Provisional text

JUDGMENT OF THE COURT (First Chamber)

7 March 2019(*)

(Appeal — Law governing the institutions — Citizens' initiative — Regulation (EU) No 211/2011 — Registration of the proposed citizens' initiative — Article 4(2)(b) — Condition that the proposed initiative does not manifestly fall outside the framework of the European Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties — Burden of proof — Economic, social and territorial cohesion — Article 174 TFEU — Citizens' initiative 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' — Application for registration — Refusal by the Commission)

In Case C−420/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 July 2016,

Balázs-Árpád Izsák, residing in Târgu Mureş (Romania),

Attila Dabis, residing in Budapest (Hungary),

represented by D. Sobor, ügyvéd,

appellants,

the other parties to the proceedings being:

European Commission, represented by K. Banks, K. Talabér-Ritz, H. Krämer and B.−R. Killmann, acting as Agents,

defendant at first instance,

Hungary, represented by M.Z. Fehér, acting as Agent,

Hellenic Republic,

Romania, represented by R.H. Radu, C.R. Canţăr, C.−M. Florescu, L. Liţu and E. Gane, acting as Agents,

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

interveners at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President of the Court, acting as President of the First Chamber, J.−C. Bonichot, A. Arabadjiev, E. Regan and S. Rodin (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: R. Şereş, administrator,

having regard to the written procedure and further to the hearing on 3 May 2018,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2018,

gives the following

Judgment

1 By their appeal Mr Balázs-Árpád Izsák and Mr Attila Dabis seek to have set aside the judgment of the General Court of the European Union of 10 May 2016, *Izsák and Dabis* v *Commission* (T−529/13, 'the judgment under appeal', EU:T:2016:282), dismissing their action for annulment of Decision C(2013) 4975 final of the European Commission of 25 July 2013 concerning the application for registration of the European citizens' initiative 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' submitted to the Commission on 18 June 2013 ('the decision at issue').

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) 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 No 211/2011 provides:

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

4 In accordance with Article 2 of that regulation:

‘For the purpose 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 the regulation provides:

‘1. Prior to initiating the collection of statements of support from signatories for a proposed citizens’ initiative, 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 proposed citizens’ initiative.

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 decision at issue

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

7 On 18 June 2013 the appellants, together with five other persons, sent the Commission a proposed European citizens' initiative ('ECI') entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' ('the proposed ECI at issue').

8 In the online register made available for that purpose by the Commission, the appellants, in accordance with Article 4(1) of Regulation No 211/2011, provided the minimum information described in Annex II to that regulation ('the required information'), including a brief statement of the subject matter and objectives of the proposed ECI at issue.

9 According to the information provided by the appellants as required information, the proposed ECI at issue aimed to ensure that the cohesion policy of the European Union paid special attention to regions whose ethnic, cultural, religious or linguistic characteristics differed from those of the surrounding regions.

10 In an annex to the information provided as required information, the appellants, in accordance with Annex II to Regulation No 211/2011, gave more detailed information on the subject matter, objectives and context of the proposed ECI at issue ('the additional information').

11 According to the appellants, the cohesion policy governed by Articles 174 to 178 TFEU should, in order to reflect the fundamental values defined in Articles 2 and 3 TEU, contribute to preserving the specific ethnic, cultural, religious or linguistic characteristics of the national minority regions which are endangered by European economic integration, and to correcting the handicaps and discrimination affecting the economic development of those regions. Accordingly, the proposed act was to give national minority regions the opportunity to access EU cohesion policy funds, resources and programmes equal to that of currently eligible regions, such as those listed in Annex I to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ 2003 L 154, p. 1). Those guarantees could, according to the appellants, include the establishment of autonomous regional institutions with sufficient powers to assist national minority regions in preserving their national, linguistic and cultural characteristics as well as their identity.

12 By the decision at issue, the Commission refused to register the proposed ECI at issue, on the ground that it was apparent from an in-depth examination of the provisions of the Treaties cited in the proposal, and of all the other possible legal bases, that the proposed ECI fell manifestly outside the framework of its powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.

The procedure before the General Court and the judgment under appeal

13 By application lodged at the Registry of the General Court on 27 September 2013, the appellants brought an action for the annulment of the decision at issue.

14 In support of their action, they put forward a single plea in law, alleging that the Commission had erred in law in refusing, on the basis of Article 4(2)(b) of Regulation No 211/2011, to register the proposed ECI at issue.

15 By the judgment under appeal, the General Court ruled essentially that the Commission had not erred in law in considering that the proposed ECI at issue fell manifestly outside the framework of its powers to submit a proposal for a legal act in that respect.

16 It therefore dismissed the action as unfounded.

Forms of order sought by the parties

17 The appellants claim that the Court should:

– set aside the judgment under appeal and annul the decision at issue;

– in the alternative, set aside the judgment under appeal and refer the case back to the General Court; and

– order the Commission to pay the costs.

18 Hungary claims that the Court should set aside the judgment under appeal and give judgment on the substance of the case or refer it back to the General Court.

19 The Commission, Romania and the Slovak Republic contend that the Court should dismiss the appeal and order the appellants to pay the costs.

The request for reopening of the oral part of the procedure

20 In accordance with Article 82(2) of the Rules of Procedure, the oral part of the procedure was closed following the delivery of the Opinion of Advocate General Mengozzi on 4 October 2018.

21 By letter of 1 November 2018, Romania requested the Court to order the oral part of the procedure to be reopened.

22 Romania, challenging the reasoning of the Advocate General in points 51 to 55 of his Opinion, argues essentially that he put forward two arguments that had not been debated between the parties. First, the Advocate General included national minority regions in the category of cross-border regions referred to in the third paragraph of Article 174 TFEU. Second, he asserted that the reference to cross-border regions in Article 174 TFEU was such as to call in question the conclusion that that article must be applied in accordance with the political, administrative and institutional situation of the Member States, and hence with Article 4(2) TEU.

23 On this point, it follows from the second paragraph of Article 252 TFEU that it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement; the Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (see, to that effect, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C−584/10 P, C−593/10 P and C−595/10 P, EU:C:2013:518, paragraph 57, and of 6 October 2015, *Commission* v *Andersen*, C−303/13 P, EU:C:2015:647, paragraph 33).

24 Consequently, a party's disagreement with the Opinion cannot, irrespective of the questions examined in the Opinion, in itself constitute grounds for reopening the oral part of the procedure (judgments of 22 November 2012, *E.ON Energie* v *Commission*, C−89/11 P, EU:C:2012:738, paragraph 62, and of 17 September 2015, *Mory and Others* v *Commission*, C−33/14 P, EU:C:2015:609, paragraph 26).

25 That said, Article 83 of the Rules of Procedure allows the Court at any time, after hearing the Advocate General, to order the reopening of the oral part of the procedure, in particular where the case must be decided on the basis of an argument which has not been debated between the parties (judgment of 21 December 2016, *Council* v *Front Polisario*, C−104/16 P, EU:C:2016:973, paragraph 62).

26 However, that is not the position in the present case.

27 It must be observed that Romania proceeds in part from an incorrect reading of the Opinion. The Advocate General's reasoning in points 51 to 55 of the Opinion concerns the question whether national minority regions may be classified as regions within the meaning of the third paragraph of Article 174 TFEU, in particular regions suffering from severe and permanent demographic handicaps, and in that context whether the list of handicaps in that provision is indicative or exhaustive. That question relating in

particular to the nature of that list, which was raised by the appellants in their appeal, was fully debated between the parties.

28 Accordingly, the Court, after hearing the Advocate General, considers that there is no need to order the oral part of the procedure to be reopened.

The appeal

29 In support of their appeal, the appellants put forward five grounds of appeal. The first ground of appeal alleges infringement of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 92(1) of the Rules of Procedure of the General Court. The second ground alleges infringement of Article 11(4) TEU and Article 4(2)(b) of Regulation No 211/2011. The third ground alleges infringement of Articles 4(2) and 174 TFEU. The fourth ground alleges infringement of Articles 7 and 167 TFEU, Article 3(3) TEU, Article 22 of the Charter and the provisions of the Treaties relating to the prohibition of discrimination. The fifth ground alleges misinterpretation of the concept of 'abuse of rights' in connection with the decision on costs.

30 In addition, in their request for an oral hearing, the appellants, on the basis of Article 127 of the Rules of Procedure of the Court, sought leave to adduce three further grounds of appeal, alleging breach of the principle of good administration, partial non-registration of the proposed ECI at issue, and breach of the principle of equal treatment.

31 It is appropriate to begin by examining the first to third grounds of appeal together, in so far as the appellants thereby essentially criticise the General Court for erring, in particular in paragraphs 72 to 74, 81 and 85 to 87 of the judgment under appeal, in finding that Articles 174 to 178 TFEU relating to the cohesion policy of the European Union could not constitute a legal basis for the adoption of the proposed act.

Arguments of the parties

32 By their first ground of appeal, the appellants argue that the General Court infringed their procedural rights under Article 47 of the Charter and Article 92(1) of the Rules of Procedure of the General Court by finding, in paragraphs 81 and 85 of the judgment under appeal, that they had not shown either that the implementation of the EU cohesion policy, both by the European Union and by the Member States, endangered the specific characteristics of national minority regions, or that the specific ethnic, cultural, religious or linguistic characteristics of national minority regions could be regarded as a severe and permanent demographic handicap within the meaning of the third paragraph of Article 174 TFEU. The appellants submit that, before making such a finding, the General Court should have informed them that it was for them to provide proof of such facts.

33 Consequently, in their view, the General Court ruled on the basis of mere suppositions, as indeed follows from the wording of paragraph 87 of the judgment under appeal.

34 According to the Commission and the Slovak Republic, this ground of appeal must be rejected as unfounded.

35 By their second ground of appeal, the appellants, supported by Hungary, complain essentially that the General Court infringed Article 11(4) TEU and misunderstood the condition in Article 4(2)(b) of Regulation No 211/2011 by finding, in paragraphs 72 to 74 of the judgment under appeal, that Articles 174, 176, 177 and 178 TFEU could not constitute a legal basis for the adoption of the proposed act and that the proposed ECI did not therefore satisfy that condition.

36 They submit, to begin with, that the relevant provisions of the EU and FEU Treaties do not limit the right to propose an ECI to fields in which the European Union has exclusive competence. That right may also be

exercised in fields of shared competence, including, therefore, the field of cohesion policy. The proposed ECI at issue, submitted on the basis of Articles 174 to 178 TFEU, assumes a legislative procedure applicable to shared competence.

37 However, according to the appellants, in paragraphs 73 and 74 of the judgment under appeal the General Court summarised the additional information incorrectly and thus attributed to the proposed ECI at issue a content which could not be deduced from the documents submitted by the organisers. The organisers clearly expected from the proposed act, first, a definition of the concept of 'national minority region' and the creation of the legal and institutional framework of such a region and, second, as an annex, the identification by name of the existing national minority regions. On the other hand, they did not expect the proposed act to require the Member States to define that concept or draw up the list of regions. The fact that the organisers did not describe in detail the procedure to be followed for adopting the proposed act cannot affect the registration of the proposed ECI at issue, since Articles 174 to 178 TFEU allow the Commission to submit a proposal for such an act.

38 Next, the appellants and Hungary argue that, in any event, the General Court infringed Article 4(2)(b) of Regulation No 211/2011 by considering that the condition set out in that provision was not satisfied in the present case. It follows from a literal interpretation of that provision that the Commission can refuse to register a proposed ECI only if it 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. Apart from the fact that the Commission exceeded its discretion in connection with the registration of the proposed ECI, the proposed ECI at issue was clearly within the framework of the cohesion policy and its aim was to improve the existing regulatory framework in order to protect the objectives pursued and values recognised by the European Union. By confirming such an incorrect conclusion of the Commission, the General Court therefore erred in law.

39 Finally, the appellants criticise the General Court for not ruling in the judgment under appeal on the question of the interpretation of Article 4(2)(b) of Regulation No 211/2011 as regards the manifest character of the Commission's lack of powers. The General Court thus breached its obligation to state reasons, and the absence of reasoning in itself justifies setting aside the judgment under appeal.

40 According to the Commission, whose position is shared by Romania and the Slovak Republic, in so far as the appellants, by their second ground of appeal, call in question the General Court's findings on the subject matter of the proposed ECI at issue, which are findings of fact within the sole jurisdiction of the General Court, that ground of appeal must be rejected as inadmissible. In any case, that ground of appeal is either unfounded or inoperative. The General Court was entitled to consider, in paragraphs 66 to 90 of the judgment under appeal, that, in view of the proposed ECI at issue and in the context of an initial examination of the material available to the Commission, the Commission manifestly could not propose the adoption of an EU act corresponding to the proposed act on the basis of Articles 174, 176, 177 and 178 TFEU.

41 Romania stresses, in particular, that the European Union has no express competence on the basis of the Treaties to legislate in the field of the protection of persons belonging to national minorities. Furthermore, it cannot act in that field by diverting from their purpose the powers it possesses in other fields such as culture, education or regional policy. Finally, the European Union obviously cannot acquire new powers in the field of the protection of persons belonging to national minorities by means of an ECI.

42 The Slovak Republic adds, in particular, that, contrary to the appellants' submissions, Article 4(2)(b) of Regulation No 211/2011 cannot be interpreted, simply because of the occurrence of the adverb 'manifestly' in that provision, as meaning that the Commission must limit itself, at the stage of registration of a proposed ECI, to a prima facie examination. It was not necessary in the present case for the General Court to adopt a position in the judgment under appeal on the meaning of that term.

43 The Slovak Republic further observes that the appellants' criticism of the General Court's finding in paragraph 73 of the judgment under appeal that the proposed act would force the Member States to define

the concept of ‘national minority region’ and draw up a list of those regions derives from an error in the Hungarian language version of that paragraph.

44 The appellants reply in this respect that the Hungarian version of the judgment under appeal must in any event be given priority, as Hungarian was the language of the case.

45 By their third ground of appeal, the appellants, supported by Hungary, essentially criticise the General Court for misinterpreting Article 174 TFEU in conjunction with Article 4(2) TFEU, in that it appears to have attributed an exhaustive character to the list of ‘handicaps’ in the third paragraph of Article 174 TFEU.

46 In particular, it is clear from the Hungarian and English language versions of that provision that the list is indicative. Although it made no express statement on the point, it may be inferred from the General Court’s finding in paragraph 86 of the judgment under appeal that the Court considered that the list was exhaustive. In any event, if the General Court were nevertheless to be regarded as implicitly accepting, in paragraph 87 of the judgment under appeal, the possibility of the list being extended, it would then have to be concluded that, by that ambiguous reasoning, the General Court infringed its obligation to state reasons.

47 Moreover, by concluding, also in paragraph 87 of the judgment under appeal, that it had not been shown that the ethnic, cultural, religious or linguistic characteristics of national minority regions systematically constitute a handicap for the economic development of those regions in relation to the surrounding regions, the General Court also infringed the third paragraph of Article 174 TFEU, since numerous arguments and statistics produced in the proceedings before the General Court showed that national minority regions suffer from a severe and permanent demographic handicap.

48 The appellants further submit that Article 3(5) of Regulation No 1059/2003 also already allows certain specific features of national minority regions to be taken into account in the context of the cohesion policy.

49 Hungary, agreeing essentially with those arguments, observes in particular that even now legal acts exist in EU law which take account, in the context of cohesion policy, of the characteristics mentioned in the proposed ECI at issue.

50 The Commission, Romania and the Slovak Republic, adopting the reasoning of the General Court criticised by the third ground of appeal, submit that this ground of appeal should be rejected as unfounded.

Findings of the Court

51 It should be observed, as a preliminary point, as regards the process of registering a proposed ECI, that under Article 4 of Regulation No 211/2011 it is for the Commission to examine whether the proposal satisfies the conditions for registration laid down inter alia in Article 4(2)(b) of that regulation. In accordance with Article 4(1) and (2), 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 (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C−589/15 P, EU:C:2017:663, paragraph 45).

52 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 (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C−589/15 P, EU:C:2017:663, paragraph 47).

53 Moreover, 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, 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 ECIs (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C−589/15 P, EU:C:2017:663, paragraph 49).

54 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, 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 (judgment of 12 September 2017, *Anagnostakis* v *Commission*, C−589/15 P, EU:C:2017:663, paragraph 50).

55 It is thus in the light of those principles that it must be examined whether the General Court erred in law by considering, on the basis of the assessments in paragraphs 72 to 89 of the judgment under appeal, that the Commission had been entitled to take the view that neither Articles 174 to 178 TFEU nor any other provisions of that Treaty allowed the adoption of the proposed act, and that the Commission was therefore entitled to refuse to register the proposed ECI.

56 It must be observed to begin with that it appears from the proposed ECI at issue, as described in more detail inter alia in paragraphs 3 and 5 to 8 of the judgment under appeal, that its objective was to ensure that, by adopting the proposed act, the European Union should in the context of its cohesion policy devote particular attention to 'national minority regions', namely regions whose ethnic, cultural, religious or linguistic characteristics differ from those of the surrounding regions. More specifically, the European Union was asked to take measures, on the basis inter alia of Articles 174 to 178 TFEU, of support, preservation or development in favour of such regions, or at the very least to take better account of those regions, which in the organisers' opinion are often disadvantaged in relation to the surrounding regions.

57 As regards the examination carried out in the present case by the General Court in order to ascertain whether Articles 174 to 178 TFEU could serve as legal bases for those purposes, it must be observed, in the first place, that the General Court treated that question, in particular in Paragraphs 81, 85 and 87 of the judgment under appeal, referred to in the first ground of appeal, essentially as a matter of assessing the facts and evidence, laying the burden of proof in this respect on the appellants.

58 Thus, after stating in paragraph 80 of the judgment under appeal that the appellants' arguments in this connection were based on claims which were in no way substantiated, nor a fortiori evidenced, the General Court found in paragraph 81 of the judgment under appeal that the appellants had not provided evidence that the implementation of the EU cohesion policy, both by the European Union and by the Member States, endangered the specific characteristics of national minority regions.

59 The General Court then, in paragraph 85 of the judgment under appeal, found that the appellants had also not shown that the specific ethnic, cultural, religious or linguistic characteristics of national minority regions could be regarded as a severe and permanent demographic handicap within the meaning of the third paragraph of Article 174 TFEU.

60 By reasoning in that way, the General Court erred in law.

61 First, the question whether the measure proposed in the context of an ECI falls within 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, within the meaning of Article 4(2)(b) of Regulation No 211/2011, is prima facie not a question of fact or of the assessment of evidence subject as such to the rules on the burden of proof, but essentially a question of the interpretation and application of the relevant provisions of the Treaties.

62 Consequently, 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. It 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.

63 It follows that, by considering that the appellants were required to demonstrate that the conditions for the adoption of the proposed act on the basis of Articles 174, 176, 177 and 178 TFEU were met in the present case, the General Court, as the Advocate General observes in substance in points 35 to 38 and 57 to 61 of his Opinion, made an incorrect assessment of the condition of registration in Article 4(2)(b) of Regulation No 211/2011 and of the distribution of tasks between the organisers of an ECI and the Commission in the ensuing registration procedure.

64 Such a premiss cannot be consistent with the principles set out in paragraphs 53 and 54 above, according to which the Commission, on receipt of a proposed ECI, is required to interpret and apply that condition of registration in such a way as to make an ECI more accessible and is entitled to refuse registration of a proposed ECI only if it falls manifestly outside the framework of its powers (see, to that effect, judgment of 12 September 2017, *Anagnostakis* v *Commission*, C−589/15 P, EU:C:2017:663, paragraphs 49 and 50).

65 In the second place, in so far as the appellants criticise the General Court more specifically for adopting, in particular in paragraph 86 of the judgment under appeal, an incorrect interpretation of Article 174 TFEU in conjunction with Article 4(2)(c) TFEU, it must be stated that, in paragraphs 85 to 89 of the judgment under appeal, the General Court in substance examined the question whether regions as contemplated by the proposed ECI at issue, namely national minority regions, may in the light of their characteristics be regarded as regions within the meaning of Article 174 TFEU and so be the subject of measures within the framework of the EU cohesion policy adopted under that provision.

66 In that context, after examining more particularly whether those characteristics, ethnic, cultural, religious or linguistic, are covered by the concept of ‘severe and permanent demographic handicap’ within the meaning of the third paragraph of Article 174 TFEU, the General Court, in paragraph 89 of the judgment under appeal, answered that question in the negative.

67 The General Court found, in paragraph 86 of the judgment under appeal, that it could not be deduced from the wording of the third paragraph of Article 174 TFEU or from secondary law that that concept ‘could include the specific ethnic, cultural, religious or linguistic characteristics of national minority regions’.

68 Article 174 TFEU admittedly describes the objectives of the cohesion policy of the European Union in general terms and gives the Union an extensive discretion as to the actions it may take in the field of economic, social and territorial cohesion, taking into account a broad concept of the regions that may be concerned by those actions.

69 In particular, the list in the third paragraph of Article 174 TFEU of regions ‘which suffer from severe and permanent natural or demographic handicaps’ is, as shown by the use in that provision of the expressions ‘among the regions concerned’ and ‘such as’, indicative, not exhaustive.

70 Nevertheless, as the General Court stated in paragraphs 87 and 89 of the judgment under appeal, the specific ethnic, cultural, religious or linguistic characteristics of national minority regions cannot be regarded as systematically constituting a handicap for economic development in relation to the surrounding regions.

71 Consequently, by excluding, in paragraphs 85 to 89 of the judgment under appeal, the possibility that a national minority region may because of its specific ethnic, cultural, religious or linguistic characteristics systematically form part of the ‘regions which suffer from severe and permanent natural or demographic handicaps’ within the meaning of the third paragraph of Article 174 TFEU, the General Court correctly interpreted the concept of ‘regions concerned’ in that provision, and did not therefore err in law on this point.

72 It follows from all the above considerations that, by finding that, for the proposed ECI at issue to be registered, the appellants were required to demonstrate that the condition in Article 4(2)(b) of Regulation No 211/2011 was satisfied, the General Court erred in law.

73 The appeal must therefore be allowed and the judgment under appeal consequently set aside, without it being necessary to examine additionally the other arguments raised in support of the first to third grounds of appeal or to consider the other grounds of appeal. Similarly, there is no need to rule on the admissibility or the merits of the new grounds of appeal sought to be adduced by the appellants.

The dispute at first instance

74 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, where the Court sets aside the judgment of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

75 In the present case, the state of the proceedings permits the Court to give final judgment.

76 It follows in particular from the finding in paragraph 72 above that the appellants' plea in law alleging that the Commission infringed Article 4(2)(b) of Regulation No 211/2011 by refusing to register the proposed ECI at issue is well founded.

77 The decision at issue must therefore be annulled.

Costs

78 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

79 Under Article 138(1) of the Rules of Procedure, applicable to appeals by virtue of Article 184(1), the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

80 Since the appellants have applied for costs against the Commission and the Commission has been unsuccessful, it must be ordered to pay the costs relating to the proceedings at first instance and on appeal.

81 In accordance with Article 184(4) of the Rules of Procedure, the interveners are to bear their own costs.

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

1. **Sets aside the judgment of the General Court of the European Union of 10 May 2016, *Iszák and Dabis* v *Commission* (T−529/13, EU:T:2016:282);**

2. **Annuls Decision C(2013) 4975 final of the Commission of 25 July 2013 concerning the application for registration of the European citizens' initiative 'Cohesion policy for the equality of the regions and sustainability of the regional cultures';**

3. **Orders the European Commission to pay the costs relating to the proceedings at first instance and on appeal;**

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

[Signatures]

* Language of the case: Hungarian.