Reports of Cases

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

12 May 2021 *

(Law governing the institutions – European citizens' initiative – Trade with territories under military occupation – Refusal of registration – Manifest lack of powers of the Commission – Article 4(2)(b) of Regulation (EU) No 211/2011 – Common commercial policy – Article 207 TFEU – Common foreign and security policy – Article 215 TFEU – Obligation to state reasons – Article 4(3) of Regulation No 211/2011)

In Case T-789/19,

Tom Moerenhout, residing in Humbeek (Belgium), and the other applicants whose names are set out in the annex, [1] represented by G. Devers, lawyer,

applicants,

v

European Commission, represented by I. Martínez del Peral and S. Delaude, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment of Commission Decision (EU) 2019/1567 of 4 September 2019 on the proposed citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' (OJ 2019 L 241, p. 12).

THE GENERAL COURT (Tenth Chamber, Extended Composition),

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

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 14 January 2021,

gives the following

* Language of the case: French.

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

Judgment

Background to the dispute

1 The applicants, Mr Tom Moerenhout and six other citizens, whose names appear in the annex, drew up the proposed European citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' ('the proposed ECI'), which was communicated to the European Commission on 5 July 2019 for registration under Article 4 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).

2 The subject matter of the proposed ECI was:

'Regulating commercial transactions with [an] Occupant's entities based or operating in occupied territories by withholding products originating from there from entering the EU market.'

3 According to the proposed ECI, its objective was:

'The Commission, as Guardian of the Treaties, has to ensure consistency of [the] Union's policy and compliance with fundamental rights and international law in all areas of EU law, including [the common commercial policy]. It must propose legal acts to prevent EU legal entities from both importing products originating in illegal settlements in occupied territories and exporting to such territories, in order to preserve the integrity of the internal market and to not aid or assist the maintenance of such unlawful situations.'

4 Under the heading 'Relevant provisions of treaties and international law', the applicants then cited Article 2, Article 3(5), Article 6(3) and Article 21 TEU and Article 2(1), Articles 3 and 205 and Article 207(1) and (2) TFEU. They also referred to the Charter of Fundamental Rights of the European Union, Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ 2002 L 358, p. 28); Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ 2019 L 30, p. 1); the judgments of 30 July 1996, *Bosphorus* (C-84/95, EU:C:1996:312); and of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91); and several provisions and sources of international law, including, in particular, United Nations Security Council resolutions and opinions of the International Court of Justice.

5 By Decision (EU) 2019/1567 of 4 September 2019 on the proposed citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law' (OJ 2019 L 241, p. 12; 'the contested decision'), the Commission refused to register the proposed ECI.

6 In recitals 5 to 7 of the contested decision the Commission gave the following reasons for that refusal:

'(5) A legal act covering the subject matter of the proposed [ECI] could only be adopted on the basis of Article 215 TFEU.

(6) However, a prerequisite for a legal act to be adopted on the basis of Article 215 TFEU is a decision adopted in accordance with Chapter 2 of Title V of the [EU] Treaty which provides for the interruption or reduction, in part or completely, of economic and financial relations with the third country concerned. The Commission does not have the power to submit proposals for such a decision. In the absence of a corresponding decision adopted in accordance with Chapter 2 of Title V of the [EU] Treaty, the Commission does not have the power to submit a proposal for a legal act to be adopted on the basis of Article 215 TFEU.

(7) For these reasons, the proposed [ECI] manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties within the meaning of Article 4(2)(b) of [Regulation No 211/2011], read in conjunction with Article 2, point 1, [of that regulation].'

Procedure and forms of order sought

7 By application lodged at the Court Registry on 14 November 2019, the applicants brought this action.

8 The Commission lodged its defence on 30 January 2020.

9 The applicants lodged their reply on 20 April 2020.

10 The Commission lodged its rejoinder on 9 July 2020.

11 On a proposal from the Tenth Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

12 The parties presented oral argument and replied to the Court's questions at the hearing on 14 January 2021.

13 The applicants claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

14 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

15 In support of their action, the applicants put forward four pleas in law. The first plea alleges infringement of Article 41(1) of the Charter of Fundamental Rights and Article 4(1) and (2) of Regulation No 211/2011 in that the Commission distorted the proposed ECI by disregarding its real aim, which related to a measure in the field of the common commercial policy. The second plea alleges infringement of the second subparagraph of Article 4(3) of that regulation in so far as

the Commission failed to fulfil its obligation to state reasons for the contested decision. The third plea alleges infringement of Article 4(2)(b) of that regulation in so far as the Commission wrongly took the view that the action envisaged in the proposed ECI could be adopted only on the basis of Article 215 TFEU. The fourth plea alleges infringement of Article 4(2)(b) of that same regulation in so far as the Commission ignored other legal bases to which the proposed ECI clearly relates.

16 The Court considers it appropriate to begin by examining the second plea, alleging an inadequate statement of reasons for the contested decision.

17 By that plea, the applicants in essence put forward three complaints concerning the statement of reasons for the contested decision.

18 First, the applicants submit that the Commission failed to explain why it considered that Article 207(2) TFEU did not constitute an appropriate legal basis for the action sought in the proposed ECI, despite the express reference to that provision and Regulation 2019/125 in that proposal. The applicants argue that the proposed ECI made it clear that it concerned a measure falling within the common commercial policy.

19 Secondly, given that the Commission considered that only Article 215 TFEU relating to measures adopted in the field of the common foreign and security policy (CFSP) could constitute an appropriate legal basis for the proposed ECI, it should have explained why it took the view that the predominant objective of that proposal was a measure in the field of the CFSP rather than one relating to the common commercial policy.

20 Thirdly, the Commission did not draw a distinction between the two paragraphs of Article 215 TFEU. The general reference to that article as the legal basis for the measure intended by the proposed ECI does not make it possible to know why the prohibition envisaged by that proposal should fall within the scope of restrictive measures against countries (on the basis of paragraph 1 of that article), rather than restrictive measures against persons (on the basis of paragraph 2 of that article).

21 The Commission disputes the applicants' arguments and contends, in essence, that the contested decision contains a sufficient statement of reasons.

22 In that regard, it should be recalled that, as regards the process of registering a proposal for a citizens' initiative under Article 4 of Regulation No 211/2011, it is for the Commission to examine whether such a proposal satisfies the conditions for registration laid down in paragraph 2 of that article.

23 In particular, among those conditions, Article 4(2)(b) of Regulation No 211/2011 lays down that a proposal for a citizens' initiative is to be registered by the Commission, provided that 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'. It is only if a proposal for a citizens' initiative, 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 that regulation, is manifestly outside the scope of the powers under which the Commission may present a proposal for a legal act of the European Union for the purposes of the application of the Treaties, that the Commission is entitled to refuse to register that proposal for a

citizens' initiative pursuant to that provision (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).

24 Under the second subparagraph of Article 4(3) of Regulation No 211/2011, where it refuses to register a proposed citizens' initiative, the Commission is to inform the organisers of the reasons for such refusal.

25 According to the case-law, the refusal to register a proposed citizens' initiative 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 judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission*, T-646/13, EU:T:2017:59, paragraph 17 and the case-law cited).

26 A citizen who has submitted a proposed citizens' initiative 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 (see judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission*, T-646/13, EU:T:2017:59, paragraph 18 and the case-law cited).

27 Failing any complete statement of reasons, 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, would be seriously compromised (judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission*, T-646/13, EU:T:2017:59, paragraph 29).

28 The obligation to inform the organisers of the reasons for the refusal to register their proposed ECI, as provided for in the second subparagraph of Article 4(3) of Regulation No 211/2011, constitutes a specific expression, with regard to the European citizens' initiative, of the obligation to state reasons for legal acts enshrined in Article 296 TFEU (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraph 28).

29 It is settled case-law that the statement of reasons required by that provision must be appropriate to the act 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. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France*,

C-367/95 P, EU:C:1998:154, paragraph 63; see also, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 88 and the case-law cited).

30 Thus, while it is true that the institutions are not obliged, in the statement of reasons for decisions they adopt, to take a position on all the arguments relied on before them in the course of an administrative procedure, it nonetheless remains the case that they are required to set out the facts and the legal considerations having decisive importance in the context of the decision (see, to that effect, judgments of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 169, and of 6 September 2012, *Storck* v *OHIM*, C-96/11 P, not published, EU:C:2012:537, paragraph 21).

31 It is in the light of those principles that the Court must examine whether the Commission provided a sufficient statement of reasons in the contested decision.

32 In the present case, as noted in paragraph 6 above, the Commission found in the contested decision that a legal act covering the subject matter of the proposed ECI could only be adopted on the basis of Article 215 TFEU (recital 5) and that it did not have the power to submit a proposal for a legal act on that basis (recital 6). It explained that the proposed ECI therefore manifestly fell outside the framework of its powers within the meaning of Article 4(2)(b) of Regulation No 211/2011, read in conjunction with Article 2, point 1, thereof (recital 7).

33 It is thus apparent from the statement of reasons in the contested decision that the Commission based its refusal on the ground, in essence, that it was not competent to submit a proposal for a legal act able to respond to the subject matter of the proposed ECI, since the only applicable legal basis was, according to the Commission, Article 215 TFEU.

34 However, it must be noted that, as the applicants claim, the contested decision does not specify why the Commission considered that only an act adopted on the basis of Article 215 TFEU could satisfy the objective of the proposed ECI. Moreover, even though it is implicit in the wording of the contested decision that the Commission considered that the other provisions relied on by the applicants in their proposed ECI, in particular Article 207 TFEU, could not constitute an appropriate legal basis for the measure envisaged by the proposed ECI, the Commission did not further explain its reasoning in that regard.

35 The sufficiency of such a statement of reasons in the contested decision must thus be assessed in the light of the following considerations.

36 First, the contested decision was based on the Commission's manifest lack of competence to submit a proposal for a legal act able to respond to the subject matter and objective of the proposed ECI. That manifest lack of competence was explained by the fact that the Commission considered that the proposed action fell entirely under the CFSP.

37 Accordingly, the Commission's assessment of the subject matter and objectives of the proposed ECI, in accordance with the case-law cited in paragraph 23 above and, consequently, of the applicable legal basis, was, for the purposes of the case-law referred to in paragraph 30 above, of decisive importance in the context of the contested decision. It follows that, contrary to what it argues, the Commission was required to provide an explanation in the contested decision for its analysis of the appropriate legal basis.

38 It is clear that the statement of reasons provided by the Commission in the contested decision, which was confined, in essence, to referring to Article 215 TFEU as the only possible legal basis for an act able to respond to the subject matter of the proposed ECI, does not make it possible to understand the reasoning for the choice of that legal basis. The reference in recital 6 of the contested decision to the Commission's lack of power to adopt a decision 'which provides for the interruption or reduction, in part or completely, of economic and financial relations with the third country concerned', which reproduces the wording of Article 215(1) TFEU, does not by any means substantiate that assessment. It must be observed that the Commission did not explain why it considered that the measure envisaged by the proposed ECI had to be categorised necessarily and solely as relating to an act providing for the interruption or reduction of commercial relations with one or more third countries for the purposes of Article 215(1) TFEU.

39 Secondly, the content of the proposed ECI is a relevant contextual factor, in terms of the case-law cited in paragraph 29 above, for the purposes of assessing the adequacy of the statement of reasons for the contested decision (see, to that effect, judgment of 12 September 2017, *Anagnostakis* v *Commission*, C-589/15 P, EU:C:2017:663, paragraphs 29 and 36 to 39).

40 In this case, the applicants referred several times explicitly to the common commercial policy and to provisions relating to that area in the proposed ECI.

41 First, in the section of the proposed ECI relating to its objective, the applicants stated that the Commission was to ensure 'consistency of [the] Union's policy and compliance with fundamental rights and international law in all areas of EU law, including [the common commercial policy]' (paragraph 3 above), and, in the section relating to the subject matter of that proposal, that it should ensure the adoption of a measure 'regulating commercial transactions' with territories under occupation (paragraph 2 above).

42 Secondly, in the section 'Relevant provisions of treaties and international law' of the proposed ECI, the applicants quoted numerous provisions relating to the common commercial policy (paragraph 4 above). In particular, they referred to Article 207(1) and (2) TFEU, which provides, inter alia, that the measures defining the framework for implementing the European Union's commercial policy are to be adopted by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and to Article 3 TFEU, which makes it clear that the common commercial policy is an area of exclusive competence of the European Union. In addition, they referred to two regulations adopted in the field of the common commercial policy, which govern trade in specific types of products from third countries, making that trade subject, inter alia, to an authorisation system, and to two judgments of the Court of Justice relating to the application of EU acts within that field.

43 It was therefore apparent from the information contained in the proposed ECI that the applicants wanted the Commission to submit a proposal for a common commercial policy measure on the basis of Article 207 TFEU.

44 The Commission rightly maintains that it was not required to refer in the contested decision to the lack of relevance of each of the alleged provisions and purported sources of law mentioned by the applicants in the proposed ECI.

45 Nevertheless, in view of the explicit and repeated references to the common commercial policy in the proposed ECI, and in particular to Article 207 TFEU, it was incumbent on the Commission in this case to explain the reasons which led it to conclude implicitly that the measure sought by the

proposed ECI, in the light of its subject matter and objective, did not fall within that field and could not therefore be adopted on the basis of Article 207 TFEU. However, the contested decision does not set out any reasoning in that regard.

46 Furthermore, in so far as the contested decision was based, in essence, on the consideration that the proposed ECI manifestly did not fall within the Commission's powers, the assessment that that proposal could not relate to the common commercial policy is of decisive importance in the context of the contested decision. Indeed, unlike the CFSP, the common commercial policy is an area in which the Commission has the power to draw up a proposal for an EU act on the basis of Article 207 TFEU.

47 Thirdly, the sufficiency or otherwise of the statement of reasons for the contested decision must also be assessed in the light of the objectives of Article 11(4) TEU, the first paragraph of Article 24 TFEU and Regulation No 211/2011 of encouraging the participation of citizens in democratic life and making the European Union more accessible. As noted in paragraphs 25 to 27 above, the Commission, on account of those objectives, must make clear the reasons justifying the refusal to register a proposed citizens' initiative.

48 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 the proposal, 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 (judgment of 3 February 2017, *Minority SafePack – one million signatures for diversity in Europe* v *Commission*, T-646/13, EU:T:2017:59, paragraph 29). The Commission would have complied with the objective of encouraging citizens' participation in democratic life, in accordance with Article 11(4) TEU and the first paragraph of Article 24 TFEU, and with the objectives of Regulation No 211/2011, only by providing a sufficient explanation for the reasons which led it to consider that the measure envisaged by the proposed ECI fell exclusively within the scope of the CFSP and was not related to the common commercial policy.

49 In the light of the foregoing considerations, and without it being necessary to examine whether the Commission should also have specified in the contested decision which paragraph of Article 215 TFEU applied to the measure envisaged by the proposed ECI, it must be found that the contested decision does not contain sufficient information to enable the applicants to ascertain the reasons for the refusal to register the proposed ECI and to enable the Court to review the lawfulness of that refusal. Accordingly, that decision does not satisfy the obligation to state reasons under Article 296 TFEU and the second subparagraph of Article 4(3) of Regulation No 211/2011.

50 It follows that the second plea must be accepted and the contested decision annulled, without there being any need to examine the other pleas raised by the applicants.

Costs

51 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, in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition)

hereby:

1. **Annuls Commission Decision (EU) 2019/1567 of 4 September 2019 on the proposed citizens' initiative entitled 'Ensuring Common Commercial Policy conformity with EU Treaties and compliance with international law';**

2. **Orders the European Commission to pay the costs.**

Papasavvas Kornezov Buttigieg

Kowalik-Bańczyk Hesse

Delivered in open court in Luxembourg on 12 May 2021.

[Signatures]