ECLI:EU:T:2018:210

JUDGMENT OF THE GENERAL COURT (Second Chamber, Extended Composition)

23 April 2018 (*)

(Institutional law — European Citizens' Initiative — Research policy — Public health — Development cooperation — EU financing of activities involving the destruction of human embryos — Commission communication pursuant to Article 10(1)(c) of Regulation (EU) No 211/2011 — Actions for annulment — Capacity to bring legal proceedings — Challengeable act — Partial inadmissibility — Judicial review — Obligation to state reasons — Manifest error of assessment)

In Case T-561/14,

European Citizens' Initiative One of Us, and the other applicants whose names appear in the annex, (1) represented initially by C. de La Hougue, and subsequently by J. Paillot, lawyers, and finally by P. Diamond, Barrister,

applicants,

supported by

Republic of Poland, represented by M. Szwarc, A. Miłkowska and B. Majczyna, acting as Agents,

intervener,

v

European Commission, represented by J. Laitenberger and H. Krämer, acting as Agents,

defendant,

supported by

European Parliament, represented initially by U. Rösslein and E. Waldherr, and subsequently by U. Rösslein and R. Crowe, acting as Agents,

and by

Council of the European Union, represented by E. Rebasti and K. Michoel, acting as Agents,

interveners,

APPLICATION based on Article 263 TFEU and seeking the annulment of Commission Communication COM(2014) 355 final of 28 May 2014 on the European Citizens' Initiative 'Uno di noi',

THE GENERAL COURT (Second Chamber, Extended Composition),

composed of M. Prek, President, E. Buttigieg (Rapporteur), F. Schalin, B. Berke and M.J. Costeira, Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 16 May 2017,

gives the following

Judgment

Background to the dispute

Procedure in respect of the European Citizens' Initiative entitled 'Uno di noi'

1 On 11 May 2012 the European Commission, in accordance with Article 4(2) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ 2011 L 65, p. 1), registered the proposed European Citizens' Initiative ('ECI') with the title 'Uno di noi' (One of Us) under reference ECI(2012) 000005 ('the ECI at issue').

2 The subject matter of the ECI at issue was, as described in the online register made available for that purpose by the Commission, 'the juridical protection of the dignity, the right to life and of the integrity of every human being from conception in the areas of EU competence in which such protection is of particular importance'.

3 The objectives of the ECI at issue were described as follows in that register:

'The human embryo deserves respect to its dignity and integrity. This is enounced by the [Court of Justice of the European Union] in the *Brüstle* case, which defines the human embryo as the beginning of the development of the human being. To ensure consistency in areas of its competence where the life of the human embryo is at stake, the [European Union] should establish a ban and end the financing of activities which presuppose the destruction of human embryos, in particular in the areas of research, development aid and public health. '

4 The provisions of the Treaties deemed relevant by the organisers of the ECI at issue were Articles 2 and 17 TEU and Articles 4(3) and (4), 168, 180, 182, 209, 210 and 322 TFEU.

5 In the context of the ECI at issue, three amendments to EU acts were proposed.

6 First, it was proposed that an article be inserted into Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1), providing that: 'no European Union budget

allocation [would] be made for the funding of activities that destroy[ed] human embryos, or that presume[d] their destruction'.

7 Second, it was proposed that a subparagraph (d) be inserted into Article 16(3) of the Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020) (COM(2011) 809 final) excluding from all funding under the framework programme 'research activities that destroy[ed] human embryos, including those aimed at obtaining stem cells, and research involving the use of human embryonic stem cells in subsequent steps to obtain them'.

8 Third, it was proposed that a paragraph 5 be added to Article 2 of Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ 2006 L 378, p. 41), worded as follows:

'The assistance of the Union, on the basis of this Regulation, shall not be used to fund abortion, directly or indirectly, through the funding of organisations that encourage or promote abortion. No reference … made in this Regulation to reproductive and sexual health, health care, rights, services, supplies, education and information at the International Conference on Population and on Development, its principles and Program[me] of Action, the Cairo Agenda and the Millennium Development Goals, in particular MDG n. 5 about health and maternal mortality, can be interpreted as providing a legal basis for using EU funds to finance directly or indirectly abortion.'

9 On 28 February 2014, pursuant to Article 9 of Regulation No 211/2011, the organisers of the ECI at issue submitted it to the Commission.

10 On 9 April 2014, pursuant to Article 10(1)(b) of Regulation No 211/2011, the Commission's representatives received the organisers of the ECI at issue.

11 On 10 April 2014, pursuant to Article 11 of Regulation No 211/2011, the organisers of the ECI at issue were given the opportunity to present it at a public hearing organised at the European Parliament.

12 On 28 May 2014 the Commission adopted Communication COM(2014) 355 final on the ECI at issue ('the contested communication'), on the basis of Article 10(1)(c) of Regulation No 211/2011. In that communication, the Commission adopted a position whereby it would not take the actions requested by the ECI at issue.

Content of the contested communication

13 The contested communication was divided into four parts.

14 In point 1, entitled 'Introduction', the Commission presented, in particular, the subject matter and objectives of the ECI at issue and the three proposed legislative amendments.

15 Point 2 of the contested communication was entitled 'State of Play'.

16 In point 2.1 of the contested communication, entitled 'Human Dignity in EU Legislation', the Commission presented, inter alia, the EU legislation on the protection of human dignity and specified that all EU legislation and expenditure must comply with the Treaties and the Charter of Fundamental Rights of the European Union and must therefore respect human dignity, the right to life and the right to the integrity of the person. That must also apply to EU legislation and

expenditure on human embryonic stem cell (hESC) research and development cooperation. The Commission also indicated that, in the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), referred to by the organisers in the description of the objectives of the ECI at issue, the Court of Justice had stated that 'the purpose of ... Directive [98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13)] [was] not to regulate the use of human embryos in the context of scientific research ... It [was] limited to the patentability of biotechnological inventions'. The Commission noted that the question whether such research could be carried out and funded had not been dealt with in that judgment.

17 Point 2.2 of the contested communication was entitled '[hESC] Research'. In that point, the Commission explained the state of stem cell research (point 2.2.1) and the competences and activities of Member States and of the European Union in the area (points 2.2.2 and 2.2.3).

18 Regarding the competences of the European Union, the Commission presented the EU Research and Innovation programme Horizon 2020, established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ 2013 L 347, p. 104), and explained that that programme operated in a strict ethical framework consisting of a 'triple lock' system involving the following elements: first, national legislation was respected — EU projects had to follow the laws of the country in which research was carried out. Second, all projects had to be scientifically validated by peer review and had to undergo rigorous ethical review. Third, EU funds could not be used for derivation of new stem cell lines, or for research that destroyed embryos — including for the procurement of stem cells.

19 Point 2.3 of the contested communication was entitled 'Development cooperation' and, after an introductory point on the state of maternal and child health in developing countries (point 2.3.1), presented the competence and activities of the Member States (point 2.3.2) and of the European Union (point 2.3.3) in the area of maternal and child health.

20 The Commission indicated that the development cooperation activities of the Member States in the area of maternal and child health were guided by the Millennium Development Goals ('MDGs') and the International Conference on Population and Development ('ICPD') Programme of Action. The Commission stated that the ICPD Programme of Action identified unsafe abortions as a major public health concern and asked for prevention of unwanted pregnancies to receive the highest priority. In no case should abortion be promoted as a method of family planning and abortion care had to take place in the legal context of each country. The ICPD underlined that, where it was not against the law, abortion should be safe. The Commission stated, moreover, that the MDGs had become the benchmark for global development policy. MDG 4 aimed to reduce the mortality rate among children under five years by two thirds, while MDG 5 aimed to reduce maternal mortality by three quarters between 1990 and 2015 and achieve universal access to reproductive health.

21 With respect to the competences and activities of the European Union, the Commission set out the provisions of the FEU Treaty on development cooperation and the main financing instruments for that cooperation. The Commission also identified the priorities for EU development funding in the health sector, including sexual and reproductive health and rights, and set out the controls put in place for the use of EU development funds.

22 Point 3 of the contested communication was entitled ‘Assessment of the European Citizens’ Initiative Requests’.

23 In point 3.1 of the contested communication, entitled ‘General observations’, the Commission recalled the objectives of the ECI at issue and addressed its request concerning the amendment of Regulation No 1605/2002. In that regard, the Commission observed that, in accordance with Article 87 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1; ‘the Financial Regulation’), all EU expenditure must be in compliance with the Treaties and with the Charter of Fundamental Rights. Therefore, according to the Commission, the Financial Regulation already ensured that all EU expenditure, including in the areas of research, development cooperation and public health, must respect human dignity, the right to life, and the right to the integrity of the person. The Commission added that the purpose of the Financial Regulation was to provide financial rules in general terms and not for a specific field of EU policy, in particular, for establishing and implementing the EU budget.

24 In point 3.2 of the contested communication, entitled ‘[hESC] research’, the Commission addressed the second proposal for a legislative amendment made by the ECI at issue. In that regard, the Commission stated that the legislation on the Horizon 2020 framework programme contained detailed provisions governing EU support for hESC research. It also stated that that legislation was recent and that the two co-legislators of the European Union, the Parliament and the Council of the European Union, had taken into account ethical considerations, the added value at EU level and the potential health benefits of all types of stem cell research. The Commission also recalled the existence of the ‘triple lock’ system (see paragraph 18 above). The Commission concluded, in that point, that the provisions of the Horizon 2020 framework programme on hESC research already addressed a number of important requests of the organisers, notably that the EU not fund the destruction of human embryos and that appropriate controls be put in place. The Commission considered, however, that it could not meet the organisers’ request that the EU not fund research subsequent to the establishment of hESC lines. In that regard, the Commission explained that it had formulated its proposal on the Horizon 2020 programme taking into account ethical considerations, potential health benefits, and the added value of support at EU level, for all types of stem cell research, and that the co-legislators of the European Union had adopted that proposal based on an agreement democratically reached during interinstitutional negotiations.

25 In point 3.3 of the contested communication, entitled ‘Development cooperation’, the Commission addressed the third proposal for a legislative amendment made by the ECI at issue. It noted, first of all, that the underlying objective of the ECI at issue was a reduction in the number of abortions undertaken in developing countries. In that regard, the Commission stated that EU aid in the health sector of developing partner countries consisted either in providing support to integrated service provision that included sexual, reproductive, maternal, newborn and child health services across the continuum of care, or in providing budget support to assist countries to improve national health service delivery. According to the Commission, that EU support contributed substantially to a reduction in the number of abortions, because it increased access to safe quality services, including good-quality family planning, a broad range of contraceptive methods, emergency contraception and comprehensive sexual education. The Commission indicated that the European Union, in granting its aid, fully respected the sovereign decisions of partner countries as to which health services would be provided and how they were packaged as long as they were in line with agreed human rights principles. The Commission specified that it therefore did not favour earmarking aid for certain services only, because it would make the comprehensive and effective support of a country’s health strategy more difficult.

26 Point 4 of the contested communication was entitled ‘Conclusions’ and constituted, in essence, a summary of the preceding developments.

27 In point 4.1 of the contested communication, entitled ‘General’, the Commission concluded that it saw no need to propose changes to the Financial Regulation.

28 In point 4.2 of the contested communication, entitled ‘[hESC] research’, the Commission expressed the opinion that the provisions of the Horizon 2020 programme already addressed a number of important requests of the organisers, notably that the EU should not fund the destruction of human embryos and that appropriate controls should be put in place. The Commission considered, however, that the organisers’ request for the EU not to fund research subsequent to the establishment of human embryonic stem cell lines could not be met.

29 In point 4.3 of the contested communication, entitled ‘Development cooperation’, the Commission concluded that a ban on abortion funding in developing countries would constrain the European Union’s ability to deliver on the objectives set out in the MDGs, particularly on maternal health, and in the ICPD Programme of Action, those objectives having been recently reconfirmed at both international and EU levels.

30 In the fifth paragraph of point 4.3 of the contested communication, the Commission stated that, in accordance with Article 10(2) of Regulation No 211/2011, that communication would be notified to the organisers of the ECI at issue as well as to the Parliament and the Council and that it would be made public.

Procedure and forms of order sought by the parties

31 The applicants are the entity known as ‘European Citizens’ Initiative One of Us’ and the seven natural persons who are the organisers of the ECI at issue and constitute its citizens’ committee within the meaning of Article 2(3) and the first subparagraph of Article 3(2) of Regulation No 211/2011.

32 By application lodged at the Registry of the General Court on 25 July 2014, the applicants brought the present action. The action sought not only the annulment of the contested communication, but also, in the alternative, the annulment of Article 10(1)(c) of Regulation No 211/2011. It designated as defendants the Parliament, the Council and the Commission.

33 On 29 January 2015 the Commission lodged its defence.

34 By separate documents lodged at the Court Registry on 6 and 9 February 2015, respectively, the Parliament and the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991. They contended that the action should be dismissed as inadmissible in so far as it concerned them.

35 By documents lodged at the Court Registry on those same dates, the Parliament and the Council applied for leave to intervene in support of the form of order sought by the Commission in the event that the action was declared inadmissible in so far as it concerned them.

36 By document lodged at the Court Registry on 17 March 2015, the International Planned Parenthood Federation applied for leave to intervene in support of the form of order sought by the Commission, the Parliament and the Council.

37 By document lodged at the Court Registry on 3 April 2015, Marie Stopes International applied for leave to intervene in support of the form of order sought by the Commission, the Parliament and the Council.

38 On 14 April 2015 the applicants lodged a reply in which they also submitted their observations on the objections of inadmissibility raised.

39 On 4 June 2015 the Commission lodged a rejoinder.

40 By order of 26 November 2015, *One of Us and Others* v *Commission* (T-561/14, not published, EU:T:2015:917), the First Chamber of the General Court dismissed the action as inadmissible in so far as it was directed against Article 10(1)(c) of Regulation No 211/2011, which had the result that the Parliament and the Council could no longer be regarded as defendants in the proceedings.

41 By decision of 30 November 2015, the President of the First Chamber of the General Court granted the Parliament and the Council leave to intervene, stating that their rights were those provided for by Article 116(6) of the Rules of Procedure of 2 May 1991.

42 By document lodged at the Court Registry on 16 January 2016, the Republic of Poland applied for leave to intervene in support of the form of order sought by the applicants.

43 By order of 16 March 2016, *One of Us and Others* v *Commission* (T-561/14, EU:T:2016:173), the President of the First Chamber of the General Court dismissed the applications to intervene of International Planned Parenthood Federation and Marie Stopes International. In addition, it was held that the applicants had misused the applications to intervene lodged by those entities, thus committing an abuse of procedure, and took account of that abuse in awarding costs pursuant to Article 135(2) of the Rules of Procedure of the General Court.

44 By decision of 17 March 2016, the President of the First Chamber of the General Court granted the Republic of Poland leave to intervene, stating that its rights were those provided for by Article 116(6) of the Rules of Procedure of 2 May 1991.

45 As a result of the changes to the composition of the chambers of the General Court, in accordance with Article 27(5), the Judge-Rapporteur was attached to the Second Chamber, to which this case has, in consequence, been assigned.

46 On a proposal from the Judge-Rapporteur, the General Court (Second Chamber), by way of measures of organisation of procedure under Article 89 of the Rules of Procedure, put, on 28 November 2016, a written question to the main parties, to which they replied within the prescribed period.

47 On a proposal from the Second Chamber, the General Court decided, on 14 December 2016, pursuant to Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition.

48 On a proposal from the Judge-Rapporteur, the General Court (Second Chamber, Extended Composition) decided, on 11 January 2017, to open the oral part of the procedure.

49 By decision of 9 March 2017, the President of the Second Chamber of the General Court allowed the request for postponement of the hearing submitted by the applicants.

50 The parties presented oral argument and gave replies to the Court's questions at the hearing on 16 May 2017.

51 The applicants, supported by the Republic of Poland, claim that the Court should:

– annul the contested communication;

– order the Commission to pay the costs.

52 The Commission, supported by the Parliament and the Council, contends that the Court should:

– dismiss the action as inadmissible and, in any event, as unfounded;

– order the applicants to pay the costs.

Law

Admissibility

Admissibility of the action in so far as it is brought by the entity known as 'European Citizens' Initiative One of Us'

53 As a preliminary point, it should be recalled that the question of the applicant's standing and of its access to remedies may be examined by the EU judicature of its own motion, in so far as it concerns a plea alleging an absolute bar to proceeding (see, to that effect, judgment of 3 July 2007, *Au Lys de France* v *Commission*, T-458/04, not published, EU:T:2007:195, paragraph 33 and the case-law cited).

54 In the present case, the question the Court should examine of its own motion is whether the entity known as 'European Citizens' Initiative One of Us' may bring legal proceedings before the EU judicature in order to seek, pursuant to Article 263, fourth paragraph, TFEU, annulment of the contested communication.

55 The main parties were given an opportunity to submit observations on that issue in their answers to the written question asked by the Court (see paragraph 46 above). That issue was also discussed during the hearing.

56 The applicants claimed, in essence, that the action was admissible in that it was brought by European Citizens' Initiative One of Us and cited, in support of that proposition, the judgment of 3 February 2017, *Minority SafePack — one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59). In the alternative, they argued that the action was, in any event, admissible in that it was being brought by seven natural persons who were the organisers of the ECI at issue and constituted its citizens' committee.

57 The Commission contended that the entity known as 'European Citizens' Initiative One of Us' did not have capacity to bring legal proceedings before the EU judicature; it was only the seven abovementioned natural persons who had that capacity.

58 It is apparent from the very wording of the Article 263, fourth paragraph, TFEU that only natural persons or entities with legal personality may bring an action for annulment under that provision.

59 However, it has been accepted that, in certain specific cases, an entity which did not have legal personality under the law of a Member State or of a non-member State could nevertheless be regarded as a 'legal person' within the meaning of Article 263, fourth paragraph, TFEU and be allowed to bring an action for annulment on the basis of that provision (see, to that effect, judgments of 28 October 1982, *Groupement des Agences de voyages* v *Commission*, 135/81, EU:C:1982:371, paragraphs 9 to 12, and of 18 January 2007, *PKK and KNK* v *Council*, C-229/05 P, EU:C:2007:32, paragraphs 109 to 112). That is the case, in particular, where by their acts or actions, the European Union and its institutions treat the entity in question as being a distinct person, which may have rights specific to it, or be subject to obligations or restrictions.

60 First of all, in the case at hand, it is not apparent from the case file that the entity known as 'European Citizens' Initiative One of Us' has legal personality under the law of a Member State or of a third State. In that regard, it must be noted that, in response to the Court Registry's question concerning evidence of that entity's existence in law, the applicants provided only a printout of the official register of European Citizens' Initiatives, uploaded by the Commission, mentioning the ECI at issue.

61 Next, it is not apparent from Regulation No 211/2011 that that regulation confers legal personality on an ECI by treating it as a distinct person. The only persons who, inter alia, are to participate in the procedure before the Commission (inter alia Articles 3 to 6 and 8 to 11 of Regulation No 211/2011), are to assume liability for any damage they cause in the organisation of an ECI (Article 13 of Regulation No 211/2011), are subject to penalties in case of infringement of Regulation No 211/2011 (Article 14 of Regulation No 211/2011), are to be informed of the reasons for the refusal of an ECI proposal and of all possible judicial and extrajudicial remedies available to them (Article 4(3), second subparagraph, of Regulation No 211/2011) and are to be notified the communication by the Commission, provided for in Article 10 of Regulation No 211/2011, are the organisers of the ECI at issue, namely the natural persons who form a citizens' committee.

62 Last, it is not apparent from any act or conduct on the part of the Commission that it treated the entity known as 'European Citizens' Initiative One of Us' as being a distinct person. Nor have the applicants put forward any circumstance to demonstrate the existence of such treatment.

63 It is therefore appropriate to conclude that the entity known as 'European Citizens' Initiative One of Us' does not have capacity to bring legal proceedings before the EU judicature.

64 That conclusion is not called into question by the judgment of 3 February 2017, *Minority SafePack — one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59), cited by the applicants. It is sufficient to state that the applicant in that case was the citizens' committee (Bürgerausschuss) of the ECI at issue, made up of the seven natural persons identified in the application, and not that ECI itself.

65 In the light of the foregoing considerations, the action must be declared inadmissible in so far as it was brought by the entity known as 'European Citizens' Initiative One of Us', without prejudice to the admissibility of the action in so far as it was being brought also by the seven natural persons comprising the citizens' committee of the ECI at issue.

Whether the contested communication may be challenged in accordance with Article 263 TFEU

66 Without formally raising an objection of inadmissibility under Article 114 of the Rules of Procedure of 2 May 1991, the Commission argues that the action is inadmissible on the ground that the contested communication does not constitute an act against which an action for annulment may be brought, in accordance with Article 263 TFEU.

67 The applicants dispute the Commission's contention.

68 It should be recalled that an action for annulment based on Article 263 TFEU is available against all measures adopted by the EU institutions, whatever their nature or form, which are intended to have binding legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9; of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 16; and of 20 September 2016, *Mallis and Others* v *Commission and ECB*, C-105/15 P to C-109/15 P, EU:C:2016:702, paragraph 51).

69 The Commission contends that the contested communication does not — by its very form and nature — purport to be an act intended to produce binding legal effects, let alone binding legal effects capable of affecting the interests of the applicants by bringing about a distinct change in their legal position. The contested communication lays down no obligations, let alone obligations incumbent on the applicants, nor does it regulate the applicants' legal status or powers. Rather, it is an act of the Commission which reflects the latter's intention of following a particular line of conduct, such acts not having to be regarded as being intended to produce legal effects. In support of its argument, the Commission cites the judgments of 6 April 2000, *Spain* v *Commission* (C-443/97, EU:C:2000:190), and of 20 May 2010, *Germany* v *Commission* (T-258/06, EU:T:2010:214).

70 As is apparent from the case-law of the EU Courts, 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 (order of 8 March 2012, *Octapharma Pharmazeutika* v *EMA*, T-573/10, not published, EU:T:2012:114, paragraph 30; see also, to that effect, order of 13 June 1991, *Sunzest* v *Commission*, C-50/90, EU:C:1991:253, paragraphs 12 and 13, and judgment of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 58).

71 The action for annulment is directed in the present case at the contested communication, by means of which the Commission adopted a final position not to submit a proposal for a legal act in response to the ECI at issue. In the context of that ECI, three amendments to EU acts were proposed and their content was precisely defined. It is therefore appropriate to ascertain whether that communication constitutes a challengeable act within the meaning of the case-law cited in paragraphs 68 and 70 above.

72 According to Article 11(4) TEU and recital 1 of Regulation No 211/2011, not less than one million citizens who are nationals of a significant number of Member States are granted the right to approach the Commission directly with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties similar to the right conferred on the Parliament under Article 225 TFEU and on the Council under Article 241 TFEU. As is stated in recital 1 of Regulation No 211/2011, that right is intended to reinforce citizenship of the Union and to enhance the democratic functioning of the European Union through the participation of citizens in its democratic life (see judgment of 3 February 2017, *Minority SafePack — one million*

signatures for diversity in Europe v *Commission*, T-646/13, EU:T:2017:59, paragraph 18 and the case-law cited). That right conferred on EU citizens is governed by Regulation No 211/2011.

73 Regulation No 211/2011 sets out the procedures and conditions required for the submission of such an ECI. It states, in recital 8 thereof, 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. Regulation No 211/2011 provides, in Article 4 thereof, that the ECI proposal must be registered with the Commission and that that registration is completed once the Commission finds that a certain number of conditions, listed in the abovementioned provision, are fulfilled. It is only following that registration that the collection of statements of support for a proposed ECI involving 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 defined in detail in Articles 5 to 8 of Regulation No 211/2011. Article 9 of Regulation No 211/2011 provides for the possibility for the organisers, provided that all the procedures and conditions set out in that regulation have been complied with, to submit the ECI to the Commission.

74 Article 10(1)(c) of Regulation No 211/2011, which constitutes the legal basis of the contested communication, provides that the Commission, within three months of the submission of the ECI in accordance with Article 9 of the abovementioned regulation, is to 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. 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 Parliament and the Council and is to be made public.

75 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 at the Parliament.

76 In view of the fact that the objective of the ECI mechanism is to invite the Commission, within the framework of its powers, to submit a proposal for an act (see, to that effect, judgment of 19 April 2016, *Costantini and Others* v *Commission*, T-44/14, EU:T:2016:223, paragraph 31), it is apparent from the abovementioned provisions that the Commission's submission of the communication as provided for in Article 10(1)(c) of Regulation No 211/2011 constitutes the completion of the ECI procedure, in so far as, through that communication, the Commission informs, inter alia, the organisers of the ECI of its decision regarding whether or not it is going to take any action in response to that decision. Moreover, it is not disputed that the presentation of such a communication constitutes an obligation for the Commission.

77 In the case at hand, it is apparent from the case file that the applicants are the organisers of the ECI at issue and that they responsible for preparing it and submitting it to the Commission, following the steps described in Articles 4 and 5 to 9 of Regulation No 211/2011. It is appropriate also to note that the ECI at issue received the support of 1 721 626 signatories coming from 28 Member States. Furthermore, it should be recalled that the contested communication presents the Commission's final position, the Commission having decided not to submit a proposal for a legal act in response to the ECI at issue and, more generally, not to take any action in response to it. In addition, that communication constitutes the completion of the specific procedure initiated and conducted by the applicants on the basis of Regulation No 211/2011 and its adoption constitutes an obligation for the Commission. In view of those elements, it is appropriate to conclude that the contested communication produces binding legal effects such as to affect the interests of the

applicants by bringing about a distinct change in their legal position (see, to that effect and by analogy, judgments of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraphs 52 and 58, and of 25 June 1998, *Lilly Industries* v *Commission*, T-120/96, EU:T:1998:141, paragraphs 50 to 56).

78 That conclusion is not called into question by the Commission's line of argument.

79 In the first place, in so far as the contested communication embodies the final position of the Commission not to submit the proposal for a legal act in response to the ECI at issue and closes the ECI procedure initiated and conducted by the applicants pursuant to Regulation No 211/2011, it must be considered that that communication does not have the nature and characteristics of the acts that were at issue in the judgments of 6 April 2000, *Spain* v *Commission* (C-443/97, EU:C:2000:190), and of 20 May 2010, *Germany* v *Commission* (T-258/06, EU:T:2010:214), cited by the Commission (see paragraph 69 above), acts which were considered, by the EU Courts, not to be open to actions for annulment.

80 The judgment of 6 April 2000, *Spain* v *Commission* (C-443/97, EU:C:2000:190), concerned an action for annulment against the Commission's internal guidelines concerning net financial corrections in the context of the application of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1). The Court of Justice considered, in paragraph 34 of that judgment, that those internal guidelines reflected only the Commission's intention of following a particular line of conduct in the exercise of the power granted to it by Article 24 of Regulation No 4253/88 and that they cannot therefore be regarded as being intended to produce legal effects.

81 In the present case, however, in so far as the contested communication displays the characteristics described in paragraph 77 above, it cannot be argued that it is not intended to produce legal effects. Unlike the act at issue in the judgment of 6 April 2000, *Spain* v *Commission* (C-443/97, EU:C:2000:190), the contested communication produces effects outside the Commission itself.

82 The judgment of 20 May 2010, *Germany* v *Commission* (T-258/06, EU:T:2010:214), involved an action for annulment against the Commission Interpretative Communication on the EU law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives. The General Court noted, in paragraph 26 of the judgment, that the aim of that communication was to make known the Commission's general approach as regards the application — in cases where the award of a contract is not subject, or not subject in full, to the Public Procurement Directives — of the set of basic rules for the award of public contracts, which flow directly from the rules and principles of the EC Treaty and, in particular, from the principles of non-discrimination and transparency. It is in that context that the Court went on to hold, in paragraph 27 of that judgment, that, in order to be considered a challengeable act, the communication in question had to be designed to produce legal effects which were new as compared with those entailed by the application of the fundamental principles of the EC Treaty and that, in order to verify that, it was necessary to consider its content. Following such a consideration, the Court concluded, in paragraph 162 of the judgment, that the communication at issue contained no new rules for the award of public contracts that went beyond the obligations under EU law and that, consequently, it could not be regarded as producing binding legal effects liable to affect the legal situation of the applicant and the interveners.

83 In the present case, it cannot be argued that the contested communication constitutes an 'interpretative' communication. However, the characteristics described in paragraph 77 above show that that communication is intended to produce binding legal effects capable of affecting the interests of the applicants by bringing about a distinct change in their legal position.

84 In the second place, the Commission noted that Article 11(4) TEU and Regulation No 211/2011 merely conferred on the organisers of an ECI a right to request the submission of a proposal for a legal act. That proposal being itself merely preliminary and preparatory by nature, the rejection of a request aiming at the submission of such a proposal cannot be regarded as an act intended to produce legal effects vis-à-vis third parties. In that context, the Commission argued that, according to EU case-law, a contested act rejecting the applicant's request cannot be assessed independently of the act expressly referred to by that request and, accordingly, the contested act is an act amenable to review only if the latter act were also capable of being the subject of an action for annulment brought by the applicant.

85 Indeed, it is apparent from settled case-law that an act of the Commission that amounts to a rejection must be appraised in the light of the nature of the request to which it constituted a reply (see order of 14 December 2005, *Arizona Chemical and Others* v *Commission*, T-369/03, EU:T:2005:458, paragraph 64 and the case-law cited). In particular, a refusal constitutes an act in respect of which an action for annulment may be brought under Article 263 TFEU, provided that the act which the institution refuses to adopt could itself have been contested under that provision (see judgment of 22 October 1996, *Salt Union* v *Commission*, T-330/94, EU:T:1996:154, paragraph 32 and the case-law cited).

86 As has already been held, however, that case-law is not applicable where, as in this case, the Commission's decision is taken in a procedure which is clearly defined by an EU regulation, under which the Commission is required to rule on a request made by an individual under that regulation (see, to that effect, judgment of 25 June 1998, *Lilly Industries* v *Commission*, T-120/96, EU:T:1998:141, paragraphs 62 and 63).

87 The Commission's line of argument, put forward in paragraph 84 above, must, therefore, be rejected.

88 In the third place, in support of its proposition regarding the non-challengeability of the contested communication, the Commission cited, during the hearing, the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), regarding the challengeability of the decision by which the Parliament's Committee on Petitions concluded its examination of the petition submitted by the applicant in that case.

89 In the context of the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), the Court of Justice held, in paragraph 22 thereof, that the decision by which the Parliament considered that a petition addressed to it did not meet the conditions laid down in Article 227 TFEU must be amenable to judicial review, since it was liable to affect the right of petition of the person concerned. The same applies to a decision by which the Parliament, disregarding the very essence of the right of petition, refuses to consider, or refrains from considering, a petition addressed to it and, consequently, fails to verify whether it meets the conditions laid down in Article 227 TFEU.

90 However, as regards a petition which the Parliament found to satisfy the conditions set out in Article 227 TFEU, the Court considered, in paragraph 24 of the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), that the Parliament had a broad

discretion, of a political nature, as regards how that petition ought to be dealt with. The Court concluded that a decision taken in that regard was not amenable to judicial review, regardless of whether, by that decision, the Parliament itself took the appropriate measures or considered that it was unable to do so and referred the petition to the competent institution or department so that that institution or department could take those measures.

91 At the hearing, the Commission argued, in essence, that the reasoning followed in the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), was transposable to the present case, in so far as, like the Parliament, it had discretion as regards the action to be taken following an ECI. Moreover, it argued that, unlike the right of petition, the right to participate in the democratic life of the Union by way of an ECI was not a fundamental right and that it would therefore be inconsistent to confer on it a degree of judicial protection 'higher' than that conferred on the right of petition.

92 In the light of paragraph 22 of the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), it is appropriate to assess whether the Commission's refusal to submit to the EU legislature a proposal for a legal act, formulated in the context of a communication adopted on the basis of Article 10(1)(c) of Regulation No 211/2011, is such as to affect the citizens' right derived from Article 11(4) TEU.

93 In that regard, it must be recalled that the citizens' right, derived from Article 11(4) TEU, is intended to reinforce citizenship of the Union and to enhance the democratic functioning of the European Union (see paragraph 72 above), the ultimate objective being to encourage participation by citizens in democratic life and to make the Union more accessible (see recital 2 of Regulation No 211/2011). The non-submission of the Commission's refusal to submit to the EU legislature a proposal for a legal act, formulated in the communication provided for in Article 10(1)(c) of Regulation No 211/2011, to judicial review would compromise the realisation of that objective, in so far as the arbitrary risk on the part of the Commission would deter all recourse to the ECI mechanism, regard being had also to the stringent procedures and conditions to which that mechanism is subject.

94 Moreover, it falls to be pointed out that the petition mechanism under examination in the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), and the ECI mechanism are not similar.

95 As is apparent from the judgment of 9 December 2014, *Schönberger* v *Parliament* (C-261/13 P, EU:C:2014:2423), a petition is, first, examined for the purposes of assessing its admissibility in the light of the conditions laid down in Article 227 TFEU and, next, is subject to the Parliament's discretionary power as regards the action to be taken. Between those two steps, the petition is not subject to any additional condition or procedure affecting the petitioner and his legal situation.

96 However, an 'admissible' ECI, in the sense that it is registered pursuant to Article 4(2) of Regulation No 211/2011 (first step of the ECI mechanism), must meet two additional conditions for it to be submitted for examination by the Commission conducted in the framework of the communication presented pursuant to Article 10 of Regulation No 211/2011 (second step of the ECI mechanism). Those additional conditions, which are incumbent on the organisers, concern, in essence, the collection of the statements of support from the signatories, the details of which are specified by that regulation. It is only once those conditions have been satisfied that the ECI is submitted for the Commission's examination.

97 Furthermore, concerning the procedure which follows the registration of an ECI proposal, Regulation No 211/2011 contains provisions which may be regarded as procedural guarantees for the organisers, thus implying that the communication submitted pursuant to Article 10 of Regulation No 211/2011 produces binding legal effects with regard to them (see, to that effect and by analogy, judgment of 12 September 2002, *DuPont Teijin Films Luxembourg and Others* v *Commission*, T-113/00, EU:T:2002:214, paragraphs 47 to 55, and order of 14 December 2005, *Arizona Chemical and Others* v *Commission*, T-369/03, EU:T:2005:458 paragraphs 72 and 82). More specifically, in the first place, pursuant to Articles 9 and 10(1)(b) of Regulation No 211/2011, the Commission is to receive the organisers 'at an appropriate level' in order to allow them to explain in detail the matters raised by the ECI. In the second place, Article 10(1)(c) of Regulation No 211/2011 explicitly provides for the obligation for the Commission to set out its reasons for taking or not taking an action following an ECI. That obligation on the Commission is further clarified in recital 20 of the same regulation, which provides, inter alia, that the Commission, in order to demonstrate that an ECI is carefully examined, should explain in a clear, comprehensible and detailed manner the reasons for its intended action, and should likewise give its reasons if it does not intend to take any action. In the third place, Article 10(2) of Regulation No 211/2011 provides that the communication referred to in Article 10(1)(c) of that regulation must not only be made public, but also be notified, inter alia to the organisers.

98 Owing to the additional conditions incumbent on the organisers and the procedural guarantees prescribed in their favour, set out in paragraphs 96 and 97 above, it must be concluded that the Commission's refusal to submit to the EU legislature a proposal for a legal act, formulated in the communication adopted pursuant to Article 10(1)(c) of Regulation No 211/2011, has binding legal effects with regard to them, within the meaning of the case-law cited in paragraph 68 above.

99 In addition, regarding the Commission's argument, set out in paragraph 91 *in fine* above, and based essentially on the fact that, unlike the right of petition, the right to the ECI is not a fundamental right and should not, therefore, enjoy a degree of judicial protection higher than that conferred on the former right, it should be noted that, since the present action satisfies the conditions laid down by Article 263 TFEU, that argument of the Commission cannot call into question the conclusion on the admissibility of that action. In any event, it must be pointed out that, although the right to the ECI is not included in the Charter of Fundamental Rights, as is the case with the right of petition, which is provided for in Article 44 of that charter, the fact remains that that right is provided for under the primary law of the Union, namely in Article 11(4) TEU. It is therefore enshrined in an instrument that has the same legal value as that conferred on the Charter of Fundamental Rights.

100 It follows that the Commission's argument that the right to the ECI enjoys a degree of judicial protection higher than that conferred on the right of petition must, in any event, be rejected.

101 In the light of the foregoing considerations, the plea of inadmissibility raised by the Commission must be rejected.

Substance

102 The applicants' line of argument reveals five grounds for annulment. The first ground alleges infringement of Article 10(1)(c) of Regulation No 211/2011 on account of the Commission's failure to submit a proposal for a legal act in response to the ECI at issue. The second ground, raised in the alternative, alleges infringement of Article 11(4) TEU on account of that failure to submit a proposal for a legal act. The third ground alleges infringement of Article 10(1)(c) of Regulation No 211/2011, in so far as the Commission did not set out separately, in the contested

communication, its legal and political conclusions on the ECI at issue. The fourth ground alleges breach of the obligation to state reasons. The fifth ground alleges errors of assessment by the Commission.

First ground: infringement of Article 10(1)(c) of Regulation No 211/2011 on account of failure to submit a proposal for a legal act in response to the ECI at issue

103 The applicants claim that the Commission's right to take no action following an ECI must be interpreted restrictively. A decision to that effect could be adopted only in one of the following three situations: first, where the measures requested by the ECI are no longer necessary, because they were adopted while the ECI was still ongoing or because the problem to be addressed has disappeared or has been satisfactorily solved in a different way, second, where the adoption of the measures requested by the ECI has become impossible subsequent to the registration of the ECI and, third, where the ECI contains no specific proposal for action but only raises awareness of a problem that should be resolved, leaving it to the Commission to determine what action, if any, may be taken. Outside those three situations, adoption of the decision to take no action infringes Article 10(1)(c) of Regulation No 211/2011. According to the applicants, none of those three situations is present in the case at hand.

104 The Commission challenges the applicants' proposition.

105 According to Article 17(1) TEU, the Commission is to promote the general interest of the European Union and take appropriate initiatives to that end.

106 Under Article 17(2) TEU, legislative acts may be adopted only on the basis of a 'Commission proposal', except where the Treaties provide otherwise.

107 Likewise, the ordinary legislative procedure, which is referred to by all the proposals of the ECI at issue, consists, according to Article 289 TFEU, in the joint adoption by the Parliament and the Council of a regulation, directive or decision 'on a proposal from the Commission'.

108 Moreover, the third subparagraph of Article 17(3) TEU provides, inter alia, that the Commission is to be completely independent in carrying out its responsibilities and its members are not to take instructions from any government or other institution.

109 The power of legislative initiative accorded to the Commission by Articles 17(2) TEU and 289 TFEU means that it is, as a rule, for the Commission to decide whether or not to submit a proposal for a legislative act and, as the case may be, to determine its subject matter, objective and content (judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraphs 70 and 74).

110 The reason for that near-monopoly of legislative initiative conferred by the Treaties upon the Commission (Opinion of Advocate General Jääskinen in *Council* v *Commission*, C-409/13, EU:C:2014:2470, paragraph 43) lies in that institution's function which, under Article 17(1) TEU, is to promote the general interest of the European Union, and in the independence it enjoys, pursuant to the third subparagraph of Article 17(3) TEU, in carrying out its responsibilities.

111 The near-monopoly mentioned in paragraph 110 above is not affected by the right to the ECI provided for in Article 11(4) TEU. That provision provides for the right of a minimum number of citizens, under certain conditions, to 'invite' the Commission to submit any appropriate proposal.

Clearly, the terms of that provision do not support an interpretation according to which the Commission is required to submit a proposal for a legal act following an ECI.

112 In addition, as the Commission rightly notes, that conclusion is also apparent from the structure of Article 11 TEU and Article 24 TFEU, which deal with the ECI in the context of other means by which citizens may bring certain issues to the attention of institutions of the Union, those means consisting in particular of dialogue with representative associations and civil society, consultations with parties concerned, petitions and applications to the Ombudsman.

113 Confirmation of the intention of the founding authority of the Union not to confer the power of legislative initiative on the ECI mechanism is to be found in recital 1 of Regulation No 211/2011, which equates, in essence, the right conferred on the ECI with that conferred on the Parliament, pursuant to Article 225 TFEU, and on the Council, pursuant to Article 241 TFEU. A request from the Parliament or the Council does not require the Commission to submit a proposal for a legal act (Opinion of Advocate General Jääskinen in *Council* v *Commission*, C-409/13, EU:C:2014:2470, paragraph 48; see also, to that effect and by analogy, judgment of 22 May 22 May 1990, *Parliament* v *Council*, C-70/88, EU:C:1990:217, paragraph 19).

114 Confirmation of that intention on the part of the founding authority is also to be found in the very wording of Article 10(1)(c) of Regulation No 211/2011, which provides, inter alia, that the Commission is to set out in a communication the action it intends to take, 'if any', following an ECI and its reasons 'for taking or not taking' that action. That wording clearly shows that the Commission is not bound to respond to an ECI.

115 In the case at hand, the interpretation of Article 10(1)(c) of Regulation No 211/2011 proposed by the applicants and set out in paragraph 103 above essentially results in the Commission being stripped of all discretion in exercising its powers of legislative initiative following an ECI. If that interpretation were to be confirmed, it would mean that the Commission would ultimately be required to take the 'specific' action (the word used by the applicants and cited in paragraph 103 above) proposed by the ECI. Such an interpretation contravenes the near-monopoly of the legislative initiative conferred by the Treaties upon the Commission and the broad discretion it has in exercising that initiative (see paragraphs 109 to 114 above).

116 The conclusion, appearing in paragraph 115 above, that the Commission is not required to take the specific action proposed by the ECI is not called into question by the existence of the procedure for registering an ECI proposal, provided for in Article 4 of Regulation No 211/2011, as the applicants essentially argue.

117 Registration is merely one precondition to which the organisers are subject before commencing the collection of the statements of support. As the main parties agree, 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. However, it is apparent from the criteria for refusal of registration provided for in Article 4(2)(b) to (d) of Regulation No 211/2011, if the ECI proposal manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties or is manifestly offensive, futile or vexatious, or is manifestly contrary to the values of the Union as set out in Article 2 TEU, that the decision whether or not to register an ECI proposal 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 (see, to that effect, judgment of 19 April 2016, *Costantini and Others* v *Commission*, T-44/14, EU:T:2016:223, paragraph 53).

118 In the light of the foregoing considerations, it must be concluded that the interpretation of Article 10(1)(c) of Regulation No 211/2011 proposed by the applicants is wrong in law. Consequently, the first ground must be rejected.

Second ground, raised in the alternative: infringement of Article 11(4) TEU on account of the non-submission of a proposal for a legal act in response to the ECI at issue

119 The applicants argue that, if their proposal as to how Article 10(1)(c) of Regulation No 211/2011 should be interpreted (see paragraph 103 above) were not accepted, that provision would be contrary to Article 11(4) TEU. According to the applicants, that latter article must be interpreted in a way that brings about some real added value with regard to the possibility for citizens to influence European Union politics and is proportionate to the huge effort of collecting more than one million signatures.

120 The applicants also argue that, as an administrative body, the Commission does not have the legal capacity to adopt a decision that overrides a legislative proposal directly and expressly approved by over one million citizens. To allow the Commission to do so would be contrary to the constitutional traditions of the Member States.

121 The Commission disputes the applicants' arguments.

122 It should be recalled that neither the wording of Article 11(4) TEU nor the Treaty system, as presented in paragraphs 105 to 112 above, supports the applicants' argument that the Commission is required to take the specific action proposed by the ECI.

123 Moreover, given that the EU Treaties define unequivocally the role and powers conferred on the ECI and on the EU institutions in the context of the process for adopting a legal act, the applicants' reliance, in support of their argument, on the constitutional systems of certain Member States, which confer a genuine power of legislative initiative on citizens' initiatives organised at national level, is irrelevant and therefore cannot find favour.

124 It should also be pointed out that rejecting the applicants' argument does not deprive the ECI mechanism of its effectiveness, which the applicants argue. As has already been stated in paragraph 76 above, the objective of that mechanism is to invite the Commission, within the framework of its powers, to submit a proposal for an act (see, to that effect, judgment of 19 April 2016, *Costantini and Others* v *Commission*, T-44/14, EU:T:2016:223, paragraph 31). Allowing the Commission broad discretion in exercising its powers of legislative initiative does not undermine that objective.

125 In the light of the foregoing considerations, the second ground for annulment raised by the applicants must be rejected.

Third ground: infringement of Article 10(1)(c) of Regulation No 211/2011, in so far as the Commission did not set out separately, in the contested communication, its legal and political conclusions on the ECI at issue

126 The applicants claim that, pursuant to Article 10(1)(c) of Regulation No 211/2011, examined in the light of recital 20 of that regulation, the Commission was required to set out its legal and political conclusions separately. That obligation is formal in nature. The contested communication, however, does not contain such separate conclusions.

127 The Commission disputes in particular the contention that such an obligation is imposed on it by Regulation No 211/2011.

128 According to well-established case-law, the preamble to a European Union act has no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting them in a manner clearly contrary to their wording (judgments of 19 November 1998, *Nilsson and Others*, C-162/97, EU:C:1998:554, paragraph 54; of 25 November 1998, *Manfredi*, C-308/97, EU:C:1998:566, paragraph 30; and of 24 November 2005, *Deutsches Milch-Kontor*, C-136/04, EU:C:2005:716, paragraph 32).

129 Regarding the case at hand, it is true that recital 20 of Regulation No 211/2011 provides that the Commission should examine an ECI and set out its legal and political conclusions 'separately'. That obligation to set out separately legal and political conclusions is not, however, stipulated in Article 10(1)(c) of that regulation, which provides that the Commission is to 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'.

130 In the light of the case-law cited in paragraph 128 above, since the obligation to set out separate legal and political conclusions, mentioned in recital 20 of Regulation No 211/2011, is not reiterated in the body of Article 10(1)(c) of that regulation, it is its content that must take precedence. It follows that the Commission is not under such an obligation when drafting the communication provided for in that provision.

131 In any event, supposing that the Commission were legally obliged to set out separately the legal and political conclusions in the communication adopted pursuant to Article 10(1)(c) of Regulation No 211/2011, that obligation being purely formal, its breach cannot result in the annulment of that communication (see, to that effect and by analogy, judgments of 21 April 1983, *Ragusa* v *Commission*, 282/81, EU:C:1983:105, paragraph 22, and of 5 May 1983, *Ditterich* v *Commission*, 207/81, EU:C:1983:123, paragraph 19).

132 In the light of the foregoing considerations, the present ground must be rejected.

Fourth ground: infringement of the obligation to state reasons

133 The applicants claim that the Commission, in connection with the obligation to state reasons incumbent on it, had to demonstrate that the existence of sufficient ethical and legal safeguards made the ECI at issue useless. However, it failed to do so.

134 In that context, the applicants claim in the first place that the fundamental argument of the ECI at issue, that the human embryo is a human being (hence the use of the expression 'one of us') who therefore has human dignity, is left unanswered in the contested communication. There is no clear statement in that communication, whether in the positive or negative sense, on the legal status that the human embryo enjoys, or should enjoy, under EU law. The Commission referred to the signatories' position that the embryo should enjoy legal protection but, at the same time, it avoided drawing the legal consequences arising from that position.

135 In the second place, the applicants claim that the Commission's ethical reasoning concerning hESC research is flawed and that the 'triple lock' system introduced in the contested communication (see paragraph 18 above) is unsound and is an inadequate reply to the ethical concern expressed by the ECI at issue.

136 In the third place, the applicants argue that the Commission's response is also unsound so far as concerns the issues linked to the European Union's development aid policy. The Commission's refusal to act on the ECI at issue had nothing to do with the objective of reducing maternal mortality, but rather with the Commission's institutional self-interest.

137 In the fourth place, the applicants claim that the Commission's refusal to amend the Financial Regulation is not sufficiently motivated and is unfounded.

138 The Commission disputes the applicants' line of argument.

139 In that context, the Commission argues, in particular, that the reasons for the communication set out pursuant to Article 10(1)(c) of Regulation No 211/2011 must allow a possible political debate so as to enable the Parliament and, ultimately, the citizens to exercise their political control over the Commission. It is in the background of that objective that the precise content and scope of the obligation to state the reasons for the decision not to submit a proposal for a legal act falls to be determined. The Commission also argues that the sufficiency of the reasons given must be assessed in relation to the subject matter of the ECI concerned, that is to say, in relation to the subject matter of the legal act concerned by that ECI. According to the Commission, only in extreme cases of manifest inaccuracies of factual assumptions or legal interpretations formulated in the communication at issue could it be deemed not to have fulfilled its obligation to state reasons under Article 10(1)(c) of Regulation No 211/2011.

140 The Commission contends that, in the case at hand, the reasons set out in the contested communication make a political debate possible and therefore proposes that the present ground be rejected.

141 It is appropriate to recall that the obligation to state reasons must apply to all acts that 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 the contested communication, which contains the decision of the Commission not to submit to the EU legislature a proposal for a legal act following the ECI at issue, is covered by such an obligation to state reasons.

142 According to settled case-law, the purpose of the obligation, under Article 296 TFEU, to state the reasons for an individual decision is to provide the person concerned with sufficient information to determine whether the decision is well founded or whether it is vitiated by a defect which may make it possible for its validity to be contested, and to enable the EU judicature to review its lawfulness (judgments of 18 September 1995, *Tiercé Ladbroke* v *Commission*, T-471/93, EU:T:1995:167, paragraph 29; of 27 September 2012, *J* v *Parliament*, T-160/10, not published, EU:T:2012:503, paragraph 20, and of 19 April 2016, *Costantini and Others* v *Commission*, T-44/14, EU:T:2016:223, paragraph 68).

143 The obligation for the Commission to set out, in the communication adopted pursuant to Article 10(1)(c) of Regulation No 211/2011, the reasons for taking or not taking an action following an ECI gives specific expression to the obligation to state reasons laid down in the context of that provision.

144 It is also settled case-law that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose clearly and unequivocally the reasoning followed by the institution which adopted the measures in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on

the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 88 and the case-law cited).

145 In addition, it is important to note that fulfilment of the obligation to state reasons and other formal and procedural constraints to which it makes the adoption of the act in question subject is of even more fundamental importance where the institutions of the European Union have a broad discretion. Only in this way can the EU judicature verify whether the factual and legal elements upon which the exercise of the discretion depends were present (see, to that effect, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 13 December 2007, *Angelidis* v *Parliament*, T-113/05, EU:T:2007:386, paragraph 61). In the case at hand, as is apparent from paragraphs 109 to 115 above and as will also be found in paragraph 169 below, the Commission has broad discretion in deciding whether or not to take an action following an ECI.

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

147 It is in the light of those elements that it must be determined whether the Commission has, in the present case, fulfilled its obligation to state reasons. Furthermore, those elements demonstrate that the Commission's proposition that the sole objective of the reasons for the communication provided for in Article 10(1)(c) of Regulation No 211/2011 is to allow a possible political debate (see paragraph 139 above) is wrong in law so far as concerns the case at hand, in the context of which the contested communication constitutes an act against which an action for annulment may be brought. To the extent that the contested communication constitutes such an act, it is subject to the obligation to state reasons laid down by Article 296 TFEU and must therefore enable the applicants to determine whether it is vitiated by defects and the EU Courts to exercise their powers of review. In particular, the Commission had to set out the reasons, legal, political or other, that had led it to decide not to take action on the three proposals for amendment of legal acts submitted by the ECI at issue.

148 By way of reminder, the contested communication was adopted following the ECI at issue, which sought to have the European Union establish a ban and end the financing of activities that presuppose the destruction of human embryos, in particular in the areas of research, development aid and public health, to respect human dignity and integrity (see paragraph 3 above). To that end, the ECI at issue proposed three amendments to EU acts, namely, the amendment to the Financial Regulation, the amendment to the Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020) (COM(2011) 809 final) and the amendment to Regulation No 1905/2006 (see paragraphs 5 to 8 above.)

149 By means of the contested communication, the Commission, in essence, refused to take the action requested in the ECI at issue.

150 As regards the proposed amendment to the Financial Regulation, the Commission gave reasons for its refusal in points 3.1 and 4.1 of the contested communication. It noted that, according to Article 87 of the Financial Regulation, all EU expenditure had to be in compliance with the EU Treaties and the Charter of Fundamental Rights. Therefore, according to the Commission, the Financial Regulation already ensured that all EU expenditure, including in the areas of research, development cooperation and public health, must respect human dignity, the right to life, and the right to the integrity of the person. The Commission added that the purpose of the Financial Regulation was to provide financial rules in general terms and not for a specific field of EU policy, in particular for establishing and implementing the EU budget. On the basis of those two considerations, the Commission concluded that it saw no need to propose an amendment to the Financial Regulation.

151 Regarding the proposed amendment to the Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 — The Framework Programme for Research and Innovation (2014-2020) (COM(2011) 809 final), the Commission gave reasons for its refusal in points 3.2 and 4.2 of the contested communication. The Commission referred to the 'triple lock' system established by the provisions of the Horizon 2020 programme, adopted by the EU legislature, and considered that those provisions already met numerous requests of the organisers, including that seeking to have the European Union not fund the destruction of human embryos and to put in place appropriate controls. The Commission nevertheless considered that the organisers' request that the European Union not fund research subsequent to the establishment of hESC lines could not be met. The Commission justified that conclusion by arguing that, in the formulation of its proposal for a regulation, it had taken into account ethical considerations, potential health benefits and the added value of support at EU level, for all types of stem cell research. The Commission essentially argued that its proposal for a regulation was the result of a weighing up of a number of considerations. Moreover, the Commission stated that that proposal was adopted by the co-legislators (the Parliament and the Council) on the basis of an agreement democratically reached in interinstitutional negotiations.

152 Regarding the proposed amendment to Regulation No 1905/2006, the Commission gave reasons for its refusal in points 3.3 and 4.3 of the contested communication. The Commission argued, in essence, that the support provided by the European Union for the health sector in developing partner countries contributed substantively to a reduction in the number of abortions (a reduction which, according to the Commission, was the underlying objective of the ECI at issue) because it increased access to safe and quality services, including good-quality family planning, a broad range of contraceptive methods, emergency contraception and comprehensive sexual education. The Commission also indicated that it did not favour earmarking aid for certain services only, because it would make the comprehensive and effective support of a country's health strategy more difficult. The Commission stated, last, that a ban on abortion funding in developing countries would constrain the European Union's ability to attain the objectives set out in the MDGs, particularly that of maternal health, and in the ICPD Programme of Action, those objectives having been recently reconfirmed at both international and EU levels.

153 The abovementioned explanations enable the applicants to determine whether the Commission's refusal to submit a proposal for amendment of certain EU acts, as the ECI at issue called on it to do, is well founded or whether it is vitiated by defects. In addition, those explanations allow the EU Courts to exercise their power to review the legality of the contested communication. Accordingly, it must be concluded that that communication is sufficiently reasoned.

154 That conclusion is not called into question by the applicants' complaints.

155 From the outset, it is specified that, in view of the case-law cited in paragraph 146 above, only the complaints put forward in paragraphs 134 and 137 above fall within the scope of the assessment of the reasoning of the contested communication. The other complaints fall within the scope of the assessment of the merits of the grounds and are examined in the context of the examination of the fifth ground, alleging errors of assessment by the Commission.

156 With regard to the complaint, presented in paragraph 134 above, alleging failure to clarify the legal status of the human embryo in the contested communication, it must be noted, as the Commission did, that there was no need for it to apply such a definition or clarification for the purposes of rejecting in a sufficiently reasoned manner, in the context of the contested communication, the three proposals for amendment of legal acts submitted by the ECI at issue. It suffices to recall that the adequacy of the statement of reasons must be assessed with regard to the objective of the ECI at issue and that that objective was not the definition or clarification of the legal status of the human embryo, but the submission by the Commission of those three proposals to the EU legislature (see paragraph 147 above). It follows that the abovementioned complaint must be rejected as ineffective.

157 So far as concerns the complaint presented in paragraph 137 above, based on the brevity of the explanations for the refusal to amend the Financial Regulation, the arguments set out in paragraph 150 above demonstrate the existence of sufficient reasoning. Consequently, the applicants' complaint must be rejected as unfounded.

158 In the light of the foregoing considerations, the present ground must be rejected.

Fifth ground: errors of assessment by the Commission

159 The applicants allege a certain number of errors of assessment in the contested communication.

160 In the first place, the applicants criticise the Commission for having considered, in the contested communication, that the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), was irrelevant with regard to the issue forming the subject matter of the ECI at issue. In that context, they argue that the Commission, by suggesting that the European Union should fund research projects that were precluded from patentability under Article 6 of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13), grossly disrespects the principle of the duty of consistency enshrined in Article 7 TFEU.

161 In the second place, the applicants raise a series of complaints regarding the Commission's considerations relating to hESC research (summarised in paragraph 135 above).

162 On the one hand, the applicants argue that the Commission's ethical reasoning concerning hESC research is flawed. They dispute, inter alia, the Commission's consideration that research on hESCs was morally acceptable because it held much promise in terms of new therapies 'for many diseases' and claim, citing a document drafted by the ECI at issue, that research on hESCs is unnecessary and that there are more promising alternative solutions. The applicants also criticise the Commission for adopting a subjacent utilitarian approach implying that scientific progress justifies the destruction of human embryos.

163 On the other hand, the applicants claim that the ‘triple lock’ system referred to in the contested communication (see paragraph 18 above) is unsound and is an inadequate reply to the ethical concern expressed by the ECI at issue. Its first element, namely, the commitment relating to observance of national laws, does not set ethical standards, but simply ensures that the national laws, whatever they provide for, are respected. Nor does its second element, namely examination of the research project at issue by peer review, serve the purpose of enforcing ethical standards, but serves only to demonstrate that an experiment is conducted in accordance with recognised scientific principles, which does not answer the question asked by the ECI at issue. Its third element, namely, the commitment that EU funds will not be used for the derivation of new stem cell lines or for research involving the destruction of human embryos, including for the procurement of stem cells, even though it involves an ethical commitment, does not go far enough, for it does not concern the financing of research projects that presuppose the destruction of human embryos.

164 In the third place, the applicants raise a series of complaints regarding the Commission’s considerations relating to development cooperation. In that regard, the applicants argue that there is no international consensus on the scope and definition of the terms ‘sexual and reproductive health’ used by the Commission in the contested communication and that there is no consensus on the notion that those terms also include recourse to abortion. According to the applicants, States are under no duty under international law to allow abortion. The applicants also argue that the MDGs and the IPCD Programme of Action do not constitute binding legal commitments, but policy objectives. The objective of reducing maternal mortality set in those objectives is legitimate and laudable, but does not justify recourse to abortion. In addition, the contested communication does not demonstrate how the financing of abortions through EU funds contributes to reducing maternal mortality. According to the applicants, other, less controversial, actions could be undertaken to reduce maternal mortality. The applicants finish by stating that the Commission’s consideration that a funding ban would constrain the Union’s ability to attain the objectives set out in the MDGs appears ill founded and that the Commission’s refusal to take the action recommended by the ECI at issue is, by contrast, justified by its institutional self-interest.

165 In the fourth place, the applicants dispute the Commission’s conclusion in the contested communication that it is not necessary to submit a proposal to amend the Financial Regulation. According to the applicants, the references to human dignity and human rights in the European Union’s primary legislation do not eliminate the necessity of including, in the Financial Regulation, an explicit, concrete and precise provision prohibiting the funding of activities that appear contrary to those values.

166 The Commission disputes, in essence, that a substantive review of the communication adopted pursuant to Article 10(1)(c) of Regulation No 211/2011 may take place. In that context, it argues that the fact that another institution or indeed the organisers or signatories of the ECI at issue do not share its factual assumptions, its legal interpretations or its political assessment behind its choice not to submit a proposal for a legal act is irrelevant for assessing whether it has fulfilled its obligation under Article 10(1)(c) of Regulation No 211/2011. Rather, the question whether such factual assumptions, legal interpretations or political assessments are convincing is one of the elements to be raised, as the case may be, throughout the political debate following a communication presented pursuant to the abovementioned provision.

167 In the light of those considerations, the Commission proposes that all the applicants’ complaints be rejected as irrelevant, in so far as they consist in disputing the factual assumptions, legal interpretations, political assessments and value judgements it expressed in the contested communication.

168 The assessment of the present ground presupposes defining the depth of the judicial review of the contested communication.

169 In that regard, it should be noted that, in exercising its powers of legislative initiative, the Commission must be allowed broad discretion, in so far as, through that exercise, it is called upon, pursuant to Article 17(1) TEU, to promote the general interest of the Union by carrying out, possibly, the difficult task of reconciling divergent interests. It follows that the Commission must be allowed broad discretion in deciding whether or not to take an action following an ECI.

170 It follows from the foregoing considerations that the contested communication, which contains the final decision of the Commission not to submit a proposal for a legal act to the EU legislature, must undergo limited review by the Court, aimed at verifying, in addition to the adequacy of its statement of reasons, the existence, inter alia, of manifest errors of assessment vitiating that decision (see, to that effect and by analogy, judgment of 14 July 2005, *Rica Foods* v *Commission*, C-40/03 P, EU:C:2005:455, paragraphs 53 to 55 and the case-law cited).

171 It is in the light of those considerations that the complaints of the applicants made in the context of the present ground should be examined.

172 In the first place, regarding the complaint relating to the Commission's interpretation of the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669) (see paragraph 160 above), it should be pointed out that, in that judgment, given on a reference for a preliminary ruling, the Court of Justice was asked to interpret Article 6(2)(c) of Directive 98/44, which provides that uses of human embryos for industrial or commercial purposes are unpatentable.

173 It is true, as the applicants maintain, in paragraph 35 of the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), that the Court of Justice confirmed that any human ovum must, as soon as fertilised, be regarded as a 'human embryo' within the meaning and for the purposes of the application of Article 6(2)(c) of Directive 98/44, since that fertilisation was such as to commence the process of development of a human being. At the same time, the Court of Justice made it clear, in paragraph 40 of the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), that the purpose of Directive 98/44 was not to regulate the use of human embryos in the context of scientific research and that it was limited to the patentability of biotechnological inventions. It follows that the Commission's conclusion, in point 2.1 *in fine* of the contested communication, according to which the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), did not deal with the question whether such research could be carried out and funded, is not vitiated by a manifest error of assessment. It is therefore without committing such an error that the Commission, in essence, considered that the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), was irrelevant for the purposes of assessing the ECI at issue, which was aimed, by means of the second proposal for amendment of an EU act, at prohibiting the funding of research activities involving or presupposing the destruction of human embryos.

174 Furthermore, contrary to the applicants' claims, the Commission's reasoning is in no way inconsistent, in view of the fact that the question of whether scientific research involving the use (and destruction) of human embryos may be financed by EU funds is clearly separate from the question, dealt with in Directive 98/44 and in the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), of whether or not a biotechnological invention involving that use is patentable.

175 It follows that the applicants' complaint relating to the Commission's interpretation of the judgment of 18 October 2011, *Brüstle* (C-34/10, EU:C:2011:669), must be rejected.

176 In the second place, concerning the applicants' complaints regarding the Commission's considerations relating to hESC research (see paragraphs 161 to 163 above), it should be noted that, by their line of argument, the applicants challenge, in essence, the Commission's ethical approach. The ethical approach of the ECI at issue is the one whereby the human embryo is a human being which must enjoy human dignity and the right to life, whereas the Commission's ethical approach, as it appears from the contested communication, takes into account the right to life and human dignity of human embryos, but, at the same time, also takes into account the needs of hESC research, which may result in treatments for currently-incurable or life-threatening diseases, such as Parkinson's, diabetes, stroke, heart disease and blindness (see point 2.2.1, first paragraph, of the contested communication). Therefore, it does not appear that the ethical approach followed by the Commission is vitiated by a manifest error of assessment in that regard and the applicants' arguments, which are based on a different ethical approach, do not demonstrate the existence of such an error.

177 As regards the applicants' specific claim, supported by a document drafted by them themselves and a foundation, according to which research on hESCs is unnecessary and there are more promising alternative solutions (see paragraph 162 above), it should be noted that that claim is not sufficiently substantiated. Furthermore, the applicants merely refer to the abovementioned document, without explaining how it, a document technical in nature, supports their claim. It follows that that claim does not satisfy the requirements set by Article 44(1)(c) of the Rules of Procedure of 2 May 1991 and must, therefore, be rejected.

178 It follows from the foregoing that the applicants' complaints regarding the Commission's considerations relating to hESC research must be rejected.

179 In the third place, concerning the applicants' complaints regarding the Commission's considerations relating to development cooperation (see paragraph 164 above), it should be noted, first of all, that the applicants dispute neither the existence of the objective of reducing maternal mortality pursued by the European Union through its action nor its legitimate and laudable nature.

180 It should be noted, next, that the Commission explained in point 3.3 of the contested communication, referring to a 2012 publication of the World Health Organization (WHO), that one of the causes of maternal mortality was the practice of unsafe abortions and that the direct and indirect support for certain services provided exclusively by the European Union contributed to a reduction in the number of abortions because it increased access to safe and quality services, including good-quality family planning, a broad range of contraceptive methods, emergency contraception and comprehensive sexual education. According to that same WHO publication, cited again by the Commission, improving the safety of abortion services contributes to the reduction of maternal deaths and illness. In view of the link demonstrated by the Commission between unsafe abortions and maternal mortality, the Commission's conclusion, in point 4.3 of the contested communication, that the ban on abortion funding would constrain the Union's ability to attain the objective of reducing maternal mortality does not appear vitiated by any manifest error of assessment and the applicants' arguments, presented in paragraph 164 above, do not demonstrate the existence of such an error.

181 It follows that the applicants' complaints regarding the Commission's considerations relating to development cooperation must be rejected.

182 In the fourth place, it should be noted that the applicants' line of argument relating to the Commission's conclusion on the proposal to amend the Financial Regulation (see paragraph 165 above) calling into question, in essence, the expediency of the Commission's choice not to submit

such a proposal to the EU legislature following the ECI at issue does not permit the assessment carried out by the latter to be regarded as vitiated by manifest error, either.

183 In the light of the foregoing considerations, the fifth ground for annulment raised by the applicants must be rejected and, consequently, the action must be dismissed in its entirety.

Costs

184 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 bear their own costs and pay those incurred by the Commission, in accordance with the form of order sought by the latter.

185 Pursuant to Article 138(1) of the Rules of Procedure, the Member States and institutions that have intervened in the proceedings are to bear their own costs. It follows that the Republic of Poland, the Parliament and the Council must bear their own costs.

On those grounds,

THE GENERAL COURT (Second Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders European Citizens' Initiative One of Us and the other applicants whose names appear in the annex to bear their own costs and to pay those incurred by the European Commission;**

3. **Orders the Republic of Poland, the European Parliament and the Council of the European Union to bear their own costs.**

Prek Buttigieg Schalin

Berke Costeira

Delivered in open court in Luxembourg on 23 April 2018.

E. Coulon

Registrar President

Table of contents

* Language of the case: English.

1 The list of the other applicants is annexed only to the version sent to the parties.