on an erroneous interpretation of Article 4(2)(c) TFEU and Article 174 TFEU and of Article 3(5) of Regulation No 1059/2003, read in the light of recital 10 thereof.

The head of claim based on an erroneous interpretation of Article 167 TFEU

91 The applicants, supported by Hungary, claim that the Commission rendered the contested decision unlawful through an erroneous interpretation by taking the view that the proposal in dispute fell manifestly outside the framework of its powers to submit a proposal for a legal act of the Union for the purpose of implementing the cultural policy referred to in Article 167 TFEU.

92 The Commission, supported by Romania and the Slovak Republic, contends that this head of claim should be rejected.

93 In the contested decision, after having defined the content of the proposed act as set out in paragraph 52 above, the Commission stated the following:

'Article … 167 … TFEU cannot either constitute [a] legal [basis] for the proposed legislation as it would not contribute to any of the objectives and policies set out in [that] provision …'

94 This head of claim raises the question of whether, having regard inter alia to its aim and content, the proposed act was to contribute to one of the objectives pursued by the cultural policy of the Union referred to in Article 167 TFEU.

95 In that regard, the Court recalls that, in accordance with Article 22 of the Charter of Fundamental Rights and the fourth subparagraph of Article 3(3) TEU, the Union is to respect its rich cultural and linguistic diversity and is to ensure that Europe's cultural heritage is safeguarded and enhanced.

96 Article 6(c) TFEU mentions culture among the areas in which the Union is to have competence to carry out actions to support, coordinate and supplement the actions of the Member States. As also appears from the first subparagraph of Article 2(5) TFEU, that EU competency does not replace the competency of the Member States and is subsidiary to it.

97 Article 167 TFEU states:

'1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

— improvement of the knowledge and dissemination of the culture and history of the European peoples,

— conservation and safeguarding of cultural heritage of European significance,

— non-commercial cultural exchanges,

— artistic and literary creation, including in the audiovisual sector.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.

5. In order to contribute to the achievement of the objectives referred to in this Article:

— the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States;

— the Council, on a proposal from the Commission, shall adopt recommendations.'

98 It appears from Article 167 TFEU and, more specifically, from Article 167(2) and (5) TFEU that, within the framework of EU cultural policy and for the purposes of contributing to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore, the EU legislator is empowered to adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States, or recommendations furthering specific objectives, namely, first, improvement of the knowledge and dissemination of the culture and history of the European peoples, second, conservation and safeguarding of cultural heritage of European significance, third, non-commercial cultural exchanges and, fourth, artistic and literary creation, including in the audiovisual sector.

99 The Commission was therefore entitled to adopt the view in the contested decision that 'the proposed legislation … would not contribute to any of the objectives of [the EU cultural policy referred to in Article 167 TFEU]'.

100 It appears from the proposal in dispute, as set out in paragraphs 3 and 5 to 8 above, that the proposed act was, in essence, to implement, within the framework of EU cohesion policy, certain guarantees so that the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions could be preserved. Those guarantees were, in essence, to consist in offering national minority regions access to EU cohesion policy funds, resources and programmes, in order to prevent any gap or lag in economic development with the surrounding regions, as far as recognising autonomous status for national minority regions in accordance with the desire expressed by their population (by referendum), irrespective of the existing political, administrative and institutional situation in the Member States concerned.

101 Article 167 TFEU cannot provide a basis for the adoption of a legal act of the Union in pursuit of such an aim and of such content. 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 is an objective which, first, goes well beyond merely contributing to the flowering of the cultures of the Member States, while respecting their national and regional diversity or merely bringing common cultural heritage to the fore and which, second, does not directly relate to one of the objectives specifically referred to in Article 167(2) TFEU. Incidentally, in paragraph 5 of the application, the applicants themselves admitted that the proposal in dispute was not 'aimed' to 'protect cultural diversity', even though they did not rule out that the proposed act could have such a 'consequence'.

102 Thus, contrary to the submission of the applicants, neither Article 3(3) TEU, nor the first paragraph of Article 167 TFEU, nor even Article 22 of the Charter of Fundamental Rights would allow, in the present case, for the Commission to propose, within the framework of the EU cohesion policy, a legal act aiming to protect the cultural diversity represented by national minorities, such an act, moreover, would have corresponded neither to the aim nor to the content of the proposed act.

103 In any event, it should be noted that the adoption of the proposed act, which necessarily implied that a definition be given to the concept of a 'national minority regions' for the purpose of implementing EU cohesion policy, did not relate to any of the possibilities of action provided for in the second paragraph of Article 167 TFEU for contributing to the achievement of the objectives sought by EU cultural policy, namely the adoption of incentive measures, excluding any harmonisation of the laws and regulations of the Member States or the adoption of recommendations.

104 For all of the foregoing reasons, the Court rejects the head of claim based on an erroneous interpretation of Article 167 TFEU.

The head of claim based on an erroneous interpretation of the first paragraph of Article 19 TFEU

105 The applicants, supported by Hungary, claim that the Commission rendered the contested decision unlawful through an erroneous interpretation of the first paragraph of Article 19 TFEU by taking the view that none of the Treaty provisions constituted a legal basis for whatever action by the institutions aiming to combat discrimination based on membership of a national minority.

106 The Commission, supported by Romania and the Slovak Republic, contends that this head of claim should be rejected.

107 In the contested decision, having defined the content of the proposed act as set out in paragraph 52 above and having stated that its assessment would concern 'the Treaty provisions … suggested and … all other possible legal bases', the Commission made the following observation:

'In conclusion, … there is no legal basis in the Treaties which would allow a proposal for a legal act [of the Union] with the content … envisage[d] [in the proposal in dispute].'

108 The applicants accuse the Commission, in that regard, of an erroneous interpretation of the first paragraph of Article 19 TFEU, which could have served as a legal basis for the proposed act.

109 This head of claim prompts the question of whether, having regard inter alia to its aim and content, the proposed act could have been adopted on the basis of the first paragraph of Article 19 TFEU.

110 Article 19 TFEU states:

'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. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.'

111 Without prejudice to the other Treaty provisions and within the limits of the powers they assign to the Union, the first paragraph of Article 19 TFEU empowers the EU legislature to adopt measures needed to combat any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

112 In the present case, without it even being necessary to consider whether or not the concept of 'discrimination' within the meaning of that provision includes any discrimination based on membership of a national minority, it should be noted that, as has already been stated in paragraph 83 above, the proposal in dispute did not aim to combat discrimination against persons and populations due to their membership of a national minority, but to prevent any gap or lag in economic development of national minority regions with the surrounding regions due to the alleged handicap of such national minority regions' specific ethnic, cultural, religious or linguistic characteristics.

113 Therefore, as the Commission correctly stated in the contested decision, the first paragraph of Article 19 TFEU could not constitute an appropriate legal basis for proposing a legal act of the Union in pursuit of the aim and of such content as set out in the proposal in dispute.

114 For all of the foregoing reasons, the Court rejects the head of claim based on an erroneous interpretation of the first paragraph of Article 19 TFEU.

The heads of claim based on a misuse of powers and an infringement of the principle of sound administration

115 The applicants, supported by Hungary, claim that the Commission misused its powers in so far as it refused to register the proposal in dispute not on the ground, stated in the contested decision in accordance with Article 4(2)(b) of Regulation No 211/2011, that the initiative fell manifestly outside the framework of its powers, but, as is apparent from its written pleadings in these proceedings, because it did not appear to the Commission appropriate, as EU law currently stands, to exercise its powers to the effect sought by the applicants, which is not provided for in Article 4(2)(b) of Regulation No 211/2011.

116 In addition, they claim that the Commission infringed the principle of sound administration in so far as it was, in the present case, guided by the intention of discouraging citizens' initiatives, even where, as in the present case, they satisfied the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011 by resorting to unlawful grounds, such as taking into account information not referred to in Article 4(1) and (2) of Regulation No 211/2011.

117 The Commission, supported by the Slovak Republic, contends that the Court should reject these heads of claim.

118 As regards, in the first place, the head of claim based on a misuse of powers, it must be borne in mind that, according to settled case-law, the concept of misuse of powers has a specific meaning in EU law and relates to cases where an administrative authority exercises its powers for a purpose other than that for which they were conferred. A decision amounts to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken to achieve an end other than that stated (see judgment of 9 September 2008 in *Bayer CropScience and Others* v *Commission*, T-75/06, ECR, EU:T:2008:317, paragraph 254 and the case-law cited).

119 In the present case, in order to demonstrate that there has been a misuse of powers, the applicants rely on certain arguments in the defence submitted by the Commission from which it would appear that the Commission did not consider it appropriate, as EU law currently stands, to exercise its powers to the effect sought by the applicants.

120 In that regard, the Court notes that the contested decision is sufficiently well-grounded as to why the proposal in dispute did not satisfy the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011, since it 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. In points 10 and 11 of its defence, the Commission reiterated the grounds for its decision and stated that it 'maintain[ed] its position' for the reasons subsequently set out in its defence in the light of the arguments elaborated in the application. Similarly, in paragraphs 2 and 97 of its rejoinder, the Commission stated that it 'maintain[ed] in full the reasoning and conclusions … set out in its defence' and that it 'ha[d] rejected the application for registration of [the proposal in question] on a well-grounded and lawful basis under Article 4(2)(b) of Regulation … No 211/2011'. It appears from the foregoing that, in its pleadings, the Commission defended the merits of the grounds set out in the contested decision, which has not been called into question in the examination of this action.

121 Against that background, the statements highlighted by the applicants, namely paragraph 17 of the defence, pursuant to which 'EU policies cannot become political instruments to the detriment of minorities' and paragraph 58 of the defence, which states that 'the Commission believes that the particularities of national minorities are capable of being taken into consideration in an appropriate manner during the establishment of the NUTS … at the level of the Member States', cannot be regarded as evidence establishing that the contested decision was based, in actual fact, on grounds other than those cited in it, of which the merits could not be called into question at the time of the assessment of the present action and as demonstrating a misuse by the Commission of the powers conferred on it by Article 4(2)(b) of Regulation No 211/2011.

122 It follows that the applicants have not, in the present case, adduced objective, relevant and consistent evidence from which the conclusion may be drawn that the contested decision was taken for reasons other than those stated, namely because the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011 were not satisfied, since the proposal in dispute 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.

123 The Court therefore rejects the head of claim based on a misuse of powers by the Commission as unfounded.

124 As regards, in the second place, the head of claim based on an infringement of the principle of sound administration, the Court notes that, pursuant to Article 41(1) of the Charter of Fundamental Rights, 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union'. It appears, in addition, from recital 10 of Regulation No 211/2011 that the general principle of sound administration requires, inter alia, that the Commission register all proposal in disputes satisfying the conditions laid down in that regulation within the time frame stipulated in Article 4(2) of the regulation, namely within two months from the receipt of the information set out in Annex II.

125 In the present case, contrary to the assertion of the applicants, the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011 were not satisfied, as appears from an examination of the heads of claim based on erroneous interpretation by the Commission of articles of the Treaties, so that that institution was entitled to refuse to register the proposal in dispute in accordance with Article 4(3) of the regulation.

126 Accordingly, the Commission was able to adopt the contested decision without infringing the general principle of sound administration.

127 The Court therefore also rejects the head of claim based on an infringement of that principle as unfounded.

128 Since all of the heads of claim raised by the applicants in support of their single plea in law based, in essence, on an infringement of Article 4(2)(b) of Regulation No 211/2011 have been rejected accordingly, the Court therefore rejects that plea and, consequently, dismisses the action in its entirety.

Costs

129 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those of the Commission, without it being necessary to take into account, in that regard, that the applicants have undermined protection of the court proceedings, inter alia in compromising the principles of equality of arms and the sound administration of justice (see, to that effect and by analogy, judgment of 21 September 2010 in *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, ECR, EU:C:2010:541, paragraphs 85 and 93) by publishing the Commission's defence on the website of the proposal in dispute (paragraph 22 above).

130 In addition, under Article 138(1) of the Rules of Procedure, the Member States which have intervened in the proceedings are to bear their own costs. Those provisions must be applied to Hungary, the Hellenic Republic, Romania and the Slovak Republic.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Balázs-Árpád Izsák and Mr Attila Dabis to bear their own costs and those incurred by the European Commission;**

3. Orders Hungary, the Hellenic Republic, Romania and the Slovak Republic to bear their own costs.

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 10 May 2016.

[Signatures]

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