Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

12 September 2017 (*)

(Appeal — Institutional law — Citizens' initiative inviting the European Commission to submit a legislative proposal relating to the writing off of public debt for Member States in a state of necessity — Application for registration — Refusal by the Commission — Manifest lack of powers of the Commission — Regulation (EU) No 211/2011 — Article 4(2)(b) — Obligation to state reasons — Article 122 TFEU — Article 136 TFEU — Infringement)

In Case C−589/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 13 November 2015,

Alexios Anagnostakis, residing in Athens (Greece), represented by A. Anagnostakis, dikigoros, and F. Moyse, avocat,

appellant,

the other party to the proceedings being:

European Commission, represented by M. Konstantinidis and H. Krämer, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, E. Juhász, M. Berger and A. Prechal, Presidents of Chambers, A. Rosas, J. Malenovský, D. Šváby, S. Rodin (Rapporteur) and C. Lycourgos, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 December 2016,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2017,

gives the following

Judgment

1 By his appeal, Mr Alexios Anagnostakis ('the appellant') asks the Court to set aside the judgment of the General Court of the European Union of 30 September 2015, *Anagnostakis* v *Commission* (T−450/12, 'the judgment under appeal', EU:T:2015:739), by which the General Court dismissed his action for annulment of Commission Decision C(2012) 6289 final of 6 September 2012, relating to the application for

registration of the European citizens' initiative 'One million signatures for a Europe of solidarity' presented to the Commission on 13 July 2012 ('the contested decision').

Legal context

2 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, and corrigendum OJ 2012 L 94, p. 49), states in recitals 1, 2, 4 and 10:

'(1) The Treaty on European Union (TEU) reinforces citizenship of the Union and enhances further the democratic functioning of the Union by providing, inter alia, that every citizen is to have the right to participate in the democratic life of the Union by way of a European citizens' initiative. That procedure affords citizens the possibility of directly approaching the Commission with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties similar to the right conferred on the European Parliament under Article 225 of the Treaty on the Functioning of the European Union (TFEU) and on the Council under Article 241 TFEU.

(2) The procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible. They should strike a judicious balance between rights and obligations.

...

(4) The Commission should, upon request, provide citizens with information and informal advice about citizens' initiatives, notably as regards the registration criteria.

...

(10) In order to ensure coherence and transparency in relation to proposed citizens' initiatives and to avoid a situation where signatures are being collected for a proposed citizens' initiative which does not comply with the conditions laid down in this Regulation, it should be mandatory to register such initiatives on a website made available by the Commission prior to collecting the necessary statements of support from citizens. All proposed citizens' initiatives that comply with the conditions laid down in this Regulation should be registered by the Commission. The Commission should deal with registration in accordance with the general principles of good administration.'

3 Article 1 of Regulation 211/2011 states:

'This Regulation establishes the procedures and conditions required for a citizens' initiative as provided for in Article 11 TEU and Article 24 TFEU.'

4 Under Article 2 of that regulation:

'For the purposes of this Regulation the following definitions shall apply:

1. "citizens' initiative" means an initiative submitted to the Commission in accordance with this Regulation, inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties, which has received the support of at least one million eligible signatories coming from at least one quarter of all Member States;

...

3. “organisers” means natural persons forming a citizens’ committee responsible for the preparation of a citizens’ initiative and its submission to the Commission.’

5 Article 4(1) to (3) of that regulation provide:

‘1. Prior to initiating the collection of statements of support from signatories for a proposal in dispute, the organisers shall be required to register it with the Commission, providing the information set out in Annex II, in particular on the subject matter and objectives of the proposal in dispute.

That information shall be provided in one of the official languages of the Union, in an online register made available for that purpose by the Commission (“the register”).

The organisers shall provide, for the register and where appropriate on their website, regularly updated information on the sources of support and funding for the proposed citizens’ initiative.

After the registration is confirmed in accordance with paragraph 2, the organisers may provide the proposed citizens’ initiative in other official languages of the Union for inclusion in the register. The translation of the proposed citizens’ initiative into other official languages of the Union shall be the responsibility of the organisers.

The Commission shall establish a point of contact which provides information and assistance.

2. Within two months from the receipt of the information set out in Annex II, the Commission shall register a proposed citizens’ initiative under a unique registration number and send a confirmation to the organisers, provided that the following conditions are fulfilled:

...

(b) the proposed citizens’ initiative 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;

...

3. The Commission shall refuse the registration if the conditions laid down in paragraph 2 are not met.

Where it refuses to register a proposed citizens’ initiative, the Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them.’

Background to the dispute and the contested decision

6 The background to the dispute, as set out in the judgment under appeal, may be summarised as follows.

7 On 13 July 2012, Mr Anagnostakis submitted to the Commission a proposed European citizens’ initiative (‘the ECI’) entitled ‘One million signatures for a Europe of solidarity’.

8 The objective of the proposed initiative was to enshrine in EU law the principle of ‘the state of necessity, in accordance with which, when the financial and political existence of a Member State is threatened by the servicing of abhorrent debt, the refusal to repay that debt is necessary and justifiable’.

9 The proposed ECI at issue referred to ‘economic and monetary policy (Articles 119 to 144 TFEU)’ as the legal basis for its adoption.

10 By the contested decision, after recalling the wording of Article 4(2) of Regulation No 211/2011 and stating that it had examined the provisions of the TFEU referred to in the proposed ECI at issue, in

particular Article 136(1) TFEU, and ‘all other possible legal bases’, the Commission refused to register that proposal on the ground that it manifestly fell outside the scope of its powers to submit a proposal for the adoption of a legal act of the Union for the purpose of implementing the Treaties.

The procedure before the General Court and the judgment under appeal

11 By an application lodged at the Registry of the General Court on 11 October 2012, Mr Anagnostakis brought an action for annulment of the contested decision.

12 In support of his action, he raised a single ground, divided into several parts, alleging that the Commission made errors of law in refusing to register the proposed ECI at issue, on the basis of Article 4(2)(b) of Regulation No 211/2011. The appellant claimed, in that regard, in essence, that the Commission could act on that proposal by proposing the adoption of a legal act on the basis of Article 122(1), Article 122(2) and Article 136(1)(b) TFEU and rules of international law.

13 By the judgment under appeal, the General Court, examining of its own motion the plea alleging a defect or insufficient statement of reasons, held that the Commission had complied with the obligation to state reasons by adopting the contested decision. Furthermore, it held that it had committed no error of law in finding that the proposed ECI in question was manifestly outside the scope of its powers to submit a proposal for a legal act in that regard. Consequently, it dismissed the action as unfounded.

Forms of order sought

14 By his appeal, Mr Anagnostakis claims that the Court should:

– set aside the judgment under appeal;

– annul the contested decision;

– order the Commission to register the proposed ECI at issue and order any other measure required by law, and,

– order the Commission to pay the costs;

15 The Commission contends that the Court should dismiss the appeal and order Mr Anagnostakis to pay the costs.

The appeal

16 The appellant raises four grounds of appeal in support of his appeal. The first ground of appeal alleges an error of law in that the General Court held that the Commission had satisfied the obligation to state reasons in adopting the contested decision. The second to fourth grounds of appeal relate to the review of whether that decision is well founded and allege, inter alia, misinterpretation of Article 122 TFEU, Article 136(1) TFEU and of the rules of international law.

The first ground of appeal, alleging an error of law as regards the sufficiency of the statement of reasons for the contested decision

Arguments of the parties

17 By his first ground of appeal, the appellant argues that by holding, in paragraphs 28 to 32 and 34 of the judgment under appeal, that the contested decision satisfied the requirements arising from the obligation to state reasons, as laid down in Article 296 TFEU, the General Court erred in law.

18 First, he claims, the General Court wrongly held, in paragraph 28 of the contested judgment, that the mere fact that the Commission refers, in the contested decision, to Article 4(2)(b) of Regulation No 211/2011, constituted a sufficient reason in the light of the case-law on the obligation to state reasons. Such a reference does not constitute a detailed and clear statement of the 'manifest' nature of the Commission's lack of competence within the meaning of that provision.

19 Secondly, according to the appellant, the Court's finding in paragraph 27 of the judgment under appeal, that the Commission carried out 'a detailed examination of the provisions of the Treaty referred to in [the] proposal (Articles 119 [TFEU] to 144 TFEU) and all other possible legal bases' is not sufficient either.

20 The same applies to the reference, in the contested decision, to Article 136(1) TFEU.

21 Finally, the General Court erred in finding, in paragraphs 30 and 31 of the judgment under appeal, that the statement of reasons for the contested decision was sufficient in the light of the nature of that decision and the context in which it was adopted. That reasoning of the General Court is, it is claimed, irrelevant to the manifest nature of the Commission's lack of competence and, on the other hand, erroneously establishes a causal link between the so-called lack 'of clarity and precision with regard to the alleged legal basis of the Commission's competence to submit a proposal for a legal act', referred to in paragraph 30 of the judgment under appeal, and the obligation to state the reasons upon which the contested decision was taken.

22 In the Commission's view, agreeing with the reasoning of the General Court referred to in the first ground of appeal, that ground must be rejected as unfounded.

Findings of the Court

23 As a preliminary point, it should be noted that under Article 11(4) TEU, introduced by the Lisbon Treaty, Union citizens may, subject to certain conditions, take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where those citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

24 The right to undertake an ECI constitutes, as does, in particular, the right to petition the Parliament, an instrument concerning the right of citizens to participate in the democratic life of the Union, provided for in Article 10(3) TEU, in that it allows them to apply directly to the Commission in order to submit to it a request inviting it to submit a proposal for a legal act of the Union, for the purposes of the application of the Treaties.

25 In accordance with the first paragraph of Article 24 TFEU, the procedures and conditions for submitting an ECI have been specified in Regulation No 211/2011. Article 4 of that regulation lays down the conditions for the Commission to register a proposed ECI.

26 Among those conditions, Article 4(2)(b) of that regulation requires that a proposed ECI should be registered by the Commission, to the extent 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'.

27 It was under that provision that the Commission, by the contested decision, refused to register the proposed ECI submitted to it by the appellant.

28 In that regard, in so far as, by its first ground of appeal, the appellant argues that the General Court erred in law by finding that that decision was sufficiently reasoned, it should be noted that 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 ECI, of the obligation to state reasons for legal acts enshrined in Article 296 TFEU. It has been consistently held, with regard to that article, that the statement of reasons 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, inter alia, judgment of 6 March 2003, *Interporc* v *Commission*, C−41/00 P, EU:C:2003:125, paragraph 55).

29 As is also apparent from settled case-law, the requirement to state reasons must be assessed by reference to the circumstances of the case. It is not necessary for the reasoning to go into all of the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 29 September 2011, *Elf Aquitaine* v *Commission*, C−521/09 P, EU:C:2011:620, paragraph 150 and of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission*, C−131/15 P, EU:C:2016:989, paragraph 47).

30 In the light of those principles, correctly recalled in paragraphs 22 to 24 of the judgment under appeal, it is appropriate to consider whether the General Court erred in law by holding that the Commission had complied with the obligation to state reasons in adopting the contested decision.

31 In the present case, it is common ground, as the General Court pointed out in paragraph 28 of the judgment under appeal, that that decision indicated that the refusal to register the proposed ECI at issue was justified by the failure to meet the condition laid down in Article 4(2)(b) of Regulation No 211/2011. In that regard, that decision stated that the Commission considered that neither the provisions relating to the European Union's economic and monetary policy relied on in that proposal, namely Articles 119 to 144 TFEU, nor any other legal basis enabled it to submit a proposal for a legal act of the European Union for the purposes of the application of the Treaties as intended by the proposed ECI at issue. In that context, the Commission expressed its view, in particular, on Article 136(1) TFEU and explained the reasons why it considered that that provision could not constitute an appropriate legal basis for that purpose.

32 Contrary to what the appellant seems to suggest, the General Court did not consider that each of those elements of the contested decision, taken individually, would constitute sufficient grounds to satisfy the requirements of the case-law relating to the obligation to state reasons. Nor did it consider, in paragraphs 30 and 31 of the judgment under appeal, that such a statement of reasons is apparent, as such, from the nature of the measure in question and from the context in which it had been adopted.

33 On the contrary, the General Court examined, in accordance with the relevant case-law of the Court of Justice referred to in paragraphs 28 and 29 of the present judgment, whether the statement of reasons for the contested decision met the requirements of Article 296 TFEU, having regard to all the elements contained therein and having regard to the circumstances of the case, in particular the nature of that decision and the context in which it was adopted.

34 In that regard, the General Court essentially pointed out, in paragraphs 25 and 26 of the judgment under appeal, that, having regard to the very nature of the right to an ECI and the possible impact of a decision refusing to register a proposed ECI on the democratic life of the Union, the Commission must state the reasons for its decision refusing the registration of such a proposal, in such a way as to make clear the reasons justifying that refusal. Thus, where that refusal is, as in the present case, based on Article 4(2)(b) of Regulation No 211/2011, that statement must state the reasons why it considers that that proposal is manifestly outside the scope of the powers under which it may submit a proposal for a legal act of the European Union for the purpose of implementing the Treaties.

35 In that context, where, in accordance with Annex II to Regulation No 211/2011, the organisers of the ECI attach, as an annex to their proposal, more detailed information on the subject, objectives and background of the proposal, the Commission is required to examine that information with care and impartiality.

36 However, the General Court also pointed out, in paragraphs 30 and 31 of the judgment under appeal, that the proposed ECI at issue was very brief and lacked clarity in that it was essentially limited, as regards the question of the legal basis for the adoption of the Union legal act referred to in that proposal, to making a

general reference to Articles 119 to 144 TFEU concerning the economic and monetary policy of the Union, without providing any explanation or clarification as to the link between the content of that proposal and the 26 articles of the TFEU to which the proposal referred.

37 In that regard, even if the Commission's website only allowed a block selection of the heading 'Economic and monetary policy 119-144 TFEU', it should be pointed out that, in accordance with Annex II to Regulation No 211/2011, the organisers could, however, have provided more detailed information on the relevance of those articles to the content of the proposed ECI at issue, which they do not claim to have done.

38 In such circumstances, the General Court cannot be criticised for having failed to have regard to the case-law referred to in paragraphs 28 and 29 of the present judgment by holding, in paragraph 31 of the judgment under appeal, that the Commission was entitled to take a decision solely on the basis of those provisions invoked generally in that proposal which appeared to it to be the least obviously relevant, namely Article 136(1) TFEU, without being required specifically to justify its assessment regarding each of those provisions or, a fortiori, to explain why any other provision of the TFEU was irrelevant.

39 In those circumstances, the General Court was entitled to hold, in paragraph 32 of the judgment under appeal, that the contested decision contained sufficient information to enable the appellant, given the context of the contested decision, to ascertain the reasons for the refusal to register the proposed ECI and the European Union judicature to exercise its power of judicial review.

40 On that last point, it is clear from the judgment under appeal that the General Court was able effectively to review that decision, including whether Article 122 TFEU could constitute a legal basis for the measure which is the subject of the proposed ECI at issue, even though that article was not specifically referred to in that proposal.

41 It is clear from the foregoing that the General Court did not err in law by holding, in paragraph 34 of the judgment under appeal, that, in the circumstances of the present case, the Commission fulfilled its duty to state reasons when adopting the contested decision.

42 Moreover, the appellant disputes the statement of reasons for that decision in so far as the proposed ECI at issue does not, he claims, manifestly fall outside the Commission's powers under the provisions referred to in that decision. However, it should be noted that that argument does not relate to the obligation to state reasons as an essential procedural requirement, but to the separate question of the merits of those reasons, which is a question of the substantive legality of the contested decision (judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C−521/09 P, EU:C:2011:620, paragraph 146 and the case-law cited). It must therefore be examined in the context of the reply to the second to fourth grounds of appeal.

43 In the light of the foregoing considerations, the first ground of appeal must be rejected as unfounded.

The second to fourth grounds of appeal, alleging errors of law as regards the review of the merits of the contested decision

Preliminary observations

44 By its second to fourth grounds of appeal, the appellant complains that the General Court, by misinterpreting Article 122 TFEU, Article 136(1) TFEU and rules of international law, considered that the condition laid down in Article 4(2)(b) of Regulation No 211/2011 was not fulfilled in the present case.

45 At the outset, it should be noted that, as regards, first, the process of registering a proposed ECI, under Article 4 of Regulation No 211/2011 it is for the Commission to examine whether such a proposal fulfils the conditions for registration laid down, inter alia, in paragraph 2(b) of that Article. In accordance with paragraphs 1 and 2 of that article, 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 therefore be taken into consideration.

46 In that regard, it should be noted that, as is apparent from recital 4 and the last subparagraph of Article 4(1) of Regulation No 211/2011, the Commission has a duty, in the context of that registration procedure, to provide assistance and advice to the organisers of an ECI, particularly with regard to the registration criteria.

47 Furthermore, it should be pointed out that, as stated in recital 10 of that regulation, the decision on the registration of a proposed ECI, within the meaning of Article 4 of that regulation, must be taken in accordance with the principle of good administration, which entails, in particular, the obligation for the competent institution to conduct a diligent and impartial examination which, moreover, takes into account all the relevant features of the case.

48 These requirements, that are inherent in the principle of good administration, apply generally to the actions of the European Union administration in its relations with the public (see, to that effect, judgment of 4 April 2017, *Ombudsman* v *Staelen*, C−337/15 P, EU:C:2017:256, paragraph 34) and, therefore, also in the context of the right to submit an ECI as an instrument of citizen participation in the democratic life of the European Union.

49 Moreover, in accordance with the objectives pursued by that instrument, as set out in recitals (1) and (2) of Regulation No 211/2011 and consisting, inter alia, in encouraging citizen participation and making the Union more accessible, the registration condition provided for in Article 4(2)(b) of that regulation must be interpreted and applied by the Commission, when it receives a proposal for an ECI, in such a way as to ensure easy accessibility to the ECI.

50 Accordingly, it is only if a proposed ECI, in view of its subject matter and objectives, as reflected in the mandatory and, where appropriate, additional information that has been provided by the organisers pursuant to Annex II to Regulation No 211/2011, is manifestly outside the scope of the powers under which the Commission may present a proposal for a legal act of the Union for the purposes of the application of the Treaties, that the Commission is entitled to refuse to register that proposed ECI pursuant to Article 4(2)(b) of that regulation.

51 That said, it is necessary, secondly, to define the scope of the judicial review which the Court is empowered to carry out in the context of the present appeal.

52 As the Advocate General has pointed out, inter alia, in paragraphs 7, 31 and 40 of his Opinion, the appellant has, in the course of present proceedings before the Court of Justice, substantially expanded on his explanations concerning the subject matter of the proposed ECI at issue and concerning the appropriate legal basis for that purpose, and has contended that the General Court repeatedly made findings in the judgment under appeal that are either incorrect or incomplete in that regard.

53 It should be noted, in the first place, as the Advocate General pointed out, inter alia, in paragraph 30 of his Opinion, that the assessment of the merits of the General Court's reasoning in the judgment under appeal, in the course of its review of the merits of the contested decision, can only be carried out on the basis of the information provided by the organisers of the proposed ECI at issue, in their application for registration of that ECI addressed to the Commission, and not in the light of clarification which was provided by the appellant only in the framework of the present appeal.

54 As the General Court noted in paragraph 3 of the judgment under appeal and, more specifically, in various passages of that judgment, that information merely described the subject matter of that proposal as consisting in enshrining in EU legislation the 'principle of the state of necessity, in accordance with which, when the financial and political existence of a Member State is threatened by the servicing of abhorrent debt, the refusal to repay that debt is necessary and justifiable', and referred generally to Articles 119 to 144 TFEU as the legal basis for its adoption.

55 In the second place, it is also settled case-law that, in an appeal, the jurisdiction of the Court of Justice is, in principle, confined to review of the findings of law on the pleas argued at first instance (see, to that effect, judgments of 30 April 2014, *FLSmidth* v *Commission*, C−238/12 P, EU:C:2014:284, paragraph 42, and of 22 May 2014, *ASPLA* v *Commission*, C−35/12 P, EU:C:2014:348, paragraph 39).

56 In the present case, as pointed out in paragraph 12 of the present judgment, the appellant, in support of the single plea in law raised in the context of his action before the General Court, relied on Article 122(1) and (2), Article 136(1) TFEU and the rules of international law.

57 It follows that the examination, by the Court, of the arguments alleging that the General Court erred in holding that there was no appropriate legal basis in EU law to adopt the principle referred to in the proposed ECI at issue, must be limited to those arguments seeking to establish that the General Court erred in its interpretation of Articles 122 and 136(1) TFEU as well as the rules of international law.

The second ground of appeal: error of law in the interpretation of Article 122 TFEU

– *Arguments of the parties*

58 By his second ground of appeal, which consists of four parts, the appellant criticises the General Court for having, in paragraphs 41 to 43 and 47 to 50 of the judgment under appeal, misinterpreted Article 122(1) and (2) TFEU in finding, contrary to Article 4(2)(b) of Regulation No 211/2011, that those provisions manifestly did not constitute a legal basis for adopting in EU legislation the principle that is the subject of the proposed ECI at issue.

59 First, by interpreting Article 122 TFEU in isolation, without putting it in the context of Articles 119 to 126 TFEU, the General Court failed to take account of the spirit of Chapter 1, entitled 'Economic policy', of Title VIII of the third part of the TFEU, the basic principle of which, it claims, is that the economic policies of the Member States fall within the competence of national governments and that they should be coordinated.

60 The appellant claims, in particular, that it follows from Article 122(1) and (2) TFEU that the measures which the Commission is entitled to propose to the Council to take under that article may be corrective or preventive and are intended to address severe difficulties or a serious threat of such difficulties which may pose a threat to the objectives of the Union. The General Court, he claims, erred in law by taking that article out of context.

61 Secondly, the appellant stresses that Article 122(1) TFEU, which also lays down the principle of solidarity between Member States, confers on the Commission wide discretion to propose the adoption of appropriate measures in order to address severe difficulties of one of them. The adoption of the principle of the state of necessity in an EU instrument would constitute such an appropriate measure. Since the General Court considered, nevertheless, that the proposed ECI at issue would be manifestly outside the scope of the Commission's powers, it misinterpreted Article 122 TFEU.

62 Thirdly, the appellant disputes, in the first place, the arguments of the General Court, in paragraph 41 of the judgment under appeal, drawn from the judgment of 27 November 2012, *Pringle* (C−370/12, EU:C:2012:756). The General Court erred in law by comparing the measure proposed by the ECI at issue and the European Stability Mechanism ('the ESM'), specifically referred to in that judgment and fundamentally different from that measure. The purpose of the proposed ECI at issue is simply to include in EU legislation the principle of the state of necessity in the light of the severe difficulties of the Hellenic Republic arising from its debt and not to create a financing mechanism such as the ESM.

63 In the second place, the appellant submits that the General Court's assessment, in paragraph 42 of the judgment under appeal, that Article 122(1) TFEU implies that the measures referred to in that provision are 'founded on assistance between the Member States', is legally flawed. It is clear from a reading of that article that, contrary to what the General Court held, the spirit of solidarity between the Member States

referred to in that article is not equivalent to assistance understood to be financial between the Member States.

64 Fourthly, the General Court erred in law when, in paragraphs 47 to 49 of the judgment under appeal, it referred again to the judgment of 27 November 2012, *Pringle* (C−370/12, EU:C:2012:756) to conclude that the purpose of the proposed ECI at issue was manifestly not covered by Article 122(2) TFEU.

65 In the first place, it is claimed, the inclusion of the principle of the state of necessity in EU legislation is not, in many respects, comparable to the ESM. In the second place, the General Court wrongly held that the procedure for declaring a state of necessity is initiated by the Member States and not by the European Union. The proposed ECI at issue, it is claimed, indicates that it is the European Union that would approve such a declaration, in a spirit of solidarity. In the third place, the General Court wrongly found, in paragraph 49 of the contested judgment, that the adoption of the principle of the state of necessity applies not only to a Member State's debt to the Union, but also to the debts incurred by that State towards other legal or natural persons, whether public or private. The adoption of that principle would in fact only cover the debt of a Member State to the European Union. In any event, the Commission could have given a partial reply to the proposed ECI at issue by limiting its subject matter to that single debt, which, it is claimed, manifestly falls within the scope of Article 122(2) TFEU.

66 According to the Commission, the second ground of appeal should be rejected as inadmissible in so far as it contains new arguments or, in any event, as unfounded.

– *Findings of the Court*

67 As a preliminary matter, it should be noted that, in accordance with settled case-law, the choice of the legal basis for a legal act of the Union must rest on objective factors amenable to judicial review, which include the aim and content of the measure (judgments of 29 April 2004 in *Commission* v *Council*, C−338/01, EU:C:2004:253, paragraph 54, of 19 July 2012, *Parliament* v *Council*, C−130/10, EU:C:2012:472, paragraph 42, and of 18 December 2014, *United Kingdom* v *Council*, C−81/13, EU:C:2014:2449, paragraph 35).

68 In the first place, in so far as, by its second ground of appeal, all the parts of which must be examined together, the appellant criticises the General Court for having committed errors of law, at paragraphs 40 to 43 of the judgment under appeal, by holding that Article 122(1) TFEU did not constitute an appropriate legal basis for adopting a measure such as that envisaged by the proposed ECI at issue, it should be borne in mind that, under that provision, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

69 In that regard, first, as the General Court rightly pointed out in paragraph 41 of the judgment under appeal, the Court held, in paragraph 116 of the judgment of 27 November 2012, *Pringle* (C−370/12, EU:C:2012:756), that Article 122(1) TFEU does not constitute an appropriate legal basis for possible financial assistance from the Union to Member States who are experiencing, or are threatened by severe financing issues.

70 While the appellant submits that the ESM, which was the subject of the case giving rise to that judgment, differs in a number of respects from the measure envisaged by the proposed ECI at issue, it is nevertheless clear from the judgment that Article 122(1) TFEU does not apply to measures whose main objective is to alleviate the severity of a Member State's financing difficulties.

71 Secondly, it must be held that the General Court did not err in law in finding, in paragraphs 42 and 43 of the judgment under appeal, that, taking into account, inter alia, the spirit of solidarity between the Member States, which must, in accordance with the wording of Article 122(1) TFEU, inform the adoption of measures appropriate to the economic situation within the meaning of that provision, that provision cannot

serve as a basis for adopting a measure or a principle enabling, in essence, a Member State to decide unilaterally not to repay all or part of its debt.

72 In so far as the appellant disputes, more specifically, the finding of the General Court, in paragraph 43 of the contested judgment, that the proposed ECI at issue would enable a Member State facing severe financing difficulties to 'decide unilaterally' not to repay all or part of its debt, it should be noted that it was only in the context of the present appeal that the appellant indicated that the possibility for such a Member State to invoke a state of necessity could be subject to conditions to be laid down by the Commission. As pointed out in paragraph 53 of the present judgment, such information cannot be taken into account when considering the merits of the assessment made by the General Court in paragraph 43 of the judgment under appeal.

73 It follows that the General Court did not err in law in holding, in paragraphs 40 to 43 of the judgment under appeal, that Article 122(1) TFEU did not constitute an appropriate legal basis for the adoption of a measure such as that envisaged by the proposed ECI at issue.

74 In the second place, in so far as the applicant, by his second ground of appeal, alleges that the General Court erred in law by holding, in paragraphs 47 to 50 of the judgment under appeal, that Article 122(2) TFEU did not constitute an appropriate legal basis for the adoption of such a measure, it should be recalled that, under that provision, the Council may, on a proposal from the Commission, and under certain conditions, grant financial assistance from the Union to a Member State which is experiencing difficulties or a serious threat of severe difficulties caused by natural disasters or exceptional occurrences beyond its control.

75 In that regard, it must be held, first, that the General Court was right to point out, in paragraph 48 of the judgment under appeal, that the Court has already held, in paragraphs 65, 104 and 131 of the judgment of 27 November 2012 in *Pringle* (C−370/12, EU:C:2012:756), that Article 122(2) TFEU confers on the Union the power to grant specific financial assistance to a Member State that finds itself in the situation referred to above, but that that provision cannot justify the legislative introduction of a mechanism of non-repayment of debt based on the principle of the state of necessity, having regard, in particular, to the general and permanent nature which is inherent in such a mechanism.

76 Secondly, as for the errors of law which, according to the appellant, the General Court committed in paragraph 49 of the judgment under appeal, regarding the nature of the financial assistance referred to in Article 122(2) TFEU, it should be noted, as the General Court did in that paragraph in the judgment under appeal, that it is clear from paragraph 118 of the judgment of 27 November 2012, *Pringle* (C−370/12, EU:C:2012:756), that that provision solely concerns financial assistance granted by the Union and not that granted by the Member States.

77 Consequently, the General Court was entitled to consider, in paragraph 49 of the judgment under appeal, that the adoption of the principle of the state of necessity forming the subject matter of the proposed ECI at issue cannot be regarded as a measure of 'assistance granted by the Union' within the meaning of that provision because it would cover not only debts owed by the Member States to the Union, but also debts owed by the Member States to other natural or legal persons, both public and private.

78 In so far as the appellant seeks to challenge, in that context, the finding of the General Court that the adoption of the principle of the state of necessity, as envisaged by the proposed ECI at issue, would cover not only debts owed by the Member States to the Union, it should be noted that, before the present appeal proceedings, the appellant has never asserted that that proposal would be limited only to the debt owed by the Member State concerned to the Union. Moreover, his argument is contradicted by other assertions set out in the appeal, according to which the purpose of the proposal is to enable Member States, that find themselves in a state of necessity, to suspend or cancel a part of their debt, owed not only to the Union but also to other Member States. Consequently, that argument cannot succeed.

79 Finally, with regard to the argument that the Commission could have acted partially on the proposed ECI at issue, as that argument was put forward for the first time in the appeal, it must be rejected as inadmissible on the basis of the settled case-law referred to in paragraph 55 of the present judgment.

80 It follows that the General Court did not err in law in finding, in paragraph 50 of the judgment under appeal, that a measure such as that envisaged by the proposed ECI at issue is manifestly not a measure of financial assistance which the Council is entitled to take, on a proposal from the Commission, pursuant to Article 122(2) TFEU.

81 It follows from the foregoing considerations that the second ground of appeal must be dismissed.

The third ground of appeal: error of law in the interpretation of Article 136(1) TFEU

– *Arguments of the parties*

82 By his third ground of appeal, the appellant alleges that the General Court, in paragraphs 57 to 60 of the judgment under appeal, misinterpreted Article 136(1) TFEU. Contrary to what the General Court considered, the principle of the state of necessity could be enshrined in EU law on the basis of Article 136 TFEU, the purpose of which is, inter alia, to contribute to the 'the proper functioning of economic and monetary union'.

83 In that regard, the applicant maintains that the assertion, in paragraph 58 of the judgment under appeal, that the adoption of the principle of the state of necessity would result in replacing the free will of contracting parties with a legislative mechanism for the unilateral writing-off of sovereign debt, which this provision clearly does not permit, is legally flawed. The adoption of that principle would enable a Member State facing severe difficulties to temporarily suspend the payment of all its debts in order to focus its economic policy on growth, thereby encouraging economic investments that promote the latter, which would undoubtedly contribute to the proper functioning of economic and monetary union as referred to in Article 136(1) TFEU. The applicant refers, in this context and by way of illustration, to the decision of the European Council of 21 July 2011, with the consequence that the decision on the cancellation of a Member State's public debt may be based on EU law.

84 Furthermore, it is claimed, Article 136(1) TFEU expressly empowers the Council to take measures to establish economic policy guidelines. Consequently, the Commission would also be entitled to propose to the Council the approval of such measures.

85 It follows that the proposed ECI at issue does not manifestly fall outside the Commission's powers within the meaning of Article 4(2)(b) of Regulation No 211/2011 and that the General Court wrongly held, in paragraph 59 of the judgment under appeal, that the adoption of a principle of the state of necessity manifestly did not fall within the terms of Article 136(1) TFEU.

86 Furthermore, according to the appellant, a stability and financial assistance mechanism as authorised in Article 136(3) TFEU could, with the agreement of the Member States and where one of them is in a state of necessity, include suspension of repayment of its debt. In any event, it is claimed, Article 352 TFEU empowers the Commission to propose a measure, such as that referred to in the proposed ECI, that is necessary to achieve one of the objectives of the Treaties, such as the stability of the euro area.

87 According to the Commission, the third ground of appeal must be rejected as partly inadmissible and unfounded as to the remainder.

– *Findings of the Court*

88 It should be recalled that, pursuant to Article 136(1) TFEU, the Council may, in order to contribute to the proper functioning of economic and monetary union and in accordance with the relevant provisions of the Treaties, adopt measures specific to those Member States whose currency is the euro in order, first, under

subparagraph (a) of that provision, to strengthen the coordination and surveillance of their budgetary discipline and, secondly, under subparagraph (b) of that provision, to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

89 The General Court did not err in law in finding, in paragraphs 57 and 58 of the judgment under appeal, that the adoption of the principle of the state of necessity, as envisaged by the proposed ECI at issue, manifestly falls outside the scope of the measures described in the previous paragraph.

90 The General Court rightly held, in paragraph 57 of the judgment under appeal, that there was nothing to support the conclusion, and the applicant had in no way demonstrated, that the adoption of the measure referred to in the proposed ECI at issue would serve the objective of coordinating budgetary discipline or fall within the scope of the economic policy guidelines which the Council is entitled to draw up in order to ensure the proper functioning of economic and monetary union.

91 The General Court was also right, first, to point out, in paragraph 58 of the judgment under appeal, that it is apparent from paragraphs 51 and 64 of the judgment of 27 November 2012, *Pringle* (C−370/12, EU:C:2012:756), that the role of the Union in the area of economic policy is restricted to the adoption of coordinating measures and, secondly, to find that the adoption of a measure such as that envisaged by the proposed ECI at issue, far from constituting 'economic policy guidance' within the meaning of Article 136(1)(b) TFEU, would in fact result in replacing the free will of contracting parties with a legislative mechanism for the unilateral writing-off of sovereign debt, which is something that the provision clearly did not authorise.

92 It follows that the General Court was right, in paragraph 59 of the judgment under appeal, to endorse the Commission's conclusion that the proposal to enshrine the principle of the state of necessity, as conceived by the appellant, manifestly did not fall within the terms of Article 136(1) TFEU.

93 In so far as the appellant also suggests, in the third ground of appeal, that the principle of the state of necessity envisaged by the proposed ECI at issue could be adopted in EU law on the basis of Article 136(3) TFEU, where appropriate in conjunction with Article 352 TFEU, it suffices to note that that argument was advanced only in the present appeal and cannot, therefore, in accordance with the case-law set out in paragraph 55 of the present judgment, be examined by the Court in the present case.

94 Having regard to the foregoing, the third ground of appeal must be rejected.

The fourth ground of appeal: error of law in the interpretation of the rules of international law

– *Arguments of the parties*

95 The fourth ground of appeal alleges that the General Court erred in interpreting the rules of international law in that it held, in paragraph 65 of the judgment under appeal, that the existence of a principle of international law, such as, in the present case, the principle of the state of necessity, did not suffice, in any event, as a basis for a legislative initiative on the Commission's part. Furthermore, the General Court did not examine the merits of the arguments as to the existence of that principle in international law.

96 According to the Commission, since the appeal contains no argument capable of calling into question the General Court's assessment that the Treaties, and not a rule of international law, must provide for the conferral of the necessary competence on the Commission, that ground of appeal must be rejected as unfounded.

– *Findings of the Court*

97 It should be noted that, in accordance with the principle of division of powers stated in Article 5(1) and (2) of the TEU, the Union shall act only within the limits of the competences conferred upon it by the Member

States in the Treaties to attain the objectives set out therein.

98 As regards, in particular, the institutions of the Union, it is specified, in Article 13(2) TEU, that each institution is to act within the limits of the powers conferred on it in the Treaties, in accordance with the procedures, conditions and objectives set out therein.

99 Consequently, it is only if competence is conferred in the Treaties to this effect that the Commission may propose the adoption of a legal act of the Union.

100 It follows that the General Court did not err in law in holding, in paragraph 65 of the judgment under appeal, that the mere existence of a principle of international law, even if it were established, such as the principle of the state of necessity invoked by the appellant, would not suffice, in any event, as a basis for a legislative initiative on the Commission's part.

101 In those circumstances, the General Court cannot be criticised for not examining the merits of the arguments concerning the existence of that principle in international law.

102 Consequently, the fourth ground of appeal must be rejected as unfounded.

103 Since none of the grounds of appeal raised by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

104 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs.

105 Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 184(1) thereof, 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 appellant has been unsuccessful and the Commission has applied for costs against it, the appellant must be ordered to pay the costs relating to the present appeal proceedings.

On those grounds, the Court (Grand Chamber) hereby:

1. Dismisses the appeal;

2. Orders Mr Alexios Anagnostakis to pay the costs.

[Signatures]

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* Language of the case: Greek.