Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

10 November 2021 *

(Law governing the institutions – European citizens' initiative – Cohesion policy – National minority regions – Registration decision – Action for annulment – Actionable measure – Admissibility – Article 4(2)(b) of Regulation (EU) No 211/2011 – Obligation to state reasons)

In Case T-495/19,

**Romania**, represented by E. Gane, R. Hațieganu, L. Lițu and L.-E. Bațagoi, acting as Agents,

applicant,

v

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

defendant,

supported by

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

intervener,

APPLICATION pursuant to Article 263 TFEU seeking annulment of Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' (OJ 2019 L 122, p. 55),

THE GENERAL COURT (Tenth Chamber),

composed of A. Kornezov, President, E. Buttigieg (Rapporteur) and K. Kowalik-Bańczyk, Judges,

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure and further to the hearing on 21 May 2021,

gives the following

* Language of the case: Romanian.

## Judgment

### Background to the dispute

1 On 18 June 2013, the proposed European citizens' initiative ('ECI') entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' ('the proposed ECI at issue') was submitted to the European Commission in accordance with 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 It was apparent from the information provided by the organisers of the proposed ECI at issue, as part of the required information for registering a proposed ECI in accordance with Annex II to Regulation No 211/2011, that that proposal aimed to ensure that the European Union as a whole, through the cohesion policy, will pay 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 as compared 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.

3 By Decision C(2013) 4975 final of 25 July 2013, and pursuant to Article 4(2)(b) of Regulation No 211/2011, the Commission refused to register the proposed ECI at issue, on the ground that it manifestly fell outside the framework of its powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

4 By judgment of 10 May 2016, *Izsák and Dabis* v *Commission* (T-529/13, EU:T:2016:282), the General Court dismissed the action for annulment brought against Decision C(2013) 4975 final.

5 On appeal, the Court of Justice set aside the judgment of 10 May 2016, *Izsák and Dabis* v *Commission* (T-529/13, EU:T:2016:282), by judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), and, giving final judgment in the dispute itself, annulled Decision C(2013) 4975 final.

6 On 30 April 2019, the Commission adopted Decision (EU) 2019/721 on the proposed ECI at issue (OJ 2019 L 122, p. 55) ('the contested decision'), by which it registered the ECI in accordance with Article 4 of Regulation No 211/2011.

7 In recitals 1 and 2 of the contested decision, the Commission identified the subject matter and objectives of the proposed ECI at issue, in the terms set out in paragraph 2 above.

8 In recitals 3 and 4 of the contested decision, the Commission stated that, in order to encourage EU citizens to use the ECI mechanism and, ultimately, to participate in the democratic life of the European Union, the procedures and conditions required for the ECI must be clear, simple, user-friendly and proportionate to the nature of the ECI.

9 In recital 5 of the contested decision, the Commission stated:

'Legal acts of the Union for the purpose of implementing the Treaties can be adopted in defining the tasks, priority objectives and the organisation of the Structural Funds which may involve grouping the Funds, in accordance with Article 177 [TFEU].'

10 In recital 6 of the contested decision, the Commission stated that the proposed ECI at issue, 'inasmuch as it aim[ed] at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds and provided that the actions to be financed [led] to the strengthening of the economic, social and territorial cohesion of the Union' did not manifestly fall outside the framework of its powers within the meaning of Article 4(2)(b) of Regulation No 211/2011.

11 In recital 7 of the contested decision, the Commission observed that the proposed ECI at issue satisfied the conditions laid down in Article 4(2)(a), (c) and (d) of Regulation No 211/2011 and, in recital 8, it concluded that that proposed ECI should be registered.

12 Article 1 of the contested decision provides as follows:

'1. The proposed citizens' initiative entitled "Cohesion policy for the equality of the regions and sustainability of the regional cultures" is hereby registered.

2. Statements of support for this proposed citizens' initiative may be collected, based on the understanding that it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds and provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union.'

13 Article 3 of the contested decision states that the organisers of the proposed ECI at issue are the addressees of that decision.

## Procedure and forms of order sought by the parties

14 By application lodged at the Court Registry on 8 July 2019, Romania brought the present action.

15 The Commission lodged its defence on 27 September 2019.

16 By document lodged at the Court Registry on 8 October 2019, Hungary applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission.

17 The reply was lodged on 16 December 2019.

18 By decision of the President of the Tenth Chamber of 7 January 2020, Hungary was granted leave to intervene.

19 The rejoinder was lodged on 27 January 2020.

20 Hungary lodged its statement in intervention on 18 February 2020 and Romania lodged its observations on that statement on 21 May 2020, within the prescribed period. The Commission did not lodge any observations on the abovementioned statement in intervention.

21 By document lodged at the Court Registry on 30 July 2020, Romania requested that a hearing be held, in accordance with Article 106(2) of the Rules of Procedure of the General Court.

22 Acting on a proposal from the Judge-Rapporteur, the General Court (Tenth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure as provided for in Article 89 of the Rules of Procedure, asked the Commission and Hungary to submit observations, if they so wished, on Romania's arguments relating to the admissibility of the action. Both parties submitted their observations within the prescribed period.

23 The parties' oral arguments and their answers to the questions put by the Court were heard at the hearing of 21 May 2021.

24 Romania claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

25 The Commission contends that the Court should:

– dismiss the action;

– order Romania to pay the costs.

26 Hungary contends that the Court should dismiss the action.

## Law

### *The admissibility of the action*

27 Romania, addressing the question of the admissibility of the action from the point of view of whether the contested decision is a challengeable act and from the point of view of whether an interest in bringing proceedings exists, submitted that that action was admissible.

28 In its observations on Romania's arguments (see paragraph 22 above), the Commission expressed doubts as to the admissibility of the action.

29 More specifically, the Commission expressed doubts as to whether the contested decision is a challengeable act, in so far as that decision could be deemed to constitute a preparatory act as a 'first stage of the citizens' initiative mechanism' leading to the adoption by the Commission of the communication provided for in Article 10(1)(c) of Regulation No 211/2011, which is a challengeable act. In that regard, the Commission contended that, according to settled case-law, in the case of acts or decisions adopted by a procedure involving several stages, particularly where they are the culmination of an internal procedure, it is in principle only those measures which definitively determine the position of the institution concerned upon the conclusion of that procedure which are open to challenge, and not intermediate measures whose purpose is to prepare for the final decision.

30 In order to explain its doubts, the Commission also contended that it was clear from the case-law of the General Court that an action for annulment could be brought, including by a Member State, against measures intended to produce legal effects which may be adverse. However, according to the Commission, in the case of a decision to register a proposed ECI, it is difficult to know what legal effects stemming from the content of that proposed ECI could cause harm and to whom. The Commission referred specifically to the judgment of 21 May 2010, *France* v *Commission* (T-425/04, T-444/04, T-450/04 and T-456/04, EU:T:2010:216, paragraph 119).

31 In the light of the foregoing considerations, the Commission left it to the Court to assess whether the contested decision is challengeable.

32 On the other hand, the Commission agreed with Romania's view that the Member States may exercise the right to bring an action for annulment against an EU act without having to establish an interest in bringing proceedings.

33 In its observations on Romania's arguments (see paragraph 22 above), Hungary argued in support of the admissibility of the action, maintaining, inter alia, that the contested decision constituted a challengeable act. Hungary also considered that it is reasonable that the Court should rule on that legal question in order to remove all uncertainty.

34 It is apparent from the arguments of the three parties that they do not dispute that the Member States may exercise the right to bring an action for annulment against an EU act without having to establish an interest in bringing proceedings. According to the case-law, a Member State, such as Romania in the present case, may admissibly bring an action for annulment of a measure producing binding legal effects without having to demonstrate that it has an interest in bringing proceedings (see judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 36 and the case-law cited). A Member State need not therefore prove that an EU act which it is contesting produces legal effects with regard to that Member State in order for its action to be admissible (see judgment of 20 September 2012, *France* v *Commission*, T-154/10, EU:T:2012:452, paragraph 37 and the case-law cited). The judgment of 21 May 2010, *France* v *Commission* (T-425/04, T-444/04, T-450/04 and T-456/04, EU:T:2010:216), referred to by the Commission (see paragraph 30 above), which, moreover, was set aside on appeal by the judgment of 19 March 2013, *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others* (C-399/10 P and C-401/10 P, EU:C:2013:175), does not in any way call into question the abovementioned case-law.

35 Since the Commission has expressed doubts as to whether the contested decision is challengeable for the purposes of Article 263 TFEU, and given Hungary's request that the Court rule expressly on that question, it is appropriate to make the following observations.

36 According to settled case-law, developed in the context of actions for annulment brought by Member States or institutions, any measures adopted by the institutions, whatever their form, which are intended to have binding legal effects are regarded as challengeable acts for the purposes of Article 263 TFEU (see judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 36 and the case-law cited).

37 In order to determine whether an act produces legal effects, it is necessary to look in particular to its subject matter, its content and substance, as well as to the factual and legal context of which it forms part (see judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 70 and the case-law cited).

38 In the present case, it is necessary to assess whether the contested decision, adopted by the Commission on the basis of Article 4 of Regulation No 211/2011, pursuant to which it registered the proposed ECI at issue, is intended to produce binding legal effects, and thus constitutes a challengeable act for the purposes of Article 263 TFEU.

39 In that regard, as has already been stated by the EU judicature (judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 73), Regulation No 211/2011, which was applicable on the date of adoption of the contested decision, sets out the procedures and conditions required for the submission of an ECI. Recital 8 of that regulation states that a minimum organised structure is needed and, to that end, it provides for the creation of a citizens' committee, composed of natural persons (organisers) coming from at least seven different Member States, which is responsible for preparing the ECI and submitting it to the Commission. Article 4 of Regulation No 211/2011 provides that a proposed ECI must be registered with the Commission and that the Commission is to register the ECI provided that a certain number of the conditions set out in that provision are fulfilled. One of those conditions is that the proposed ECI at issue does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties (Article 4(2)(b) of Regulation No 211/2011). Article 4(4) of Regulation No 211/2011 provides that a proposed ECI that has been registered is to be made public in the register provided for in the second subparagraph of Article 4(1) of that regulation.

40 It is only after the proposed ECI at issue has been registered that the collection of statements of support, from at least one million signatories, coming from at least one quarter of all Member States, may be initiated. That collection must be made in accordance with the procedures and conditions set out in detail in Articles 5 to 8 of Regulation No 211/2011. In particular, under Article 8 of Regulation No 211/2011, the organisers are to submit the statements of support collected from the Member States concerned for verification and certification.

41 Under the first subparagraph of Article 9 of Regulation No 211/2011, provided that all relevant procedures and conditions set out in that regulation have been complied with, the organisers may submit the ECI to the Commission, accompanied by information regarding any support and funding received for that initiative. That information is to be published in the register.

42 Article 10(1) of Regulation No 211/2011 provides that, where the Commission receives an ECI in accordance with Article 9 of that regulation, it is to:

(a) publish the ECI without delay in the register;

(b) receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the ECI;

(c) within three months, set out in a communication its legal and political conclusions on the ECI, the action it intends to take, if any, and its reasons for taking or not taking that action.

43 Article 10(2) of Regulation No 211/2011 provides that the abovementioned communication is to be notified to the organisers as well as to the European Parliament and the Council of the European Union and must be made public.

44 Article 11 of Regulation No 211/2011 provides, inter alia, that, within the three-month deadline laid down in Article 10(1)(c) of that regulation, the organisers are to be given the opportunity to present the ECI at a public hearing in the Parliament.

45 It is apparent from the provisions set out in paragraphs 39 to 44 above that the decision to register a proposed ECI, such as the contested decision in the present case, is intended to produce binding legal effects on the organisers, institutions and Member States concerned.

46 Indeed, as regards the organisers, the abovementioned registration decision triggers the mechanism for the collection of statements of support and provides the organisers with, inter alia, first, the right to submit the ECI to the Commission and explain it in detail (see paragraphs 41 and 42, subparagraph (b), above), secondly, the right to require the Commission to issue the communication referred to in Article 10(1)(c) of Regulation No 211/2011 (see paragraph 42, subparagraph (c), above) and, thirdly, the right to present the ECI at a public hearing at the Parliament (see paragraph 44 above). Those rights, created in respect of the organisers, constitute at the same time obligations for the institutions concerned, namely the Commission and the Parliament, in that the Commission is required to receive the organisers and issue the abovementioned communication, and the Parliament is required to organise the abovementioned public hearing.

47 As regards the Member States concerned, the decision to register a proposed ECI creates an obligation on their part to authorise the collection of statements of support and to verify and certify them (see paragraph 40 above).

48 The Commission's doubts as to whether the contested decision is challengeable are unfounded.

49 In that regard, the argument that the decision to register a proposed ECI is a preparatory or intermediate act intended to lay the groundwork for the adoption of the communication referred to in Article 10(1)(c) of Regulation No 211/2011 should be rejected (see paragraph 29 above).

50 As the EU judicature has already held, first, the objective of the registration procedure is to prevent organisers from wasting time on an ECI that, from the outset, cannot lead to the desired outcome and, secondly, the decision whether or not to register a proposed ECI involves a first assessment being made of that proposal on the legal aspect and is without prejudice to the Commission's assessment in the context of the communication adopted on the basis of Article 10(1)(c) of Regulation No 211/2011, which sets out 'its legal and political conclusions' on the ECI, the action it intends to take, if any, and its reasons for taking or not taking that action (see, to that effect, judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 117 and the case-law cited).

51 Furthermore, in the judgment of 19 December 2019, *Puppinck and Others* v *Commission* (C-418/18 P, EU:C:2019:1113, paragraph 70), the Court of Justice stated that the particular added value of the ECI mechanism resided not in certainty of outcome, but in the possibilities and opportunities that it created for EU citizens to initiate debate on policy within the EU institutions without having to wait for the commencement of a legislative procedure. As the Commission rightly notes, the policy debate, both with citizens and with the institutions, takes

place, in particular, during the campaign to gather statements of support, at the meeting with the Commission and at the public hearing in the Parliament. It is thus apparent that that policy debate results from the registration decision and the subsequent procedure, and takes place before the Commission adopts the communication referred to in Article 10(1)(c) of Regulation No 211/2011.

52 Accordingly, a decision to register a proposed ECI is the outcome of a specific stage in the ECI process which produces binding legal effects distinct from those produced by the communication provided for in Article 10(1)(c) of Regulation No 211/2011, which, moreover, also constitutes a challengeable act, in accordance with the judgment of 23 April 2018, *One of Us and Others* v *Commission* (T-561/14, EU:T:2018:210).

53 In the light of all the foregoing considerations, it must be concluded that the contested decision constitutes a challengeable act for the purposes of Article 263 TFEU and that the present action is admissible.

### *Substance*

54 Romania raises two pleas in law in support of its action. The first alleges infringement of Article 4(2)(b) of Regulation No 211/2011 and the second alleges infringement of the obligation to state reasons. It is appropriate to examine the second plea first.

#### *The plea alleging infringement of the obligation to state reasons*

55 Romania submits, as a preliminary point, that the Commission has a broad discretion in examining compliance with the condition laid down in Article 4(2)(b) of Regulation No 211/2011 and that, consequently, its obligation to state reasons is of fundamental importance.

56 In that context, in the first place, Romania complains that the Commission failed to set out, in the contested decision, the reasons why it is competent to promote measures relating to the subject matter and objectives of the proposed ECI at issue, as identified in that decision.

57 In the second place, Romania complains that the Commission does not give sufficient reasons for its approach, set out in Article 1(2) of the operative part of the contested decision, of specifying that statements of support for the proposed ECI at issue may be collected, 'based on the understanding that it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds and provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union'.

58 According to Romania, a statement of reasons for the Commission's approach, referred to above, is required in view, first, of the context in which the contested decision was adopted, characterised, inter alia, by the fact that the Commission had initially, by Decision C(2013) 4975 final, refused to register the proposed ECI at issue and that the Court of Justice, in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), had not identified any error of law on the part of the Commission in that decision and, secondly, of the fact that, according to the provisions of Regulation No 211/2011, the decision to register a proposed ECI must be based on an accurate assessment of its subject matter and objectives, even if it is an abstract assessment as opposed to a concrete assessment. Romania submits that, in the present case, the Commission appears to have registered the proposed ECI at issue without knowing what it actually envisaged.

59 Romania concludes that the contested decision does not explain why the proposed ECI at issue could be registered, and that, in the present case, the Commission infringed the obligation to state reasons laid down in the second paragraph of Article 296 TFEU.

60 The Commission and Hungary dispute Romania's arguments.

61 It should be borne in mind that the obligation to state reasons for legal acts laid down in the second paragraph of Article 296 TFEU applies to all acts which may be the subject of an action for annulment (judgment of 1 October 2009, *Commission* v *Council*, C-370/07, EU:C:2009:590, paragraph 42). It follows that, notwithstanding the fact that the second subparagraph of Article 4(3) of Regulation No 211/2011 refers to the Commission's obligation to inform the organisers of the reasons for its decision only when it refuses to register the proposed ECI, the contested decision is subject to the obligation to state reasons even in so far as it contains the Commission's decision to register the proposed ECI at issue (see, to that effect, judgment of 24 September 2019, *Romania* v *Commission*, T-391/17, under appeal, EU:T:2019:672, paragraph 79).

62 It has been consistently held, with regard to Article 296 TFEU, that the statement of reasons for legal acts must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (see judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 28 and the case-law cited).

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

64 Furthermore, it is necessary to distinguish the obligation to state reasons as an essential procedural requirement from the review of the merits of the reasons stated, which comes within the review of the act's substantive legality and requires the Court of Justice to determine whether or not the reasons on which the act is based are vitiated by errors (see, to that effect, judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraphs 66 to 68).

65 It should also be remembered, as the EU judicature has already noted, that the Commission does not have a wide discretion for the purposes of the registration of a proposed ECI, as Article 4(2) of Regulation No 211/2011 states that that institution is to 'register' a proposed ECI, provided that the conditions set out in Article 4(2)(a) to (d) of that regulation are fulfilled, that is to say, inter alia, when the proposed ECI at issue does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties. Conversely, if, following an initial analysis, it is clear that that final condition is not met, the Commission must 'refuse' to register the proposed ECI as set out in the

first subparagraph of Article 4(3) of Regulation No 211/2011 (judgment of 24 September 2019, *Romania* v *Commission*, T-391/17, under appeal, EU:T:2019:672, paragraph 84). Romania's argument set out in paragraph 55 above must therefore be rejected.

66 It is in the light of the considerations set out in paragraphs 61 to 65 above that it is necessary to assess in the present case whether the statement of reasons in the contested decision meets the requisite legal standard.

67 As regards the context in which the contested decision was adopted, it should be observed that initially, by Decision C(2013) 4975 final, the Commission refused to register the proposed ECI at issue on the ground that it manifestly fell outside the framework of its powers within the meaning of Article 4(2)(b) of Regulation No 211/2011.

68 The Commission noted that the main objective of the proposed ECI at issue was to ensure the 'equality of the regions and sustainability of the regional cultures' by giving 'special attention to regions with national, ethnic, cultural, religious or linguistic characteristics that are different from those of the surrounding regions'. The Commission considered that Articles 174 to 178 TFEU, referred to in the abovementioned proposal as provisions of the Treaties relevant to the proposed action, could not serve as a legal basis for the purpose of adopting the proposed legal act, since all measures adopted under the cohesion policy had to have as their objective the strengthening of economic, social and territorial cohesion, as defined in Article 174 TFEU. According to the Commission, improving the situation of national minorities could not be understood as contributing to 'reducing disparities between the levels of development of the various regions' and the backwardness of certain regions, as provided for in the second paragraph of Article 174 TFEU. In that regard, the Commission considered that the list of 'handicaps' set out in the third paragraph of Article 174 TFEU, which require 'particular attention' to be paid a given region, was exhaustive.

69 That Commission decision was upheld by the General Court, which dismissed the action for annulment of that decision (judgment of 10 May 2016, *Izsák and Dabis* v *Commission*, T-529/13, EU:T:2016:282).

70 In the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), the Court of Justice set aside the judgment referred to in paragraph 69 above.

71 In the first place, while providing clarification as to the Commission's obligations when examining the condition for registration laid down in Article 4(2)(b) of Regulation No 211/2011, the Court of Justice observed that that condition for registration must be interpreted and applied by the Commission in such a way as to ensure easy accessibility to ECIs. Accordingly, it is only if a proposed ECI, in view of its subject matter and objectives as reflected in the mandatory and, where appropriate, additional information that has been provided by the organisers pursuant to Annex II to Regulation No 211/2011, manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties that the Commission is entitled to refuse to register the proposed ECI pursuant to Article 4(2)(b) of that regulation (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 53 and 54).

72 Furthermore, the Court of Justice stated that the question whether the measure proposed in the context of an ECI falls within the framework of the Commission's powers is prima facie not a question of fact or of the assessment of evidence subject as such to the rules on the burden of

proof, but essentially a question of the interpretation and application of the relevant provisions of the Treaties. Consequently, where the Commission receives an application for registration of a proposed ECI, it is not for it to ascertain, at that stage, that proof has been provided of all the factual elements relied on, or that the reasoning behind the proposed ECI and the proposed measures is adequate. It must confine itself to examining, for the purpose of assessing whether the condition for registration in Article 4(2)(b) of Regulation No 211/2011 is satisfied, whether from an objective point of view such measures envisaged in the abstract could be adopted on the basis of the Treaties (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 61 and 62).

73 In the second place, the Court of Justice concluded that the General Court had erred in law by finding that, for the proposed ECI at issue to be registered, the organisers were required to demonstrate that the condition in Article 4(2)(b) of Regulation No 211/2011 was satisfied. According to the Court of Justice, the General Court had made an incorrect assessment of the abovementioned condition for registration and of the distribution of tasks between the organisers of an ECI and the Commission in the ensuing registration procedure (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 63 and 72).

74 In the third place, the Court of Justice reviewed the General Court's interpretation of Article 174 TFEU, read in conjunction with Article 4(2)(c) TFEU, in the judgment referred to in paragraph 69 above. In that context, the Court of Justice stated the following:

'68. Article 174 TFEU admittedly describes the objectives of the cohesion policy of the European Union in general terms and gives the Union an extensive discretion as to the actions it may take in the field of economic, social and territorial cohesion, taking into account a broad concept of the regions that may be concerned by those actions.

69. In particular, the list in the third paragraph of Article 174 TFEU of regions "which suffer from severe and permanent natural or demographic handicaps" is, as shown by the use in that provision of the expressions "among the regions concerned" and "such as", indicative, not exhaustive.

70. Nevertheless, as the General Court stated in paragraphs 87 and 89 of the judgment under appeal, the specific ethnic, cultural, religious or linguistic characteristics of national minority regions cannot be regarded as systematically constituting a handicap for economic development in relation to the surrounding regions.

71. Consequently, by excluding, in paragraphs 85 to 89 of the judgment under appeal, the possibility that a national minority region may because of its specific ethnic, cultural, religious or linguistic characteristics systematically form part of the "regions which suffer from severe and permanent natural or demographic handicaps" within the meaning of the third paragraph of Article 174 TFEU, the General Court correctly interpreted the concept of "regions concerned" in that provision, and did not therefore err in law on this point.'

75 In the fourth place, the Court of Justice upheld the appeal and set aside the judgment referred to in paragraph 69 above on the basis of the conclusion set out in paragraph 73 above (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 73).

76 In the fifth place, the Court of Justice, taking the view that the state of the proceedings permitted it to give final judgment, annulled the Commission's decision refusing to register the proposed ECI at issue. More specifically, the Court of Justice, on the basis of the finding that the General Court

had erred in law (by finding that, for the proposed ECI at issue to be registered, the applicants were required to demonstrate that the condition in Article 4(2)(b) of Regulation No 211/2011 was satisfied), held that the applicants' plea in law, alleging infringement of that provision, was well founded. From that finding, the Court of Justice concluded that the Commission's decision refusing to register the proposed ECI at issue had to be annulled (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 74 to 77).

77 Following the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), the Commission adopted the contested decision by which it registered the proposed ECI at issue.

78 It is clear from the wording of the contested decision (see paragraphs 7 to 13 above) that, in the first place, the Commission identified the subject matter and objectives of the proposed ECI at issue. In the second place, the Commission carried out the preliminary legal analysis required, first, by identifying, in recital 5 of the contested decision, the legal basis enabling it to submit a proposal for a legal act of the European Union in order to give effect to the ECI at issue, namely Article 177 TFEU, and, secondly, by specifying, in recital 6 and Article 1(2) of the contested decision, that the actions to be financed following that ECI should be aimed at strengthening the economic, social and territorial cohesion of the European Union. In other words, in the context of that analysis, the Commission identified the limits of EU competences with regard to the proposed ECI at issue.

79 Having regard to the wording of the contested decision, the context in which it was adopted and the relevant legal rules, the General Court considers that the statement of reasons in the contested decision meets the requisite legal standard. That conclusion is not called into question by Romania's complaints.

80 As regards, first of all, Romania's first complaint, alleging that the Commission failed to set out the reasons why it was competent to propose the adoption of a legal act of the European Union giving effect to the ECI at issue (paragraph 56 above), it is apparent from the wording of the contested decision that the Commission considered that the proposed ECI at issue related to the economic, social and territorial EU cohesion policy, referred to in Title XVIII of Part Three of the FEU Treaty, and that Article 177 TFEU could constitute a legal basis for an EU act giving effect to the ECI at issue. The Commission also set out, in recital 6 and Article 1(2) of the contested decision, the limits of EU competences in that regard. In those circumstances, Romania's first complaint is unfounded and must be rejected.

81 In its second complaint (paragraphs 57 and 58 above), Romania submits, in essence, that the contested decision does not sufficiently explain the Commission's change of position concerning the proposed ECI at issue, evidenced by the fact that, in the context of Decision C(2013) 4975 final, the Commission had initially refused to register it.

82 The General Court considers that the second complaint is also unfounded. It should be noted that the Commission's change of position is explained in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), which forms part of the context in which the contested decision was adopted.

83 First, in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), the Court of Justice invalidated the Commission's analysis, in Decision C(2013) 4975 final, that the list in the third paragraph of Article 174 TFEU of regions 'which suffer from severe and permanent natural or demographic handicaps' is exhaustive. According to the Court of Justice, that list is indicative.

84 Secondly, in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177, paragraph 62), the Court of Justice stated that, where the Commission receives an application for registration of a proposed ECI, it must confine itself to examining whether, from an objective point of view, and without verifying the factual elements relied on or ascertaining that the reasoning behind the proposed measures is adequate, such measures envisaged in the abstract could be adopted on the basis of the Treaties.

85 Thirdly, by the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177, paragraph 62), the Court of Justice not only set aside the judgment of the General Court referred to in paragraph 4 above, but also annulled Commission Decision C(2013) 4975 final. The Commission was therefore required to adopt a new decision on the proposed ECI at issue, drawing all the appropriate inferences from the abovementioned judgment of the Court of Justice.

86 The considerations set out in paragraphs 83 to 85 above, known to Romania, explain why, notwithstanding its initial position expressed in Decision C(2013) 4975 final, the Commission ultimately registered the proposed ECI at issue by the contested decision. Those considerations also explain its approach, in recital 6 and Article 1(2) of the contested decision, of setting out the field in which legal acts of the European Union may be adopted ('provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union'), which corresponds to the field in which the submission of legal acts is requested by the organisers of the ECI at issue ('the proposed [ECI at issue], inasmuch as it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds'), to conclude that the proposed ECI at issue does not manifestly fall outside the framework of its powers within the meaning of Article 4(2)(b) of Regulation No 211/2011.

87 Romania's assertion that the Commission appears to have registered the proposed ECI at issue without knowing what it actually envisaged (see paragraph 58 above) is more concerned with the substance of the dispute, and is addressed in the examination of the first plea.

88 On the basis of the foregoing considerations, the present plea must be dismissed.

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

89 Romania submits that the proposed ECI at issue manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties, within the meaning of Article 4(2)(b) of Regulation No 211/2011, and that, consequently, the contested decision infringes that provision.

90 In the first place, Romania submits that Articles 174 to 178 TFEU relating to the economic, social and territorial cohesion of the European Union do not constitute a valid legal basis for an EU action as envisaged in the proposed ECI at issue.

91 In that regard, Romania submits that, in the field of economic, social and territorial cohesion (the field with which the proposed ECI at issue is concerned), the European Union can achieve the objective of protecting the rights of persons belonging to national minorities only in so far as the purpose of the cohesion policy established by the Treaty is to achieve that objective. Any other course of action would infringe the principle of conferral, expressed in Article 4(1) and Article 5(1) and (2) TEU.

92 However, according to Romania, the economic, social and territorial cohesion policy is aimed at the overall harmonious development of the European Union through, inter alia, reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions. According to Romania, what is relevant for an action which is part of that policy is the criterion of the level of development of the various regions, and not the criterion of the national, ethnic, cultural, religious and linguistic characteristics of the regions. Moreover, it cannot be accepted that there is a valid and systematic link between the ethnic composition of certain regions and their level of development in relation to neighbouring regions.

93 Romania concludes that the criterion relating to the particular characteristics of regions which are populated by national minorities is not relevant to the assessment of the level of development of a region, so that criterion should not play any role in the implementation of the cohesion policy. Consequently, an act based on such a criterion would not achieve the cohesion policy's objectives of reducing disparities between the levels of development of the various regions of the European Union and, consequently, cannot be based on Articles 174 to 178 TFEU.

94 In that context, Romania notes that, in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), the Court of Justice did not address the question whether the measures referred to in the proposed ECI at issue and 'envisaged in the abstract could be adopted on the basis of the Treaties'. On the other hand, the Court of Justice confirmed the General Court's analysis that a national minority region could not, in the light of its specific ethnic, cultural, religious or linguistic characteristics, systematically form part of the 'regions which suffer from severe and permanent natural or demographic handicaps' within the meaning of the third paragraph of Article 174 TFEU. Romania infers from this that the Court of Justice held that legislation such as that intended by the organisers cannot be based on the Treaty provisions on cohesion policy.

95 In the second place, Romania submits that the wording of recital 6 of the contested decision reveals the existence of some reservations in the Commission's assessment. Those reservations indicate that, according to the Commission, the subject matter and objectives of the proposed ECI at issue are unclear, and that it is also unclear how those objectives could be achieved through the adoption of legal acts based on Articles 174 to 178 TFEU. The Commission's approach is not compatible with Regulation No 211/2011. According to Romania, the decision to register a proposed ECI must be based on an accurate assessment of its subject matter and objectives, even if it is an abstract assessment as opposed to a concrete assessment. As established in Article 10 of Regulation No 211/2011, that assessment cannot be postponed until a later stage of the ECI procedure.

96 In the reply, expanding on the arguments set out in paragraph 95 above, Romania complains that the Commission refers only to a limited amount of the information on the ECI at issue provided by the organisers, namely the stated objective which is general and unclear, and thus misinterprets the concept of 'analysis in the abstract' referred to by the Court of Justice in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177).

Romania submits that the Commission should have taken account of both the mandatory information and the additional information provided by the organisers pursuant to Annex II to Regulation No 211/2011 and that, in that context, the correct identification of the subject matter and the real objectives of the proposed ECI at issue is a condition *sine qua non* for identifying the area of competence of the European Union or the legal basis of any EU act that may be adopted.

97 More specifically, Romania submits that the Commission should have taken account of the fact that the proposed ECI at issue referred to the need to define the concept of 'national minority region' and to provide a list of those regions. The Commission should also have taken account of the fact that the transposition of the proposed ECI at issue into European legislation presupposed the reconfiguration of the entire statistical system provided for in 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), and the modification of the administrative organisation method for Member States in a new territorial configuration, which had to take account of the ethnic, religious, linguistic or cultural criterion. According to Romania, the administrative and territorial organisation of the Member States falls within their exclusive competence and, in accordance with Article 4(2) TEU, the European Union is obliged to respect the constitutional order of the Member States.

98 On the basis of the arguments set out above, Romania concludes that the contested decision infringes Article 4(2)(b) of Regulation No 211/2011.

99 The Commission and Hungary dispute Romania's arguments.

100 Before specifically addressing the complaints made by Romania against the Commission in the context of the present plea, it is important to recall the characteristics of the examination which the Commission must carry out under Article 4(2)(b) of Regulation No 211/2011.

101 In that regard, it should be recalled that the condition for registration of a proposed ECI must be interpreted and applied by the Commission in such a way as to ensure easy accessibility to ECIs. Accordingly, it is only if a proposed ECI, in view of its subject matter and objectives as reflected in the mandatory and, where appropriate, additional information that has been provided by the organisers, manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties that the Commission is entitled to refuse to register the proposed ECI pursuant to Article 4(2)(b) of that regulation (see paragraph 71 above).

102 Moreover, there is a distinction between the examination that the Commission is required to carry out under Article 4(2)(b) of Regulation No 211/2011 and the examination that it is required to carry out under Article 10(1)(c) of that regulation.

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

104 The decision to register a proposed ECI involves an initial legal assessment being made of that proposal and is without prejudice to the Commission's assessment in the context of the communication adopted on the basis of Article 10(1)(c) of Regulation No 211/2011, that communication containing the Commission's definitive position on whether or not to submit a proposal for a legal act of the European Union in response to the ECI at issue (see, to that effect, judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraphs 77, 79 and 117).

105 It is apparent from the considerations set out in paragraphs 100 to 104 above that the Commission may refuse to register a proposed ECI only if, in carrying out the examination under Article 4(2)(b) of Regulation No 211/2011, it concludes that it can be completely ruled out that the Commission could submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties. On the other hand, if the Commission cannot reach such a conclusion, it is obliged to register the proposed ECI in question.

106 The finding set out in paragraph 105 above is supported by the clarification, provided by the Court of Justice, that the particular added value of the ECI mechanism resides not in certainty of outcome, but in the possibilities and opportunities that it creates for EU citizens to initiate debate on policy within the EU institutions without having to wait for the commencement of a legislative procedure (see paragraph 51 above). It is apparent from that clarification that, even where the Commission has strong doubts as to whether the proposed ECI at issue falls within the framework of its powers within the meaning of Article 4(2)(b) of Regulation No 211/2011, it must register that proposal in order to enable the debate on policy within the institutions, which is triggered as a result of that registration.

107 It is in the light of the considerations set out in paragraphs 101 to 106 above that Romania's complaints must be assessed.

108 As regards Romania's complaint, set out in paragraphs 95 to 97 above, that the Commission had not taken into account all the information provided by the organisers in the proposed ECI at issue, and had not, in essence, correctly identified the content of that proposal, it is important to note, as a preliminary point, that, according to the case-law, information relating to the subject matter and objectives of the proposed ECI, provided by the organisers of the ECI compulsorily or on an optional basis, in accordance with Annex II to Regulation No 211/2011, must be taken into consideration by the Commission when it carries out its examination under, inter alia, Article 4(2)(b) of that regulation (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 51 and 54). Moreover, it has been stated that where, in accordance with Annex II to Regulation No 211/2011, the organisers of the ECI attach, as an annex to their proposal, as they did in the present case, more detailed information on the subject, objectives and background of the proposal, the Commission is required to examine that information with care and impartiality (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 35).

109 In the present case, it should be noted in the first place that, in recitals 1 and 2 of the contested decision, the Commission identified the subject matter and objectives of that proposal by reproducing the mandatory information provided by the organisers pursuant to Annex II to Regulation No 211/2011 (see paragraph 2 above).

110 In the second place, it should be noted that Article 177 TFEU, identified by the Commission in recital 5 of the contested decision as a potential legal basis for the legal acts of the European Union which could be adopted in response to the ECI at issue, was among the provisions cited by the organisers in the proposed ECI at issue, pursuant to Annex II to Regulation No 211/2011, as provisions relevant to the proposed action.

111 In the third place, it should be observed that the Commission registered the proposed ECI at issue 'based on the understanding that it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds' and 'provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union' (Article 1(2) of the contested decision).

112 The considerations set out in paragraphs 108 to 111 above, examined in the light of all the information provided by the organisers of the proposed ECI at issue, show that the Commission, in accordance with the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177, paragraph 62), examined, from an objective point of view, the proposed measures, envisaged in the abstract, by confining itself, in essence, to setting out the subject matter and objectives of the proposed ECI at issue and finding that that proposal fell within the scope of the EU cohesion policy. Viewed in that light, the proposed ECI at issue is correctly presented in the contested decision and no distortion of the content of the decision can be found.

113 It is true, as Romania observes, that in the context of the additional and optional information provided in accordance with Annex II to Regulation No 211/2011, the organisers of the ECI at issue referred to the need for the legal act of the European Union adopted following the ECI at issue to define the concept of 'national/ethnic minority regions' and to provide a list of those regions. The organisers also stated that, when forming the regions referred to in Regulation No 1059/2003, ethnic, religious, linguistic and cultural boundaries must be taken into account.

114 That being so, it should be noted that it was apparent from all the information communicated by the organisers that the elements set out in paragraph 113 above constituted, in their view, a means of achieving the objective of the ECI at issue, as described in recital 2 of the contested decision. It follows that, in so far as, when carrying out the assessment under Article 4(2)(b) of Regulation No 211/2011, the Commission was under a legal obligation to examine, from an objective point of view, the measures proposed, envisaged in the abstract, without being able to ascertain that proof had been provided of all the factual elements relied on, or that the reasoning behind the proposed ECI at issue and the proposed measures was adequate (judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177, paragraph 62), it has not been demonstrated that the Commission failed to take into account all the information provided by the organisers of the proposed ECI at issue, including the additional and optional information, or that it distorted the content of that proposal.

115 In addition, Romania's argument that there were some 'reservations' in the Commission's assessment, which is, in essence, contrary to Regulation No 211/2011 (see paragraph 95 above), must be rejected.

116 Indeed, it is clear that the Commission's approach of registering the proposed ECI at issue 'based on the understanding that it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union' is consistent with Regulation No 211/2011, as interpreted by the Court of Justice, in particular in

the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), in that, as already noted, the Commission must interpret and apply the condition for registration laid down in Article 4(2)(b) of the abovementioned regulation in such a way as to ensure easy accessibility to ECIs. The Commission may therefore, if necessary, 'frame', 'qualify' or even partially register the proposed ECI at issue in order to ensure that it is easily accessible, provided that it complies with the obligation to state reasons incumbent on it, and that the content of the proposal is not distorted. That approach allows the Commission – instead of refusing to register a proposed ECI – to register it in a qualified manner, in order to preserve the effectiveness of the objective pursued by Regulation No 211/2011. That conclusion is all the more compelling since the organisers of such a proposal are not necessarily lawyers who are able to express themselves accurately in writing and have knowledge of the competences of the European Union and the powers of the Commission. Furthermore, Romania's assertion that the existence of 'reservations' in the Commission's assessment indicates the existence of doubts and questions on the part of the Commission (see paragraph 95 above) is not only unsubstantiated, but also ineffective, in so far as, as has already been noted, the existence of such doubts and questions should not prevent the Commission from registering the proposed ECI at issue.

117 In addition, the Commission's approach is explained by the fact that it was required to adopt a new decision on the proposed ECI at issue, following the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), drawing all the appropriate inferences from that judgment, as pointed out in paragraph 85 above.

118 In the light of the considerations in paragraphs 108 to 117 above, Romania's complaint set out in paragraphs 95 to 97 above must be rejected.

119 As regards Romania's complaint, set out in paragraphs 90 to 94 above, that Articles 174 to 178 TFEU do not constitute a valid legal basis for EU action as envisaged in the proposed ECI at issue, it must be remembered that the Commission, without erring in law (see the findings in paragraphs 114 and 118 above), registered that proposed ECI 'based on the understanding that it aims at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds' as those proposals may be made on the basis of Article 177 TFEU (Article 1(2) of the contested decision, read in conjunction with recital 5 of that decision).

120 The first paragraph of Article 177 TFEU provides inter alia that 'the … Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure … shall define the tasks, priority objectives and the organisation of the Structural Funds'. Article 177 TFEU is placed under Title XVIII, entitled 'Economic, social and territorial cohesion', in Part Three of the FEU Treaty, entitled 'Union policies and internal actions'.

121 It is apparent from Article 4(2)(c) TFEU that economic, social and territorial cohesion is one of the areas of shared competence between the European Union and the Member States. In accordance with Article 2(6) TFEU, the scope of and arrangements for exercising the European Union's competences are to be determined by the provisions of Title XVIII of Part Three of the FEU Treaty.

122 The first paragraph of Article 174 TFEU, under Title XVIII, provides that in order to promote its overall harmonious development, the European Union is to develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

123 The third paragraph of Article 174 TFEU provides:

'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.'

124 The Court of Justice has held that Article 174 TFEU describes the objectives of the EU cohesion policy in general terms and gives the European Union an extensive discretion as to the actions it may take in the field of economic, social and territorial cohesion, taking into account a broad concept of the regions that may be concerned by those actions (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 68).

125 In addition, the Court of Justice has stated that the list in the third paragraph of Article 174 TFEU of regions 'which suffer from severe and permanent natural or demographic handicaps' is indicative, not exhaustive (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 69).

126 It is apparent from the considerations set out in paragraphs 120 to 125 above that the European Union has competence in the field of economic, social and territorial cohesion. Moreover, it must be borne in mind that Article 177 TFEU provides for the adoption of regulations in accordance with the ordinary legislative procedure, which, as stated in Article 289(1) TFEU, is triggered by the submission of a proposal from the Commission to the Parliament and the Council.

127 It follows from the foregoing that the Commission did not err in concluding, in the contested decision, that the proposed ECI at issue, in as much as it aimed at proposals from the Commission for legal acts setting out the tasks, priority objectives and the organisation of the Structural Funds, and provided that the actions to be financed led to the strengthening of the economic, social and territorial cohesion of the European Union, did not manifestly fall outside the framework of its powers within the meaning of Article 4(2)(b) of Regulation No 211/2011. That conclusion must be reached in the light of the clarification, provided by the Court of Justice, that the question whether the measure proposed in the context of an ECI falls within the framework of the Commission's powers within the meaning of the abovementioned provision is, prima facie and essentially, a question of the interpretation and application of the relevant provisions of the Treaties (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 61).

128 It is true, as was also noted by Romania, that, in the judgment of 7 March 2019, *Izsák and Dabis* v *Commission* (C-420/16 P, EU:C:2019:177), the Court of Justice upheld the analysis of the General Court in the judgment of 10 May 2016, *Izsák and Dabis* v *Commission* (T-529/13, EU:T:2016:282), according to which the specific ethnic, cultural, religious or linguistic characteristics of national minority regions cannot be regarded as systematically constituting a handicap for economic development in relation to the surrounding regions. The Court of Justice thus held that, by excluding the possibility that a national minority region may because of its specific ethnic, cultural, religious or linguistic characteristics systematically form part of the 'regions which suffer from severe and permanent natural or demographic handicaps' within the meaning of the third paragraph of Article 174 TFEU, the General Court correctly interpreted the concept of 'regions concerned' in that provision (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 70 and 71).

129 Those clarifications provided by the Court of Justice do not call into question the finding, in paragraph 127 above, that the Commission did not err in concluding that the proposed ECI at issue did not manifestly fall outside the framework of its powers. First, the decision to register a proposed ECI is without prejudice to the Commission's assessment in the context of the communication adopted on the basis of Article 10(1)(c) of Regulation No 211/2011, which sets out 'its legal and political conclusions' on the ECI, the action it intends to take, if any, and its reasons for taking or not taking that action, as has been observed in paragraphs 50 and 104 above. Secondly, as the Commission stated in the defence, it may, when preparing that communication and if it considers it necessary to do so, examine, in particular on the basis of factual information, whether and to what extent the characteristics of a national minority region may have an impact on its economic or social development in relation to the surrounding regions, and whether and to what extent the differences found between the levels of economic or social development call for action leading to the strengthening of economic, social and territorial cohesion.

130 On the basis of the foregoing considerations, Romania's complaint set out in paragraphs 90 to 94 above must be rejected and, accordingly, the present plea must be dismissed. The action must therefore be dismissed.

## Costs

131 Under Article 134(1) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Romania has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the latter.

132 Under Article 138(1) of the Rules of Procedure, the Member States which have intervened in the proceedings are to bear their own costs. Hungary must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Tenth Chamber)

hereby:

1. **Dismisses the action;**

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

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

Kornezov Buttigieg Kowalik-Bańczyk

Delivered in open court in Luxembourg on 10 November 2021.

[Signatures]