Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

24 September 2019*

(Law governing the institutions – European citizens' initiative – Protection of national and linguistic minorities – Strengthening of cultural and linguistic diversity – Registration in part – Principle of conferral – Commission not manifestly lacking legislative powers – Obligation to state reasons – Article 5(2) TEU – Article 4(2)(b) of Regulation (EU) No 211/2011 – Article 296 TFEU)

In Case T-391/17,

**Romania**, represented initially by R. Radu, C.-M. Florescu, E. Gane and L. Lițu, and subsequently by C.-M. Florescu, E. Gane, L. Lițu and C.-R. Canțăr, acting as Agents,

applicant,

v

**European Commission**, represented by H. Krämer, L. Radu Bouyon and H. Stancu, acting as Agents,

defendant,

supported by

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

intervener,

APPLICATION pursuant to Article 263 TFEU seeking annulment of Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe' (OJ 2017 L 92, p. 100),

THE GENERAL COURT (Second Chamber),

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

Registrar: I. Dragan, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 April 2019,

gives the following

* Language of the case: Romanian.

## Judgment

### Background to the dispute

1 On 15 July 2013, the Bürgerausschuss für die Bürgerinitiative Minority SafePack – one million signatures for diversity in Europe (citizens' committee for the citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe' ('the committee' or the 'organisers')) submitted to the European Commission the proposal for a European citizens' initiative (the 'ECI') entitled 'Minority SafePack– one million signatures for diversity in Europe' ('the proposed ECI').

2 By Decision C(2013) 5969 final of 13 September 2013, the Commission refused the application for registration of the proposed ECI on the ground that it manifestly fell outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

3 The committee brought proceedings before the General Court, which, by its judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59), annulled Commission Decision C(2013) 5969 final on the ground that the Commission had failed to comply with its obligation to state reasons.

4 On 29 March 2017, the Commission adopted Decision (EU) 2017/652 on the proposed citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe' (OJ 2017 L 92, p. 100; 'the contested decision'), Article 1(1) of which provides:

'1. The proposed citizens' initiative entitled "Minority SafePack – one million signatures for diversity in Europe" is hereby registered.

2. Statements of support for this proposed citizens' initiative may be collected, based on the understanding that it aims at proposals from the Commission for:

– a recommendation of the Council "on the protection and promotion of cultural and linguistic diversity in the Union",

– a decision or a regulation of the European Parliament and of the Council, the subject matter of which is to adapt "funding programmes so that they become accessible for small regional and minority language communities",

– a decision or a regulation of the European Parliament and of the Council, 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,

– a regulation adapting the general rules applicable to the tasks, priority objectives and the organisation of the Structural Funds in such a way that account is taken of the protection of minorities and the promotion of cultural and linguistic diversity provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the European Union,

– a regulation of the European Parliament and of the Council, the subject matter of which is to change the regulation relating to the "Horizon 2020" programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the European Union,

– the amendment of the EU legislation in order to guarantee approximately equal treatment for stateless persons and citizens of the European Union,

– a regulation of the European Parliament and of the Council, in order to introduce a unitary copyright so that the whole European Union can be considered an internal market in the field of copyright,

– an 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,

– a Council regulation or decision, with a view to the block exemption of projects promoting national minorities and their culture from the procedure provided for in Article 108(2) TFEU.'

5 As set out in recital 2 of the contested decision, the subject matter of the proposed ECI is as follows: 'We call upon the [European Union] to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union'.

6 As set out in recital 3 of the contested decision, the objectives of the proposed ECI are as follows:

'We call on 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 in the Union. [These 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.'

7 Recital 4 of the contested decision states that the proposed ECI refers specifically in its annex to 11 EU legal acts for which it aims, in essence, at proposals from the Commission, namely:

(a) a recommendation of the Council of the European Union '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;

(b) 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';

(c) a decision or a regulation of the 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;

(d) a regulation of the 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;

(e) a regulation of the Parliament and of the Council on the basis of Articles 173(3) TFEU and 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 European Union;

(f) 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 European Union 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 Parliament;

(g) 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;

(h) the amendment of the EU legislation in order to guarantee approximately equal treatment for stateless persons and citizens of the European Union, on the basis of Article 79(2) TFEU;

(i) a regulation of the Parliament and of the Council on the basis of Article 118 TFEU, in order to introduce a unitary copyright so that the whole of the European Union can be considered an internal market in the field of copyright;

(j) an amendment to 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; and

(k) a Council regulation or 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.

8 Recital 5 of the contested decision states that EU legal acts for the purpose of implementing the Treaties can be adopted:

– in the areas of improvement of the knowledge and dissemination of the culture and history of the European peoples; conservation and safeguarding of cultural heritage of European significance; non-commercial cultural exchanges; and artistic and literary creation, including in the audiovisual sector;

– in the fields of developing the European dimension in education, including, inter alia, through the teaching and dissemination of the languages of the Member States;

– in defining the tasks, priority objectives and organisation of the Structural Funds provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the European Union;

– on specific measures in support of action taken in the Member States to achieve the objectives of speeding up the adjustment of industry to structural changes, encouraging an environment favourable to initiative and to the development of undertakings throughout the European Union, particularly small and medium-sized undertakings, encouraging an environment favourable to cooperation between undertakings, fostering better exploitation of the industrial potential of policies of innovation, research and technological development;

– in the area of research and technological development in the form of a multiannual framework programme establishing the scientific and technological objectives to be achieved by the European Union's activities and fixing the relevant priorities, indicating the broad lines of such activities and fixing the maximum overall amount and the detailed rules for EU financial participation in the framework programme and the respective shares in each of the activities provided for;

– in the area of rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States of the European Union;

– for the creation of European intellectual-property rights to provide uniform protection of intellectual-property rights throughout the European Union and for the setting up of centralised EU-wide authorisation, coordination and supervision arrangements;

– for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons;

– for determining the categories of aid granted by States exempted from the procedure set out in Article 108(2) TFEU.

9 In recital 6 of the contested decision, the Commission infers from the earlier recitals that the proposed ECI, inasmuch as it aims at proposals from the Commission for EU legal acts for the purpose of implementing the Treaties, as referred to in recital 4(a) to (e) and (h) to (k) of the contested decision, does not manifestly fall outside the framework of its powers to submit a proposal for an EU legal act for the purpose of implementing the Treaties under Article 4(2)(b) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ 2011 L 65, p. 1).

10 By contrast, so far as concerns the other two proposals referred to in the proposed ECI, namely those referred to in recital 4(f) and (g) of the contested decision, the Commission concludes in recitals 7 to 9 of the contested decision that the proposed ECI manifestly falls outside the framework of its powers to submit a proposal for an EU legal act for the purpose of implementing the Treaties pursuant to Article 4(2)(b) of Regulation No 211/2011.

## Procedure and forms of order sought

11 By application lodged at the Court Registry on 28 June 2017, Romania brought the present action.

12 By separate document lodged at the Court Registry on the same day, Romania lodged an application for interim measures under Articles 278 and 279 TFEU requesting the Court to order suspension of the operation of the contested decision. That application was rejected by order of 13 November 2017, *Romania* v *Commission* (T-391/17 R, not published, EU:T:2017:805).

13 By decision of the President of the Second Chamber of 27 September 2017, the Slovak Republic was granted leave to intervene in support of the form of order sought by Romania. By letter lodged at the Court Registry on 18 October 2017, the Slovak Republic informed the Court that it was withdrawing its intervention, with the result that, by order of 16 November 2017, *Romania* v *Commission* (T-391/17, not published, EU:T:2017:823), it was removed from the present case as an intervener.

14 By decision of the President of the Second Chamber of 15 November 2017, Hungary was granted leave to intervene in support of the form of order sought by the Commission. Hungary's statement in intervention was lodged after the expiry of the period set by the President, and for that reason has not been included in the file.

15 The committee's application to intervene was rejected by order of 16 November 2017, *Romania* v *Commission* (T-391/17, not published, EU:T:2017:831), confirmed on appeal by order of 5 September 2018, *Minority SafePack – one million signatures for diversity in Europe* v *Romania and Commission* (C-717/17 P(I), not published, EU:C:2018:691).

16 Romania claims that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

17 The Commission contends that the Court should:

– dismiss the action as unfounded;

– order Romania to pay the costs.

## Law

### *Preliminary observations*

18 During the hearing, the Commission, in response to the questions put by the Court, challenged the admissibility of the action by raising, first, the late stage at which the action had been brought and, second, the non-challengeable nature of the contested decision.

19 It should be recalled that the Courts of the European Union are entitled to assess, in accordance with the circumstances of each case, whether the proper administration of justice justifies dismissal of the action on the merits without first a ruling on the grounds of inadmissibility raised by the defendant (see, to that effect, judgments of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraphs 51 and 52; of 23 March 2004, *France* v *Commission*, C-233/02, EU:C:2004:173, paragraph 26; and of 15 June 2005, *Regione autonoma della Sardegna* v *Commission*, T-171/02, EU:T:2005:219, paragraph 155).

20 In the circumstances of the present case, the Court considers that, in the interests of procedural economy, it is appropriate at the outset to examine the pleas in law invoked by Romania, without first ruling on the admissibility of the action, since the action is, in any event and for the reasons set out below, unfounded.

### *Substance*

21 In support of its action, Romania relies on two pleas in law, the first alleging infringement of Article 5(2) TEU and of Article 4(2)(b) of Regulation No 211/2011, the second alleging failure to take account of the second paragraph of Article 296 TFEU.

#### *The first plea, alleging infringement of Article 5(2) TEU and of Article 4(2)(b) of Regulation No 211/2011*

22 In the first place, Romania claims that the analysis of the information and detailed measures set out in the annex to the proposed ECI reveals that, notwithstanding the stated objectives, the proposed ECI in reality focuses exclusively on improving the protection of the rights of persons belonging to national

and linguistic minorities, even though it has no direct link with cultural diversity within the meaning of Article 3 TEU and Article 167 TFEU, the strengthening of which is at most a consequence inherent in improved protection of the rights of persons belonging to national and linguistic minorities.

23 On the one hand, as regards the strengthening of cultural diversity under Article 167(1) and (4) TFEU, Romania asserts that the European Union is competent to support, coordinate and complement, but is not competent, either on an exclusive basis or on a basis shared with the Member States, to promote a policy the sole purpose of which is cultural diversity. Under Article 167(4) TFEU, a legislative act of the European Union cannot focus exclusively on cultural diversity, but the European Union must take this into account and promote it in the context of its policies. On the other hand, as regards the protection of the rights of persons belonging to national and linguistic minorities, Romania asserts that the European Union does not have express competence to legislate and that this area remains within the exclusive competence of the Member States, as is evident from, inter alia, Articles 2, 3, 7 and 8 TEU, Article 4(2) TFEU and Decision C(2013) 5969 final referred to in paragraph 2 above.

24 In the second place, Romania claims that the concrete action areas referred to in the proposed ECI and presented in the annex to it must be analysed objectively in the light of their context, which is defined by the subject matter and objectives of the proposed ECI. In its view, it is not sufficient for the proposed acts to form part of an area that comes within the European Union's sphere of competence. It continues that, since, in accordance with the principle of conferral set out in Article 5(2) TEU, the European Union's powers may be exercised only in order to achieve the objectives established in the Treaties, the acts at issue must also, in their content and their objectives, be designed to contribute towards achieving the objectives established for EU action in the relevant area of competence. It argues that it is not apparent from any provision of the Treaties that the policy objectives in the areas in which a request for the adoption of EU legal acts has been submitted are designed to bring about any type of action concerning the protection of national minorities. The applicant continues that since, therefore, by its subject matter and objectives; the proposed ECI manifestly falls outside the sphere of EU competence, no measure which may be proposed in order to achieve those objectives can be regarded as coming within that sphere of competence.

25 In the third place, Romania claims that none of the measures listed in the additional information falls outside the ECI's subject matter or its objectives as set out in the required information, with the result that an individual examination cannot lead to any other conclusion as to the powers of the European Union. In this respect, it continues, the partial registration of the proposed ECI is in this case of no consequence, as the Commission can neither act upon an ECI in order to achieve objectives other than those indicated by the organisers without compromising the autonomy of the latter, nor can it unreasonably distort the stated subject matter of the ECI.

26 In the fourth and final place, Romania claims that, with regard more particularly to the concrete areas referred to in the proposed ECI, so far as concerns, first, the proposed measures relating to languages, education and culture, the organisers erred in basing the proposals relating to 'languages' in section 2 of the proposed ECI on the second indent of Article 167(5) TFEU and on the second indent of Article 165(4) TFEU, as those articles contain no provisions relating to 'languages' or 'linguistic policy'. Furthermore, it argues, none of the objectives pursued by Articles 165 to 167 TFEU, which include the development of quality education, the contribution to the flowering of the cultures of the Member States while respecting their national and regional diversity or the improvement of the knowledge and dissemination of the culture and history of the European peoples, refers to persons belonging to national or linguistic minorities. Therefore, it continues, a specific measure in the field of 'education' or 'culture', intended to support persons belonging to those minorities, would also have no legal basis in the Treaties, Article 3 TEU being unable to remedy this situation. In its view, the power to adopt measures in the field of the linguistic identity of persons belonging to national minorities is a matter for the Member States, regard being had to the fact that Article 10 of the Council of Europe Framework Convention for the Protection of National Minorities, adopted on 10 November 1994, to which certain Member States of the European Union are parties, is applicable in this context.

27 Secondly, so far as concerns the field of regional policy, and more specifically the proposals based, on the one hand, on Articles 177 and 178 TFEU, seeking to adapt the provisions relating to the European Union's regional funds and, on the other hand, on Article 173(3) and Article 182(1) TFEU, with a view to amending 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), Romania asserts that, in accordance with Article 174 TFEU, importance attaches to the criterion of the development of the different regions for the purposes of the cohesion policy and not the national, ethnic, cultural, religious or linguistic characteristics of the regions, especially since there is no clear and generally valid link between the ethnic composition of particular regions and their level of development. It continues that an act adopted on the basis of Article 177 TFEU cannot set objectives in addition to those laid down in Article 174 TFEU. The same, it submits, applies to the 'Horizon 2020' programme, since the objectives of the specific measures listed in Article 173 TFEU ('Industry') and Article 179 TFEU ('Research and technological development and space') have no connection with the protection of the rights of persons belonging to national minorities. Romania adds that there is no basis, within the framework of the European Union's competence, for adopting an act which, as in the present case, is contrary to the values enshrined in Article 2 TEU, by introducing indirect discrimination on the basis of ethnicity and which would raise the problem of exceeding the limits, established in accordance with international law, of the parent State's involvement in the protection of its national minority located within the territory of another State.

28 Thirdly, so far as concerns the measures proposed regarding stateless persons with a view to ensuring equal treatment between stateless persons and citizens of the European Union, Romania claims that reliance on the criterion of membership of a national minority in order to grant exceptional status to a specific category, such as stateless persons, does not correspond to the objectives set out in Article 79(1) TFEU. Romania asserts that since the proposed ECI proposes merely that more favourable treatment be granted to persons without nationality, it does not correspond to the subject matter of that proposed ECI and could at most be the subject of a separate ECI. It continues that, for the purposes of Title V of the FEU Treaty, which includes Article 79 TFEU, stateless persons are treated in the same way as third-country nationals, as follows from Article 67(2) TFEU. From this point of view, in its opinion, the Treaties also do not provide a legal basis for adopting acts which seek to ensure approximately equal treatment between persons without nationality and EU nationals.

29 Fourthly, so far as concerns the proposal to establish a unitary copyright system within the European Union, on the basis of Article 118 TFEU, Romania notes that the purpose of the proposal appears to be to facilitate the use, by persons belonging to minorities, of goods and services in their own language, which is often also that of a neighbouring country, with the result that the proposal distances itself from the purpose of the measures referred to in Article 118 TFEU and also raises the problem, referred to previously, of the involvement of the parent State in the protection of persons belonging to national minorities. According to the recommendations made on these questions at the international level, Romania's view is that preferential treatment by the parent State should be granted on the basis of a bilateral approach with the consent of the competent State and should be limited to the 'fields of education and culture, in so far as it pursues the legitimate aim of encouraging cultural ties and [the preferential treatment] is proportionate to that aim'. Finally, it claims that the difficulties surrounding the language regime for the European patent point to the difficulties involved in creating a unified system of intellectual-property rights throughout Europe.

30 Fifthly, so far as concerns the proposal to amend Directive 2010/13, Romania asserts that granting exceptional treatment to 'regions where national minorities live' would be contrary to the values enshrined in Article 2 TEU, would constitute direct discrimination in terms of the free movement of services, which is prohibited by Article 56 TFEU, and would also raise the problem referred to in paragraph 29 above of the involvement of the parent State in the protection of persons belonging to national minorities.

31 Sixthly and finally, so far as concerns the proposal based on Article 109, Article 108(4) or Article 107(3)(d) TFEU, which concern the field of State aid, Romania asserts that the proposed exemption runs counter to the objectives of the measures, which are limited to the fields of education, culture, languages and religion, available under international law in relation to persons belonging to national minorities. The granting of 'cross-border' State aid by the parent State to legal persons pursuing a commercial objective with the aim of promoting the rights of persons belonging to national minorities of the neighbouring State would, it submits, be incompatible with the principles of international law relating to the involvement of parent States in the protection of persons belonging to national minorities located in the territory of other States, would hinder competition and would lead to discrimination based on ethnicity criteria between citizens of the European Union and would therefore be contrary to the values of the European Union.

32 The Commission, supported by Hungary, disputes the arguments put forward by Romania.

33 As a preliminary point, it should be noted that under Article 11(4) TEU, introduced by the Lisbon Treaty, EU citizens may, subject to certain conditions, take the initiative of inviting the Commission, within the framework of its powers, to submit an appropriate proposal on matters in regard to which those citizens consider that a legal act of the European Union is required for the purpose of implementing the Treaties (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 23).

34 The right to adopt an ECI constitutes, in the same way as, inter alia, the right to petition the European Parliament, an instrument relating to the right of citizens to participate in the democratic life of the European Union, provided for in Article 10(3) TEU, in that it allows them to apply directly to the Commission in order to make to it a request inviting it to submit a proposal for a legal act of the European Union, for the purposes of the application of the Treaties (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 24). As stated in recital 1 of Regulation No 211/2011, this right is intended to reinforce European citizenship and to enhance the democratic functioning of the European Union (judgments 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 of 10 May 2017, *Efler* v *Commission*, T-754/14, EU:T:2017:323, paragraph 24).

35 In accordance with the first paragraph of Article 24 TFEU, the procedures and conditions required for submitting an ECI have been specified in Regulation No 211/2011. Article 4 of that regulation lays down the conditions under which the Commission may register a proposed ECI (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 25).

36 Thus, as regards the process of registering a proposed ECI, it is, under Article 4 of Regulation No 211/2011, for the Commission to examine whether such a proposal fulfils the conditions laid down in, inter alia, paragraph 2(b) of that article, which envisages that a proposed ECI should be registered by the Commission, to the extent to which it 'does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties' (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraphs 26 and 45).

37 As is apparent from the case-law, in accordance with Article 4(1) and (2) of Regulation No 211/2011, information relating to the subject matter and objectives of the proposed ECI provided by the organisers of the ECI, compulsorily or on an optional basis, in accordance with Annex II to that regulation must be taken into consideration, in accordance with (judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 45, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 51).

38 The 'information set out in Annex II' to Regulation No 211/2011, to which Article 4 of that regulation refers, is not limited to the minimum information which, pursuant to that annex, must be placed on the register. The right, recognised in Annex II to Regulation No 211/2011, of the organisers of the proposed ECI to provide additional information, or even a draft EU legal act, has as a corollary the Commission's obligation to examine that information in the same way as any other information provided pursuant to that annex, in accordance with the principle of sound administration, recalled in recital 10 of Regulation No 211/2011 and including the duty of the competent institution to examine carefully and impartially all relevant features of the case. Therefore, in order to assess whether a proposal for an ECI fulfils the conditions for registration set out in Article 4(2)(b) of Regulation No 211/2011, the Commission must examine the additional information (judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission*, T-646/13, EU:T:2017:59, paragraphs 30 to 32; see also, to this effect, judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraphs 47, 48 and 50, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 52 to 54).

39 Moreover, in accordance with the objectives pursued by the ECI, as set out in recitals 1 and 2 of Regulation No 211/2011, consisting, inter alia, in encouraging participation by citizens and making the European Union more accessible, the registration condition in Article 4(2)(b) of that regulation must be interpreted and applied by the Commission, when it receives a proposed ECI, in such a way as to ensure easy accessibility to the ECI (judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 49, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 53 and 64).

40 Consequently, it is only if a proposed ECI, in view of its subject matter and objectives as reflected in the mandatory and, where appropriate, additional information that has been provided by the organisers pursuant to Annex II to Regulation No 211/2011, manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties that the Commission is entitled to refuse to register the proposed ECI pursuant to Article 4(2)(b) of that regulation (judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 50, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraph 54).

41 In this regard, it follows from the wording of Article 4(2)(b) of Regulation No 211/2011 that the Commission must carry out an initial examination of the information available to it in order to determine whether the proposed ECI does not manifestly fall outside the framework of its powers, while provision is made for a more comprehensive examination to be carried out if the proposal is registered. Indeed, Article 10(1)(c) of that regulation provides that, when the Commission receives the ECI, it is to set out within three months in a communication its legal and political conclusions on the ECI, the action that it intends to take, if any, and its reasons for taking or not taking that action (judgment of 19 April 2016, *Costantini* v *Commission*, T-44/14, EU:T:2016:223, paragraph 17). The decision to register a proposed ECI, which involves an initial legal assessment of it, is thus without prejudice to the Commission's assessment, where appropriate, in the context of the communication adopted on the basis of Article 10(1)(c) of Regulation No 211/2011 and which fixes the Commission's final position on whether or not to submit a proposal for a legal act in response to the ECI (see, to that effect, judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, currently under appeal, EU:T:2018:210, paragraphs 79 and 117).

42 As has also previously been held, where the Commission receives an application for registration of a proposed ECI, it is not for it to ascertain, at that stage, that proof has been provided of all the factual elements relied on, or that the reasoning behind the proposed ECI and the proposed measures is adequate. The Commission must confine itself to examining, for the purpose of assessing whether the condition of registration in Article 4(2)(b) of Regulation No 211/2011 is satisfied, whether from an objective point of view such measures, envisaged in the abstract, could be adopted on the basis of the

Treaties, if it is not to fail to have regard to the objective of ensuring easy accessibility to the ECI (judgment of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 62 and 64).

43 In the present case, in order to determine whether the Commission has correctly applied the condition set out in Article 4(2)(b) of Regulation No 211/2011, it is therefore necessary to examine whether, in the light of the proposed ECI and in the context of an initial examination of the information available to the Commission, the latter could, contrary to Romania's assertion, have validly concluded at the registration stage that that proposal, in so far as it concerned proposals for legal acts such as those referred to in Article 1(2) of the contested decision envisaged in the abstract, did not manifestly fall outside the framework of its powers to submit a proposal for an EU legal act for the purpose of implementing the Treaties.

44 It that respect, it should be recalled that, according to Article 5 TEU, the limits of EU powers are governed by the principle of conferral and that, according to Article 13(2) TEU, each institution must act within the limits of the powers conferred on it in the Treaties (see, to that effect, judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraphs 97 and 98, and of 19 April 2016, *Costantini* v *Commission*, T-44/14, EU:T:2016:223, paragraph 16). The objective of democratic participation of EU citizens underlying the ECI mechanism cannot frustrate the principle of conferred powers and authorise the European Union to legislate in a field in which no power has been conferred on it (judgment of 19 April 2016, *Costantini* v *Commission*, T-44/14, EU:T:2016:223, paragraph 53).

45 In accordance with equally settled case-law, the choice of the legal basis for a legal act of the European Union must rest on objective factors amenable to judicial review, which include the objective and content of the measure (see judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 67 and the case-law cited).

46 With regard to the subject matter and objectives of the proposals for acts to be submitted by the Commission, as listed in Article 1(2) of the contested decision, the proposed ECI states, as indicated in recitals 2 and 3 of the contested decision, that that proposal seeks the adoption of a series of legislative acts in order to improve the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity in the European Union. These acts should, it is stated, include measures relating to regional and minority languages, education and culture, regional policy, equality, audiovisual and other media content and regional support. The annex to the proposed ECI refers explicitly to various legal acts in respect of which it invites the Commission to make proposals.

47 Contrary to Romania's claims, the proposed ECI does not seek exclusively to ensure respect for the rights of persons belonging to national and linguistic minorities, but it also seeks to strengthen cultural and linguistic diversity in the European Union, as is apparent both from the subject matter and objectives set out in that proposal and from the consideration given to the various proposals for legal acts listed and explained in the annex to the proposed ECI, the organisers of which request that it be presented to the European Parliament and the Council.

48 In this context, it should be emphasised that, as stated in paragraph 37 above, the Commission is, for the purposes of registering a proposed ECI, required to take into account the subject matter and objectives of that proposal as reflected not only in the compulsory information, but also in the additional information provided by the organisers pursuant to Annex II to Regulation No 211/2011 (judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 45, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 51 and 54).

49 In accordance with this case-law, following the judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission* (T-646/13, EU:T:2017:59), by which Decision C(2013) 5969 referred to in paragraph 2 above was annulled, the Commission carried out a fresh analysis of the proposed ECI on the basis of all the information submitted by the organisers, in particular taking into account the proposals for legal acts set out in the annex to the proposed ECI, which concluded that, inasmuch as the proposed ECI aimed at proposals from the Commission for 9 of the 11 proposals for EU legal acts referred to in recital 4(a) to (e) and (h) to (k) of the contested decision, it did not manifestly fall outside the framework of its powers to submit a proposal for an EU legal act for the purpose of implementing the Treaties pursuant to Article 4(2)(b) of Regulation No 211/2011.

50 As has been stated in paragraph 47 above and as the Commission has correctly observed, the legal acts listed in the annex to the proposed ECI, which, according to the Commission, come within the framework of its powers to submit a proposal for an EU legal act for the purpose of implementing the Treaties in the areas at issue, are manifestly intended to contribute, on the one hand, to achieving the general objective of ensuring respect for the rights of persons belonging to minorities, and, on the other hand, also in a direct fashion to attaining the general objective of respecting and promoting cultural and linguistic diversity in the European Union.

51 In this respect, it should be pointed out, first, that, in accordance with Article 2 TEU, respect for minority rights is one of the values on which the European Union is founded and, secondly, that the fourth subparagraph of Article 3(3) TEU states that the European Union must respect its rich cultural and linguistic diversity.

52 With more particular reference to the strengthening of cultural diversity, Article 167(4) TFEU provides that the European Union is to take cultural aspects into account in its action under other provisions of the Treaties in order, inter alia, to respect and promote the diversity of its cultures.

53 Contrary to what Romania claims, this does not mean that, by the contested decision, the Commission conceded that the European Union has general competence to legislate in the field of the protection of the rights of persons belonging to national minorities, but only that respect for the rights of minorities and the strengthening of cultural and linguistic diversity, as values and objectives of the European Union, must be taken into account in EU actions in the areas covered by the proposed ECI. As Romania itself has stated in this context, first, the fourth subparagraph of Article 3(3) TEU necessarily contains general guidance for EU action in other areas and, secondly, the respect for minorities referred to in Article 2 TEU forms an integral part of the European Union's values which the Commission is required to respect in the framework of its powers.

54 It should be noted, particularly, in this regard that Romania is not challenging the competence of the European Union to adopt legal acts in the concrete action areas referred to in the legal acts listed in recital 4(a) to (e) and (h) to (k) of the contested decision (see paragraph 7 above) and which are set out in recital 5 thereof (see paragraph 8 above) in order to achieve the objectives of the provisions at issue. However, Romania takes the view that the European Union's competence in these areas cannot allow the Commission to invite the Parliament and the Council to adopt legal acts with a view to achieving the objectives set out in the proposed ECI, which are fundamental elements defining the scope of the proposal, since those acts are not designed to contribute to the achievement of the objectives established for EU action in the relevant area of competence. If it were to do so, Romania argues, the Commission would be misdirecting the European Union's powers in areas such as culture, education, regional policy and State aid from the purpose for which it was recognised in the Treaties as having those powers.

55 That argument cannot be accepted.

56 While, in the areas for which the European Union is competent, the Commission is entitled to submit, for the purpose of achieving the objectives specifically pursued by the relevant provisions of the FEU Treaty, proposals for legal acts which take account of the values and objectives which form the subject matter of the proposed ECI, nothing must prevent that institution, as a matter of principle, from submitting proposals for specific acts which, as in the present case, are deemed to supplement EU action in the areas for which it is competent in order to ensure respect for the values set out in Article 2 TEU and the rich cultural and linguistic diversity laid down in the fourth subparagraph of Article 3(3) TEU.

57 Inasmuch as Romania claims in this context that the exercise of the European Union's powers is limited by Article 4(2) TEU, under which the European Union respects the national identity of Member States which is inherent in their fundamental political and constitutional structures, it is sufficient to note that Romania has failed to substantiate this claim and, in particular, to demonstrate that that provision necessarily precludes the adoption of measures such as those referred to in Article 1(2) of the contested decision, envisaged in the abstract, in so far as those measures seek to ensure, within the European Union's fields of competence, respect by the European Union for the values on which it is based, such as respect for the rights of persons belonging to minorities, and to pursue the objectives set out in Article 3 TEU, which include respect for the rich cultural and linguistic diversity of the European Union.

58 To the extent to which Romania asserts that, by registering in part the proposed ECI, the Commission risks compromising the autonomy of the organisers and unduly altering the stated purpose of the proposed ECI, it is sufficient to note that the organisers have expressed, in paragraph 8 of that proposal entitled 'Safeguard clause', the desire that a separate determination be made in respect of each of the 11 proposals and that, if one of the proposals were to be deemed inadmissible, this should not affect the other proposals. Consequently, the registration in part of the proposed ECI, far from compromising the autonomy of the organisers and constituting an alteration of the stated purpose of that proposal, accords with a wish formally expressed by the organisers themselves in the proposed ECI in the event that the Commission were to conclude that certain of the measures at issue manifestly did not come within the scope of its powers.

59 Finally, Romania's argument that the various proposals for legal acts at issue are in no way suitable for contributing to achieving the objectives established for EU action in the relevant area of competence must also be rejected.

60 First, with regard to the measures relating to 'language', 'education' and 'culture' which are referred to in section 2 of the proposed ECI, in respect of which the organisers suggest the first indent of each of Article 167(5) and Article 165(4) TFEU as the legal basis for adoption, the Commission rightly states that the concept of 'culture', which is the heading of Title XIII of the FEU Treaty, and includes Article 167 TFEU, refers in Article 167(4) TFEU to respect for cultural and linguistic diversity, which is established in Article 3 TEU as an EU objective, and that the concept of 'education', which is part of the heading of Title XII of the FEU Treaty, and includes Article 165 TFEU, encompasses matters linked to the promotion of linguistic diversity in the European Union, which is, moreover, a specific objective referred to in Article 5(1)(e) of Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+': the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (OJ 2013 L 347, p. 50), adopted on the basis of Article 165(4) TFEU, as is the case for the acts relating to 'language' referred to in the proposed ECI.

61 In addition, pursuant to the second indent of Article 167(5) TFEU, the Council may adopt recommendations, on a proposal from the Commission, with a view to contributing to achieving the objectives referred to in that article, with the result that the proposal for an act seeking a 'Council

Recommendation "on the protection and promotion of cultural and linguistic diversity within the Union"', envisaged in the abstract, cannot be regarded as manifestly exceeding the framework of the Commission's powers to submit a proposal for a legal act for the purpose of applying that provision.

62 Finally, as stated in paragraph 56 above, the fact that Articles 165 to 167 TFEU do not include among their specific objectives the respect for persons belonging to national and linguistic minorities does not preclude the European Union from adopting, within the framework of the powers which it exercises on the basis of those provisions, measures which take account of such an objective.

63 Secondly, with regard to the measures relating to 'regional policy', which are referred to in sections 3.1 and 3.2 of the proposed ECI, and more specifically the proposals based on Articles 177 and 178 TFEU, relating to regional funds, as well as those based on Articles 173(3) and 182(1) TFEU, concerning the amendment of Regulation No 1291/2013 on the 'Horizon 2020' programme, these measures also are intended not to extend the areas for which the European Union is competent, but to ensure that use is made of its existing powers to finance programmes. Thus, as regards regional funds, the fourth indent of Article 1(2) of the contested decision refers to 'a regulation adapting the general rules applicable to the tasks, priority objectives and the organisation of the Structural Funds in such a way that account is taken of the protection of minorities and the promotion of cultural and linguistic diversity provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union'. As regards the 'Horizon 2020' programme, as the Commission has pertinently pointed out, a potential amendment of Regulation No 1291/2013 is designed to improve research into the added value that national minorities and cultural and linguistic diversity could bring to social and economic development within the regions of the European Union.

64 In addition, as has been stated in particular in paragraph 56 above, contrary to Romania's assertion, the fact that Articles 173, 177, 178 and 182 TFEU do not refer to respect for persons belonging to national and linguistic minorities as one of their specific objectives does not preclude the European Union from adopting, within the framework of the powers which it exercises on the basis of those provisions, measures which take account of such an objective.

65 In regard to Romania's complaint that intervention by a State in the protection of its national minority in the territory of another State exceeds the limits set under international law, the Commission states, once again correctly, that the appraisal as to whether the legal acts proposed in the ECI are compatible with such standards does not affect the examination of the registration condition laid down in Article 4(2)(b) of Regulation No 211/2011.

66 Thirdly, with regard to the measures proposed in respect of 'stateless persons', in order to guarantee equal treatment between such persons and EU citizens, which are referred to in section 5.2 of the proposed ECI, and which the organisers suggest could be adopted under Article 79(2) TFEU, the Commission has pointed out correctly that several legal acts which apply to, inter alia, stateless persons had been adopted at EU level, such as Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection (OJ 2011 L 132, p. 1), which also addresses equal treatment between stateless persons and EU citizens. By inviting the Commission to submit amendments to the rules 'that allow for the approximation of the rights of long-term stateless persons and their families to those of EU citizens', the proposed ECI, envisaged in the abstract, has been able to be considered as not manifestly exceeding the Commission's powers to submit proposals for EU legal acts for the purposes of implementing the Treaties.

67 Fourthly, with regard to the proposal for the introduction, on the basis of Article 118 TFEU, of a 'unitary copyright' which would allow the whole of the European Union to be considered as an internal market in copyright matters, which is referred to in section 6.1 of the proposed ECI, it should

be noted that that provision states that the European Union is competent to establish measures concerning the creation of European intellectual-property rights to provide uniform protection of intellectual-property rights throughout the European Union.

68 As stated in paragraph 56 above, the fact that Article 118 TFEU does not refer to respect for persons belonging to national and linguistic minorities as one of its specific objectives does not preclude the European Union from adopting, within the framework of the powers which it exercises on the basis of that provision, measures which take account of such an objective.

69 As regards Romania's complaint that the intervention of a State in the protection of its national minority in the territory of another State exceeds the limits set under international law, it should be reiterated that the question of the compatibility of the legal acts proposed in the ECI with such standards does not affect the examination of the registration condition laid down in Article 4(2)(b) of Regulation No 211/2011.

70 Fifthly, with regard to the proposal to amend Directive 2010/13 on 'audiovisual media services', on the basis of Articles 53(1) and 62 TFEU, which is referred to in section 6.2 of the proposed ECI, and which seeks to ensure the freedom to provide services and the reception of audiovisual content in regions where national minorities reside, it should also be stated that there is nothing to preclude the Commission from proposing an amendment to that directive which takes into account the concerns regarding respect for persons belonging to national and linguistic minorities, whereas Romania's arguments based, on the one hand, on the alleged infringement of Article 56 TFEU and of Article 2 TEU and, on the other hand, on the exceeding of the limits, established in accordance with international law, on the intervention of a State in the protection of its national minority in the territory of another State, are of no consequence in the assessment of the registration condition laid down in Article 4(2)(b) of Regulation No 211/2011. In so far as this complaint refers more particularly to a breach of Article 2 TEU, it could at most be examined in terms of the condition laid down in Article 4(2)(d) of Regulation No 211/2011, which prohibits the Commission from registering ECI proposals which are manifestly contrary to the values of the European Union as set out in Article 2 TEU, although this provision, however, is not referred to in the current plea.

71 Sixthly, with regard to the proposal for a 'block exemption of projects promoting national minorities and their culture', based on Article 107(3)(e) TFEU and referred to in section 7 of the proposed ECI, the Commission has pointed out correctly that, in accordance with Article 107(3)(d), TFEU, aid to promote culture and heritage conservation can be considered compatible with the internal market, following an analysis carried out by the Commission, where it does not alter conditions for trading and competition in the European Union to an extent contrary to the common interest. To the extent to which Romania claims that that proposal is liable to lead to discrimination on grounds of ethnicity, would hinder competition and would be contrary to the limits of the parent State's involvement in the protection of its national minority in the territory of another Member State, reference should be made to the foregoing, to the effect that these arguments do not have any bearing on the assessment of the registration condition laid down in Article 4(2)(b) of Regulation No 211/2011 and Romania has not invoked a breach of Article 4(2)(d) of that regulation in the context of the present plea.

72 In the light of the foregoing considerations, it must be concluded that Romania is wrong to claim that the Commission made an error of assessment and infringed Article 5(2) TFEU and Article 4(2)(b) of Regulation No 211/2011 in concluding, at the stage of registration of the proposed ECI, and without prejudice, as the case may be, to a more comprehensive examination under Article 10 of Regulation No 211/2011, that, from an objective point of view, the proposals for legal acts such as those referred to in Article 1(2) of the contested decision and envisaged in the abstract did not fall 'manifestly outside' the framework of the Commission's powers to submit a proposal for an act for the purpose of implementing the Treaties.

73 The first plea must therefore be rejected.

***The second plea, alleging infringement of the second paragraph of Article 296 TFEU***

74 Romania asserts that the obligation to state reasons laid down in the second paragraph of Article 296 TFEU is not exhaustively regulated by the second subparagraph of Article 4(3) of Regulation No 211/2011. In its view, that obligation constitutes an essential procedural requirement for respect of its rights of defence as a privileged applicant and contributes to bringing about the more general objective of ensuring that the EU Courts are able to exercise their power of judicial review. It continues that the statement of reasons must be appropriate to the nature of the act at issue and should clearly and unequivocally disclose the reasoning of the institution which adopted the act. Moreover, in accordance with case-law, an EU institution must explain its reasoning explicitly when the decision significantly deviates from previous decisions, as in the present case in fundamentally departing from Decision C(2013) 5969 final referred to in paragraph 2 above. In addition, Romania claims that the obligation to state reasons is all the more important in the case where the proposed ECI is registered because the condition laid down in Article 4(2)(b) of Regulation No 211/2011 is intended to ensure compliance with the fundamental principle of the conferral of powers. Finally, it argues that, as the Commission has a wide discretion as to whether the proposed ECI is manifestly outside the framework of its powers to submit a proposal for a legal act, compliance with the obligation to state reasons assumes fundamental importance for the purpose of enabling a determination to be made as to whether or not there has been an error of assessment and to determine the combination of the facts and law on which the exercise of its discretion depends.

75 However, according to Romania, the contested decision refers to the subject matter and objectives of the proposed ECI in recitals 2 and 3 without setting out the reasons why the Commission is competent to propose acts which come within the scope of that subject matter and which pursue the objectives of protection set out therein. It continues that the Commission simply lists, in recital 4 of the contested decision, the nine registered proposals for acts. It argues that, even if the Commission had stated in the recitals of the contested decision that the proposals for legislative acts submitted pursuant to policies coming within the scope of the powers of the European Union and described generically in recital 5 of the contested decision were registrable, the Commission, in the operative part, is authorising the collection of signatures for proposals for legislative acts which admittedly come within the scope of the Commission's generic areas of competence, but which promote national or linguistic minorities and cultural and linguistic diversity. In addition, it submits that the contested decision does not contain any reference to the values and objectives of the European Union set out in Articles 2 and 3 TEU.

76 Moreover, it continues that, although the Commission sets out, in recitals 2 and 3 of the contested decision, the objectives and area referred to in the ECI, namely the protection of persons belonging to national minorities and cultural and linguistic diversity, the Commission provides no details from which it is apparent that it is not competent in those areas and, particularly, in the area of protection of persons belonging to national minorities, as it does, for example, when giving reasons for rejecting the other two proposals as inadmissible. In the view of Romania, such a manifestly insufficient statement of reasons is liable to prevent, on the one hand, interested parties from becoming aware of the reasons for the registration of the proposed ECI and to respond accordingly, and, on the other hand, the Court from reviewing the legality of the contested decision.

77 Furthermore, it asserts that the contested decision is drafted in a generic and stereotypical manner and does not indicate the reasons on which the Commission based its conclusion that the registration in part of a proposed ECI is possible, even though it had adopted a diametrically opposed position in Decision C(2013) 5969 final.

78 The Commission, supported by Hungary, takes issue with Romania's arguments.

79 It should be recalled that the obligation to state reasons for legal acts set out in the second paragraph of Article 296 TFEU applies to all acts which may be the subject of an action for annulment (judgment of 1 October 2009, *Commission* v *Council*, C-370/07, EU:C:2009:590, paragraph 42). It follows that, notwithstanding the fact that the second subparagraph of Article 4(3) of Regulation No 211/2011 refers to the Commission's obligation to inform the organisers of the reasons for its decision only when it refuses to register the proposed ECI, the contested decision is subject to the obligation to state reasons even in so far as it contains the Commission's decision to register the proposed ECI to the extent to which it concerns 9 of the 11 proposals for legal acts listed in its annex.

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

81 As is also apparent from settled case-law, the requirement to state reasons must be assessed by reference to the circumstances of the particular case. 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 and to all the legal rules governing the matter in question (see judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 29 and the case-law cited).

82 Furthermore, it is necessary to distinguish the obligation to state reasons as an essential procedural requirement from the review of the merits of the reasons stated, which comes within the review of the act's substantive legality and requires the Court to determine whether the reasons on which the act is based are vitiated by errors (see, to that effect, judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraphs 66 to 68).

83 According to Romania, in accordance with case-law (see, to this 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), compliance with the obligation to state reasons assumes even greater importance in cases where the EU institutions have a wide discretion, as is the position in the present case. It argues that it is only in this way that the EU Courts can determine whether the elements of fact and of law on which the exercise of the discretion depends were present.

84 However, contrary to the position expressed by Romania, the Commission does not have a wide discretion for the purposes of the registration of a proposed ECI, as Article 4(2) of Regulation No 211/2011 states that that institution is to 'register' such a proposal, provided that the conditions set out in Article 4(2)(a) to (d) of that regulation are fulfilled, that is to say, inter alia, when the proposed ECI does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties. Conversely, if, following an initial analysis, it is clear that that final requirement is not met, the Commission must 'refuse' to register the proposed ECI as set out in the first subparagraph of Article 4(3) of Regulation No 211/2011.

85 The Commission has even less discretion as it has been held, in accordance with the objectives pursued by an ECI, as set out in recitals 1 and 2 of Regulation No 211/2011, consisting, inter alia, in encouraging participation by citizens and making the European Union more accessible, that the registration condition provided for in Article 4(2)(b) of that regulation must be interpreted and applied by the Commission, when it has received a proposed ECI, in such a way as to ensure easy

accessibility to the ECI (judgments of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 49, and of 7 March 2019, *Izsák and Dabis* v *Commission*, C-420/16 P, EU:C:2019:177, paragraphs 53 and 64).

86 In the present case, it must be held that the recitals of the contested decision set out the elements which led to its adoption and that Romania was in a position to examine the grounds on which the contested decision was based, a fact also demonstrated by all of the arguments that it has presented in support of the present action.

87 Thus, as the Commission indicated clearly in recital 6 of the contested decision, the proposed ECI, in so far as it aims at proposals from it for EU legal acts, as referred to in recital 4(a) to (e) and (h) to (k) of that decision, for the purpose of implementing the Treaties, did not manifestly fall outside the framework of its powers to submit a proposal for a legal act. That conclusion originates in the description found in recital 5 of the contested decision, and reproduced in paragraph 8 above, of the areas in which EU legal acts seeking to implement the Treaties may be adopted.

88 The fact that, at the stage of registration of a proposed ECI, involving an initial legal assessment of that proposal and without prejudice to the Commission's assessment in the context of the communication that it adopts, as appropriate, on the basis of Article 10(1)(c) of Regulation No 211/2011 (judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraph 117), that institution confines itself to setting out, as it did in recital 5 of the contested decision, in a generic manner the areas in which EU legal acts may be adopted and which correspond to the areas in which the organisers of the proposed ECI request that legal acts be adopted, in order to conclude that the proposed ECI does not manifestly fall outside the framework of the Commission's powers, without raising the fact that the measures to which the proposed ECI refers seek to improve the protection of persons belonging to national and linguistic minorities and to strengthen the European Union's cultural and linguistic diversity, cannot be regarded as being contrary to the obligation to state reasons.

89 To the extent to which Romania claims in this context that the Commission has failed in its obligation to state reasons by departing from its position expressed in Decision C(2013) 5969 referred to in paragraph 2 above without explaining the reasons for that departure, first, it should be noted that it is clear from the statement of reasons for the contested decision that, contrary to what was the position in Decision C(2013) 5969, the Commission has, in registering in part the proposed ECI, taken account, in accordance with the case-law of the Court of Justice and the General Court, of the additional information provided by the organisers as well as the compulsory information, for the purposes of determining whether the condition in Article 4(2)(b) of Regulation No 211/2011 was met. Moreover, the Commission had already suggested in Decision C(2013) 5969 that some of the proposals for legal acts set out in the annex to the proposed ECI, considered individually, could come within the framework of its powers to submit a proposal for an EU legal act for the purpose of implementing the Treaties.

90 Secondly, as regards the Commission's decision to accept the registration in part of the proposed ECI, in respect of which Romania also criticises the absence of reasons in the contested decision, the Commission argued before the Court that its position had evolved since the adoption of Decision C(2013) 5969 referred to in paragraph 2 above and that it now took the view that such a registration was liable to encourage the participation of citizens in democratic life and to make the European Union more accessible.

91 In this respect, it should be noted, first, that recital 10 of the contested decision states that the effect of the ECI is to enhance the democratic functioning of the European Union by enabling every citizen to participate in the European Union's democratic life and, secondly, that, according to recital 11 of that decision, for that purpose, the procedures and conditions required for the ECI should be clear, simple,

user-friendly and proportionate to the nature of the ECI so as to encourage participation by citizens and make the European Union more accessible, before the Commission concludes in recital 12 of the contested decision that the proposed ECI should be registered in part.

92 Consequently, even if the statement of reasons required by Article 296 TFEU does not imply that, as a rule, the author of a decision must set out the reasons which led it to rely on a specific interpretation of the relevant legal rule and if it suffices for that institution to set out the facts and legal considerations of fundamental importance in the scheme of the decision, it must be held that the contested decision sets out, in any event, to the requisite legal standard, the reasons underlying the registration in part of the proposed ECI.

93 In addition, to the extent to which Romania also criticises the Commission for not having referred in the contested decision to Articles 2 and 3 TEU as, according to that Member State, those provisions alone do not provide EU legislative competence, suffice it to state that that conclusion is apparent from the wider context of the contested decision and, in particular, from Decision C(2013) 5969 referred to in paragraph 2 above, pursuant to which the contested decision was adopted, and which recalls, moreover, in recital 8 that, so far as concern measures which have been refused registration and which are not the subject of the present action, Article 3(3) TEU does not in itself constitute a legal basis for any action by the institutions.

94 Consequently, the second plea must be rejected and therefore the action must be dismissed in its entirety.

## Costs

95 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 Romania has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the latter, including the costs relating to the interim proceedings.

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

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Romania to bear its own costs and to pay those incurred by the European Commission, including the costs relating to the interim proceedings;**

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

Prek Buttigieg Costeira

Delivered in open court in Luxembourg on 24 September 2019.

[Signatures]