ECLI:EU:T:2017:59

Provisional text

JUDGMENT OF THE GENERAL COURT (First Chamber)

3 February 2017 (*)

(Law governing the institutions — European citizens' initiative — Protection of national and linguistic minorities and strengthening of cultural and linguistic diversity in the European Union — Refusal of registration — Commission manifestly lacking legislative powers — Obligation to state reasons — Article 4(2)(b) and (3) of Regulation (EU) No 211/2011)

In Case T-646/13,

Bürgerausschuss für die Bürgerinitiative Minority SafePack — one million signatures for diversity in Europe, represented initially by E. Johansson, J. Lund and C. Lund, and subsequently by E. Johansson and T. Hieber, lawyers,

applicant,

supported by

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

intervener,

v

European Commission, represented by H. Krämer, acting as Agent,

defendant,

supported by

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

and by

Romania, represented by R. Radu, R. Haţieganu, D. Bulancea and A. Wellman, acting as Agents,

interveners,

APPLICATION pursuant to Article 263 TFEU and seeking annulment of Commission Decision C(2013) 5969 final of 13 September 2013 rejecting the request for registration of the proposed European citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe',

THE GENERAL COURT (First Chamber),

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

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 16 September 2016,

gives the following

Judgment

Background to the dispute

1 On 15 July 2013, the applicant, Bürgerausschuss für die Bürgerinitiative Minority SafePack — one million signatures for diversity in Europe, consisting of Mr Hans Heinrich Hansen, Mr Hunor Kelemen, Mr Karl-Heinz Lambertz, Ms Jannewietske Annie De Vries, Mr Valentin Inzko, Mr Alois Durnwalder and Ms Anke Spoorendonk, submitted to the European Commission the proposed European citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' ('the proposed

ECI'), the aim of which was, according to the minimum information provided pursuant to the first subparagraph of Article 4(1) 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), read in conjunction with Annex II to that regulation ('the required information'), to call upon 'the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union'. It follows from that information provided as part of the required information that the objectives pursued by the European citizens' initiative (ECI) consist of calling upon the European Union 'to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity [within its territory]' and that those acts 'shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support'.

2 It follows, moreover, from the more detailed information that was annexed to the information provided as part of the required information ('the additional information') in accordance with the final paragraph of Annex II to Regulation No 211/2011 that the aim of the proposal is to secure the adoption of a series of legal acts listed and described in sections 2 to 7 of the additional information. In section 8 of that information, headed 'Safeguard clause', the organisers note that, for each of the proposals for legal acts concerned, the proposed ECI suggests, by way of indication, the legal basis and the type of act to be adopted that seem the most appropriate to them, that each of those proposals should be examined separately and that the inadmissibility of one or more of them should not lead to the inadmissibility of the other proposals that come within the area of competence of the Commission.

3 By its Decision C(2013) 5969 final of 13 September 2013 ('the contested decision'), the Commission refused to register the proposed ECI on the ground that it manifestly fell outside the powers enabling the Commission to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties.

Procedure and forms of order sought

4 By application lodged at the Registry of the General Court on 25 November 2013, the applicant brought the present action.

5 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs;

6 The Commission contends that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs.

7 By order of the President of the First Chamber of 4 September 2014, Hungary was granted leave to intervene in support of the form of order sought by the applicant, and the Slovak Republic and Romania were granted leave to intervene in support of the form of order sought by the Commission.

Law

8 In support of its action, the applicant raises two pleas in law alleging, first, infringement of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and in the second subparagraph of Article 4(3) of Regulation No 211/2011 and, secondly, infringement of Article 11 TEU, of the first paragraph of Article 24 TFEU and of Article 4(2)(b) of Regulation No 211/2011.

9 The applicant, supported by Hungary, criticises the Commission on the ground that it merely stated in the contested decision, without further specification, that some of the themes on which it was invited, in the annex to the proposed ECI, to submit proposals for a legal act of the European Union fell within the framework of its powers to then conclude that the registration of the proposed ECI must be refused in its entirety on the ground that the partial registration of a proposed ECI is not provided for in Regulation No 211/2011. Respect for the obligation to state reasons is, it submits, all the more important because, first, the ECI is a means of democratic participation of citizens in the legislative process that should be accessible and easy to implement and, secondly, the organisers of ECI proposals are not, generally speaking, legal professionals.

10 In the first place, the applicant submits, the Commission should have specified the proposals among those set out in the annex to the proposed ECI which, in its view, fell outside the framework of its powers. In the second place, it should have stated the reasons for which it came to that conclusion in respect of each of the proposals at issue. In the absence of reasons, the organisers cannot know which parts of the proposed ECI should demonstrate that their application is well founded and they are prevented from adapting, if need be, the proposed ECI to the position expressed by the Commission in order to submit a new proposal to it. Furthermore, the Commission's attitude incited the authors of the proposal to submit the 11 measures provided for in it separately, which is contrary to the principle of procedural economy and does little to encourage participation by citizens and make the European Union more accessible, within the meaning of recital 2 of Regulation No 211/2011.

11 In this context, the applicant claims that, contrary to the position expressed by the Commission, the information relating to the subject matter of a proposed ECI, which is included in the annex to the latter, in the present case information concerning 11 specific proposals for the adoption of legal acts, has the same importance as the information provided pursuant to the second paragraph of Annex II to Regulation No 211/2011. In accordance with Annex II, the description of the subject matter included in the body of the application for registration may contain 'no more than 200 characters', while the

organisers of a proposed ECI have the opportunity to 'provide more detailed information ... in an annex' to it, in particular, on its 'subject'.

12 In the third place, according to the applicant, the contested decision should have stated the reasons that led the Commission to consider that Regulation No 211/2011 did not permit it to register only part of a proposed ECI. Neither the text of the regulation nor the Treaties support such an interpretation. This is all the more so as the proposed ECI expressly stated that its authors requested that the Commission examine individually each of the 11 proposals referred to in the annex and that the inadmissibility of one of them should not affect the admissibility of the other proposals. The exercise of their rights by citizens, who are not specialised legal professionals, and the importance of the ECI as an instrument of direct democracy impose such an obligation on the Commission.

13 According to the Commission, supported by the Slovak Republic and Romania, the contested decision states the main reasons for refusing the registration with regard to the subject matter of the proposed ECI, as formulated in the body of the proposal, namely, the protection of minorities and the promotion of cultural and linguistic diversity. It is clear from the overall scheme of Annex II to Regulation No 211/2011 that the subject matter of a proposal is fixed definitively in its body, whereas the explanations given in the annex to the proposed ECI are purely indicative and informative, being incapable of expanding or limiting that subject matter. That conclusion cannot be called into question by the fact that, in the annex to the proposed ECI, its authors invited the Commission to examine whether the proposal was manifestly inadmissible with regard to each of the themes referred to in that annex.

14 Furthermore, the contested decision indicated clearly that a proposed ECI cannot be registered when part of it falls, as in the present case, outside the framework of the powers of the Commission under which it may propose the adoption of a legal act for the purpose of implementing the Treaties. In this context, that institution is not required to state the reasons for the interpretation of Article 4(2)(b) of Regulation No 211/2011 on which it bases its decision, except if, unlike the position in the present case, legal arguments to the contrary had been raised in the course of the procedure for the adoption of the contested decision.

15 According to settled case-law, the purpose of the obligation, under the second paragraph of Article 296 TFEU, to state the reasons for an individual decision is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may make it possible for its validity to be contested, and to enable the Courts of the European Union to review its lawfulness. The second subparagraph of Article 4(3) of Regulation No 211/2011, which provides that the Commission is to inform the organisers of the reasons for any refusal to register a proposed ECI, gives specific expression to that obligation to state reasons in so far as citizens' initiatives are concerned (judgment of 30 September 2015, *Anagnostakis* v *Commission*, T-450/12, at present under appeal, EU:T:2015:739, paragraphs 22 and 23).

16 It is also settled case-law that the statement of reasons required by Article 296 TFEU must be appropriate to the nature of the measure in question. The requirement to state reasons must be appraised by reference to the circumstances of each case, in particular the content of the measure and the nature of the reasons given. 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 for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context (judgment of 30 September 2015, *Anagnostakis* v *Commission*, T-450/12, at present under appeal, EU:T:2015:739, paragraph 24).

17 In this case, the refusal to register the proposed ECI is an action that may impinge upon the very effectiveness of the right of citizens to submit a citizens' initiative that is enshrined in the first paragraph of Article 24 TFEU. Consequently, such a decision must disclose clearly the grounds justifying the refusal (see, to that effect, judgment of 30 September 2015, *Anagnostakis* v *Commission*, T-450/12, at present under appeal, EU:T:2015:739, paragraph 25).

18 A citizen who has submitted a proposed ECI must be placed in a position to be able to understand the reasons for which it was not registered by the Commission, with the result that it is incumbent on the Commission, when it receives such a proposal, to appraise it and also to state the different reasons for any refusal to register it, given the effect of such a refusal on the effective exercise of the right enshrined in the Treaty. This follows from the very nature of this right which, as is pointed out in recital 1 of Regulation No 211/2011, 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 (judgment of 30 September 2015, *Anagnostakis* v *Commission*, T-450/12, at present under appeal, EU:T:2015:739, paragraph 26).

19 In the contested decision, the Commission stated that the main objective of the proposed ECI is the adoption of a series of legal acts of the European Union for the purpose of improving the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the European Union. The Commission further notes that the proposed ECI suggests, to that end, Articles 19 TFEU, 20 TFEU, 25 TFEU, 62 TFEU, 79 TFEU, 107 TFEU to 109 TFEU, 118 TFEU, 165 TFEU, 167 TFEU, 173 TFEU, 177 TFEU to 178 TFEU and 182 TFEU, Articles 2 TEU and 3 TEU and Articles 21 and 22 of the Charter of Fundamental Rights of the European Union ('the Charter') as possible legal bases.

20 In that regard, the contested decision indicates that, even though respect for the rights of persons belonging to minorities is a value of the European Union referred to in Article 2 TEU, no provision of the Treaties provides a legal basis for the adoption of legislative acts aiming at promoting those rights. Furthermore, even if, in accordance with Article 3(3) TEU, the EU institutions must respect cultural and linguistic diversity and are bound, pursuant to Article 21(1) of the Charter, to refrain from all discrimination based on membership of a national minority, none of those provisions confers a legal basis in view of any such action of the institutions for those purposes.

21 The Commission adds that some of the acts requested in the annex to the proposed initiative, likely to contribute to achieving the main objective of protecting persons belonging to minorities, could, taken individually, fall within the framework of powers under which it may submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties, but that the regulation on the citizens' initiative does not provide for the registration of one or several parts of a proposed initiative. The Commission accordingly concludes that the Treaties provide no legal basis for the purpose of submitting a complete series of proposals as established in the application for registration and that, therefore, the proposed ECI manifestly falls outside the framework of powers under which it may submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

22 While it thus follows clearly from the contested decision that the Commission rejects the registration of the proposed ECI because of non-fulfilment of the condition laid down in Article 4(2)(b) of Regulation No 211/2011 and that it sets out, to that effect, its reasons, it must be held that its reasoning is manifestly inadequate in view of the case-law cited in paragraphs 17 and 18 above, taking into account, in particular, the additional information provided by the organisers, in the annex to the proposed ECI, for the purpose of adopting specific legal acts of the European Union in the different areas listed in that annex in order to achieve the purpose of the proposal at issue.

23 The annex to the proposed ECI contains detailed additional information, divided into eight sections, on the specific scope of that proposal, which were submitted pursuant to the final paragraph of Annex II to Regulation No 211/2011, which states that organisers may provide more detailed information on the subject, objectives and background to their proposed ECI in an annex and may, if they wish, submit draft legal acts.

24 Thus, after a first section dedicated to the importance given by the EU to respect for, and the protection of, minorities and respect for cultural and linguistic diversity through, in particular, a certain number of provisions contained in the Treaties, such as Articles 1 TEU to 3 TEU and Articles 9 TFEU and 10 TFEU, sections 2 to 7 of the annex to the proposed ECI outline 11 areas in which the proposed acts should be developed by the institutions of the European Union and give, to that end, precise suggestions on the types of act to adopt, the content of those acts and the corresponding legal bases in the FEU Treaty.

25 The proposed ECI seeks, more specifically, the adoption of:

– a recommendation of the Council 'on the protection and promotion of cultural and linguistic diversity in the Union' on the basis of the second indent of Article 167(5) TFEU and the second indent of Article 165(4) TFEU [section 2.1];

– a proposal for a decision or a regulation of the European Parliament and of the Council on the basis of the first indent of Article 167(5) TFEU and the first indent of Article 165(4) TFEU, the subject matter of which is to adapt 'funding programmes so

that they become accessible for small regional and minority language communities' [section 2.2];

– a proposal for a decision or a regulation of the European Parliament and of the Council on the basis of the first indent of Article 167(5) TFEU and the first indent of Article 165(4) TFEU, the subject matter of which is to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages and will promote diversity at all levels and be financed mainly by the European Union [section 2.3];

– a proposal for a regulation of the European Parliament and of the Council on the basis of Articles 177 TFEU and 178 TFEU, the subject matter of which is to adapt the common provisions relating to EU regional funds in such a way that the protection of minorities and the promotion of cultural and linguistic diversity are included therein as thematic objectives [section 3.1];

– a proposal for a regulation of the European Parliament and of the Council on the basis of Article 173(3) TFEU and Article 182(1) TFEU, the subject matter of which is to change the regulation relating to the 'Horizon 2020' programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the EU [section 3.2];

– a proposal for a Council directive, regulation or decision on the basis of Article 20(2) TFEU and Article 25 TFEU, for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament [section 4];

– proposals for effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of the existing Council directives on the subject of equal treatment, on the basis of Article 19(1) TFEU [section 5.1];

– proposals for the amendment of the EU legislation in order to guarantee approximately equal treatment for stateless persons and citizens of the Union, on the basis of Article 79(2) TFEU [section 5.2];

– a proposal for a regulation of the European Parliament and of the Council on the basis of Article 118 TFEU, in order to introduce a unitary copyright so that the whole EU can be considered an internal market in the field of copyright [section 6.1];

– a proposal for amendment of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95, p. 1), for the purpose of ensuring the freedom

to provide services and the reception of audiovisual content in regions where national minorities reside, on the basis of Article 53(1) TFEU and Article 63 TFEU [section 6.2]; and

– a proposal for a Council or Commission regulation or a proposal for a Council decision, with a view to the block exemption of projects promoting national minorities and their culture, on the basis of Article 109 TFEU, Article 108(4) TFEU or Article 107(3)(e) TFEU [section 7].

26 In a final section, the organisers state that the adoption of all of the proposals for legal acts referred to in the previous sections would represent a significant improvement in minority protection in the EU and that the suggestions relating to the type of acts and the legal bases are intended only for guidance purposes. The organisers state that, even if, in their view, all of those proposals fall within the framework of the Commission's powers, they expect that each proposal would be examined individually and that the possible inadmissibility of one proposal decided by the Commission would have no effect on the other proposals that were deemed admissible.

27 It is clear from the contested decision that the Commission failed to identify in any way which of the 11 proposals for legal acts manifestly did not, in its view, fall within the framework of powers under which it is entitled to submit a proposal for a legal act of the European Union and also failed to provide any reasons in support of that assessment, notwithstanding the precise suggestions provided by the organisers on the proposed type of act as well as the respective legal bases and the content of those acts.

28 Even though, as follows from paragraph 19 of the present judgment, the contested decision recalls the different legal bases mentioned by the organisers in the additional information provided in support of their proposed ECI and subsequently indicates that, for some of the acts referred to in that information, the Commission may be entitled to submit a proposal for an act of the European Union, that decision merely addresses Article 2 TEU and Article 3(3) TEU and Article 21(1) of the Charter, referred to in section 1 of the annex to that proposal, before concluding that, in so far as the Commission cannot register parts of a proposed ECI, the application had to be rejected in its entirety.

29 In so doing, and even assuming that the position expressed by the Commission on the substance, according to which a proposed ECI cannot, whatever its content, be registered if it is deemed in part inadmissible by that institution, is well founded, the organisers were not, in any event, placed in a position to be able to identify those of the proposals set out in the annex to the proposed ECI which, according to that institution, fell outside the framework of its powers, within the meaning of Article 4(2)(b) of Regulation No 211/2011, or to know the reasons which led to that assessment and, therefore, were prevented from challenging the merits of that assessment, just as the Court is prevented from exercising its review of the legality of the Commission's assessment. Moreover, failing any complete statement of reasons, the possible introduction of a new proposed ECI, taking into account the Commission's objections on

the admissibility of certain proposals, would be seriously compromised, as would also be the achievement of the objectives, referred to in recital 2 of Regulation No 211/2011, of encouraging participation by citizens in democratic life and of making the European Union more accessible.

30 That is the case, in particular, as the Commission itself acknowledged during the hearing, where the information contained in the 'body' of the application for registration, namely, the information provided as being the information required, is not the only information that must be taken into account by that institution for the purposes of determining whether the proposal in dispute meets the conditions for registration laid down in Article 4(2)(b) of Regulation No 211/2011.

31 Annex II to Regulation No 211/2011, entitled 'Required information for registering a proposed citizens' initiative', to which Article 4(2) of that regulation refers and which has binding force identical to that of the regulation (judgment of 10 May 2016, *Izsák and Dabis* v *Commission*, T-529/13, at present under appeal, EU:T:2016:282, paragraph 45), provides that the information which must be provided in order to register a proposed citizens' initiative on the Commission's online register concerns, in particular, its 'subject matter, in no more than 200 characters' and 'a description of the objectives of the proposed citizens' initiative on which the Commission is invited to act, in no more than 500 characters', while making clear that the organisers 'may provide more detailed information on the subject, objectives and background to the proposed citizens' initiative in an annex' and that they 'may also, if they wish, submit a draft legal act'.

32 Contrary to the position expressed by the Commission in its written pleadings, the 'information set out in Annex II' to Regulation No 211/2011, to which Article 4 of that regulation refers, is not therefore limited to the minimum information which must be provided under that annex for the purpose of registering the application (judgment of 10 May 2016, *Izsák and Dabis* v *Commission*, T-529/13, at present under appeal, EU:T:2016:282, paragraph 48). The right under Annex II to Regulation No 211/2011 of the organisers of the proposed initiative to provide additional information, and even a draft legal act of the European Union, has as a corollary an obligation for the Commission to consider that information as any other information provided pursuant to that annex, in accordance with the principle of sound administration, including the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, judgment of 10 May 2016, *Izsák and Dabis* v *Commission*, T-529/13, at present under appeal, EU:T:2016:282, paragraphs 49, 50, 56 and 57) and, therefore, to state the reasons, in accordance with the requirements set out in paragraphs 17 and 18 above and subject to review by the Courts of the European Union, for its decision in the light of all of that information.

33 In the light of the foregoing considerations, it must be held that the contested decision manifestly does not contain sufficient elements to enable the applicant to ascertain the reasons for the refusal to register the proposed ECI with regard to the various information contained in that proposal and to react accordingly, and to enable the Court to review the lawfulness of the refusal to register.

34 Consequently, without it being necessary to reply to the applicant's complaint that the Commission should, moreover, have stated the grounds in support of its interpretation that a proposed ECI cannot be registered if a part of the proposed measures does not fall within the framework of the powers of that institution under which it may present a legal act of the European Union for the purpose of implementing the Treaties, it must be concluded that the Commission has failed to comply with its obligation to state reasons by not indicating those of the measures which, among those set out in the annex to the proposed ECI, did not fall within its competence, nor the reasons in support of that conclusion, and that, therefore, for that reason alone, the action must be upheld, without any need to examine the second plea.

Costs

35 Under Article 134(1) of the Rules of Procedure of the General Court, 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 Commission has been unsuccessful, it must be ordered to pay the costs incurred by the applicant, in accordance with the form of order sought by the latter, in addition to bearing its own costs. Under Article 138(1) of the Rules of Procedure, the Member States which intervened in the proceedings are to bear their own costs.

On those grounds,

THE GENERAL COURT (First Chamber),

hereby:

1. **Annuls Commission Decision C(2013) 5969 final of 13 September 2013 rejecting the request for registration of the proposed European citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe';**

2. **Orders the European Commission to bear its own costs and to pay those incurred by** Bürgerausschuss für die Bürgerinitiative Minority SafePack — one million signatures for diversity in Europe;

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

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 3 February 2017.

[Signatures]

* Language of the case: German.