JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

9 November 2022 (*)

(Law governing the institutions – European citizens' initiative – 'Minority SafePack – one million signatures for diversity in Europe' – Commission communication setting out the reasons for not adopting the proposals for legal acts contained in the European citizens' initiative – Obligation to state reasons – Equal treatment – Principle of sound administration – Manifest error of assessment)

In Case T-158/21,

**Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe',** represented by T. Hieber, lawyer,

applicant,

supported by

**Hungary,** represented by M. Fehér and K. Szíjjártó, acting as Agents,

intervener,

v

**European Commission,** represented by I. Martínez del Peral, I. Rubene, E. Stamate and D. Drambozova, acting as Agents,

defendant,

supported by

**Hellenic Republic,** represented by T. Papadopoulou, acting as Agent,

and by

**Slovak Republic,** represented by E. Drugda, acting as Agent,

interveners,

THE GENERAL COURT (Eighth Chamber),

composed, at the time of the deliberations, of J. Svenningsen, President, C. Mac Eochaidh (Rapporteur) and J. Laitenberger, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

## Judgment

1 By its action under Article 263 TFEU, the applicant, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe', seeks annulment of Commission Communication C(2021) 171 final of 14 January 2021 on the European Citizens' Initiative entitled 'Minority SafePack – one million signatures for diversity in Europe' ('the contested communication').

### Background to the dispute

2 The applicant submitted a request for registration of the proposed European citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe' ('the proposed ECI') to the European Commission, pursuant to Article 11(4) TEU and 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).

3 The aim of the proposed ECI was to invite the European Union to adopt a series of acts in order to improve the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity within the European Union.

4 On 29 March 2017, the Commission adopted Decision (EU) 2017/652 on the proposed [ECI] (OJ 2017 L 92, p. 100). In Article 1(1) of that decision, the Commission declared the proposed ECI registered and, in Article 1(2), it listed the nine proposals in respect of which statements of support could be collected, namely:

– a recommendation of the Council of the European Union 'on the protection and promotion of cultural and linguistic diversity in the Union' (proposal 1);

– a decision or a regulation of the European Parliament and of the Council to adapt 'funding programmes so that they become accessible for small regional and minority language communities' (proposal 2);

– a decision or a regulation of the Parliament and of the Council to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages and will promote diversity at all levels and be financed mainly by the European Union (proposal 3);

– a regulation adapting the general rules applicable to the tasks, priority objectives and the organisation of the Structural Funds in such a way that account is taken of the protection of minorities and the promotion of cultural and linguistic diversity provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the European Union (proposal 4);

– a regulation of the Parliament and of the Council to change the regulation relating to the 'Horizon 2020' programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the European Union (proposal 5);

– the amendment of EU legislation in order to guarantee approximately equal treatment for stateless persons and citizens of the European Union (proposal 6);

– a regulation of the Parliament and of the Council in order to introduce a unitary copyright so that the whole European Union can be considered an internal market in the field of copyright (proposal 7);

– an amendment of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1), to ensure the freedom to provide services and the reception of audiovisual content in regions where national minorities reside (proposal 8);

– a Council regulation or decision for a block exemption of projects promoting national minorities and their culture from the procedure provided for in Article 108(2) TFEU (proposal 9).

5 On 1 January 2020, Regulation No 211/2011 was repealed and replaced by Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative (OJ 2019 L 130, p. 55, corrigendum OJ 2019 L 334, p. 168), as amended by Commission Delegated Regulation (EU) 2019/1673 of 23 July 2019 replacing Annex I to Regulation 2019/788 (OJ 2019 L 257, p. 1).

6 On 10 January 2020, having collected more than 1 300 000 statements of support within the prescribed period, including, according to the contested communication, 1 128 422 statements validated by the competent authorities of 11 Member States, the applicant submitted the ECI entitled 'Minority SafePack – one million signatures for diversity in Europe' ('the ECI') to the Commission.

7 On 5 February 2020, at a meeting with the Commission pursuant to Article 15(1) of Regulation 2019/788, the applicant orally presented the proposals of the ECI and submitted a document explaining the corresponding legislative proposals.

8 On 15 October 2020, the public hearing took place before the Parliament, pursuant to Article 14(2) of Regulation 2019/788. That hearing, initially scheduled for 23 March 2020, had been postponed owing to the COVID-19 pandemic. The applicant took part in that hearing by video conference.

9 On 17 December 2020, after a plenary debate on 14 December 2020, the Parliament adopted Resolution (2020)2846(RSP), P9_TA-PROV (2020)0370 on the ECI. In paragraph 20 of the resolution, the Parliament called on the Commission to act on that initiative by proposing legal acts based on the Treaties and on Regulation 2019/788, in accordance with the principles of subsidiarity and proportionality; pointed out that the ECI was calling for legislative proposals in nine distinct areas, and recalled that the ECI requested that each proposal be individually verified and assessed.

10 On 14 January 2021, the Commission adopted the contested communication in which it defined its position on the Parliament resolution and responded to the nine proposals of the ECI. After evaluating those proposals, it informed the applicant of the reasons for its refusal to take the action requested in the ECI.

**Forms of order sought**

11 The applicant, supported by Hungary, claims that the Court should:

– annul the contested communication in its entirety;

– in the alternative, annul the contested communication in part, provided that the conditions for partial annulment are met;

– order the Commission to pay the costs.

12 The Commission, supported by the Hellenic Republic and by the Slovak Republic, contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

13 The Slovak Republic also contended that the Court should order the applicant to pay the costs.

**Law**

14 In support of its action, the applicant relies on three pleas in law. The first plea alleges infringement of the obligation to state reasons, the second plea alleges an error of law and several manifest errors of assessment, and the third plea, raised in the reply, alleges breach of the principle of equal treatment.

***The first plea, alleging infringement of the obligation to state reasons***

15 In support of the first plea, the applicant, supported by Hungary, asserts, in essence, that the Commission failed to comply with the obligation to state reasons in adopting the contested communication. First, the Commission failed to take account of the oral and written explanations provided by the applicant in the written documents submitted to the Commission as well as during the meeting with the Commission and at the hearing before the Parliament. Secondly, certain reasons in the contested communication are limited to mere references to other EU acts. Accordingly, the statement of reasons given in the contested communication is inadequate, with the exception of the reasons relating to proposal 5.

16 The Commission, supported by the Hellenic Republic and by the Slovak Republic, disputes those arguments.

17 In that regard, in accordance with settled case-law, the purpose of the obligation, under Article 296 TFEU, to state the reasons for an individual decision is to provide the person concerned with sufficient information to determine whether the decision is well founded or whether it is vitiated by a defect which may make it possible for its validity to be contested, and to enable the EU judicature to review its lawfulness (see judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 142 and the case-law cited).

18 The obligation on the Commission to set out, in the communication adopted pursuant to Article 15(2) of Regulation 2019/788, its conclusions, both legal and political, on the ECI concerned, the action it intends to take, if any, in response to that ECI and its reasons for taking or not taking that action constitutes the specific expression of the obligation to state reasons laid down in that provision (see, to that effect and by analogy, judgments of 19 December 2019, *Puppinck and Others* v *Commission*, C-418/18 P, EU:C:2019:1113, paragraph 91, and of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 143).

19 It is also settled case-law that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose clearly, comprehensibly and unequivocally the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the court having jurisdiction 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 (see, to that effect, judgments of 19 December 2019, *Puppinck and Others* v *Commission*, C-418/18 P, EU:C:2019:1113, paragraphs 92 and 94 and the case-law cited, and of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 144 and the case-law cited).

20 In addition, it is important to note that fulfilment of the obligation to state reasons and the other formal and procedural constraints to which adoption of the act in question is subject is of even more fundamental importance where the institutions of the European Union have a broad discretion. Only in this way can the EU judicature verify whether the factual and legal elements upon which the exercise of the discretion depends were present (see judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 145 and the case-law cited).

21 In relation to that last point, it has previously been held that, in exercising its powers of legislative initiative, the Commission must be allowed broad discretion, in so far as, through that exercise, it is called upon, pursuant to Article 17(1) TEU, to promote the general interest of the European Union, carrying out, possibly, the difficult task of reconciling divergent interests. It follows that the Commission must be allowed broad discretion to decide whether or not to take action in response to an ECI, with the result that the communication at issue is subject to limited judicial review by the EU judicature, aimed at determining, inter alia, the adequacy of its statement of reasons (see, to that effect, judgments of 19 December 2019, *Puppinck and Others* v *Commission*, C-418/18 P, EU:C:2019:1113, paragraphs 88, 89 and 96, and of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraphs 169 and 170).

22 In the present case, the contested communication was adopted in response to the ECI, the aim of which, according to the applicant, was to call upon the European Union to improve the protection of persons belonging to national and linguistic minorities and to strengthen cultural and linguistic diversity within the European Union. To that end, the ECI contained nine proposals for the adoption of new acts or the amendment of existing acts of EU law. By means of the contested communication, the Commission, in essence, refused to take the action requested in the ECI.

23 In that regard, it is apparent from the contested communication that, in accordance with Article 15(2) of Regulation 2019/788, the Commission set out its legal and political conclusions which led it to find that it was not necessary to take any action in response to the ECI. More specifically, following an analysis of, inter alia, the legal framework defining its powers of action and those of the European Union in the relevant area, the Commission concluded that 'follow-up can be made in a number of areas'. However, taking into account the initiatives already undertaken by the EU institutions in the areas covered by the ECI and the Commission's monitoring of the implementation of those initiatives, the Commission considered that, at that stage, 'no additional legal act [was] necessary' in order to achieve the objectives pursued by the ECI. In so doing, the Commission set out, comprehensibly and sufficiently, the nature of the legal and political reasons for its refusal to take the action envisaged by the ECI.

24 Furthermore, the reasons given in the contested communication build on the considerations set out, in particular, in Decision 2017/652 and also follow on from the exchanges that took place between the applicant and the Commission on 5 February 2020. The statement of reasons for the contested communication is therefore reinforced by its context, which was well known to the applicant.

25 The Commission therefore set out the main reasons which led it, in the light of its broad discretion, to refuse to take each of the actions proposed by the ECI.

26 That conclusion is not invalidated by the fact that, in the contested communication, the Commission did not expressly adopt a position on each of the written and oral explanations given by the applicant with regard to all of the proposals. As stated in paragraph 19 above, the case-law does not require that the statement of reasons specify all the relevant facts and points of law, and the Commission cannot therefore be required to adopt a position on each of the written and oral explanations given with regard to all of the proposals contained in an ECI. Moreover, as stated in paragraph 25 above, the Commission set out the main reasons, both political and legal, which led it to refuse to take the action proposed by the ECI.

27 Similarly, it is necessary to reject the applicant's arguments that, on several occasions, the Commission failed to comply with the obligation to state reasons by confining itself to merely referring to other EU acts without explaining the relevance of those instruments to the ECI. Contrary to what the applicant claims,

the Commission does not merely refer, without explanation, to other EU acts, but rather states that those acts address certain aspects mentioned in the ECI.

28 In the light of all the foregoing considerations, the Court finds that the statement of reasons set out in the contested communication enables the applicant to determine whether the Commission's refusal to submit the proposals contained in the ECI is well founded or whether it is vitiated by defects. In addition, that statement of reasons also enables the EU judicature to review the legality of the contested communication. Accordingly, the contested communication is found to be sufficiently reasoned.

29 That conclusion is without prejudice to any errors of law or of assessment which the Commission may have made. The obligation to state reasons as an essential procedural requirement, which may be raised in a plea that inadequate or even no reasons are stated for a decision, must be distinguished from review of the merits of the reasons stated, which falls within the review of the act's substantive legality and requires the Court to determine whether the grounds on which the act is founded are vitiated by an error. The two reviews differ in nature and give rise to separate assessments by the Court (see judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraph 146 and the case-law cited). The merits of the reasons given in respect of proposals 1, 3, 6 and 8, which are the only proposals referred to by the applicant in the second plea, will therefore be examined in paragraphs 42 to 146 below.

30 Consequently, the first plea must be rejected as unfounded.

31 For the same reasons, Hungary's complaint, alleging breach of the principle of sound administration in that the Commission did not expressly respond to each of the matters put forward by the applicant, must also be rejected.

***The third plea, alleging breach of the principle of equal treatment***

32 In the third plea, raised for the first time in the reply, the applicant alleges, in essence, that the Commission breached the principle of equal treatment by failing to offer the applicant the same opportunities to discuss the ECI and to persuade the Commission of its concerns as those given to the organisers of the 'End the Cage Age' ECI, in respect of which the Commission announced its intention to submit a legislative proposal. As a result, the applicant was placed at a disadvantage as compared with the organisers of the 'End the Cage Age' ECI.

33 The applicant submits that, apart from the meeting of 5 February 2020 pursuant to Article 15(1) of Regulation 2019/788, the Commission never organised or proposed further meetings with the applicant in order to discuss the objectives pursued by the ECI. However, various documents disclosed to the applicant following a request for access to the minutes of all the meetings held between the Commission and the organisers of three ECIs, including, in particular, the 'End the Cage Age' ECI, made pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), after the application had been lodged in the present action, show that, in respect of the 'End the Cage Age' ECI, the Commission met the organisers of that initiative or communicated with them by telephone on at least four occasions in addition to the meeting provided for by Article 15(1) of Regulation 2019/788. Three of those additional exchanges took place before the 'End the Cage Age' ECI was submitted.

34 Furthermore, after the close of the written part of the procedure, the applicant lodged an 'additional written pleading' at the Court Registry, together with four annexes. In that 'additional written pleading', the applicant states, inter alia, that it is apparent from the Commission's response to a new request for access to documents, submitted on 4 October 2021, that representatives of cabinets of Members of the Commission had two meetings by videoconference with representatives of the organisers of the 'End the Cage Age' ECI in addition to the meetings referred to in paragraph 33 above, prior to the public hearing. The applicant submits that all ECIs should have the same opportunity to be brought to the attention of the Commission, since the objective of Article 9 TEU is to ensure a level playing field for all ECIs. In its observations on that 'additional written pleading', Hungary supports the applicant's arguments and adds

that the Commission's approach infringed not only the principle of equal treatment, but also the principle of a diligent and impartial administration.

35 The Commission disputes that line of argument, contending that the present plea is unfounded and that the 'additional written pleading' and the annexes thereto are inadmissible.

36 In the present case, without it being necessary to consider the admissibility of the third plea – in the light of Article 84 of the Rules of Procedure of the General Court – and of the evidence produced after the close of the written part of the procedure – in the light of Article 85(3) of those rules – it should be stated that the facts relied upon by the applicant are not capable of demonstrating a breach of the principle of equal treatment.

37 First, the applicant does not claim that the Commission did not fully comply with its obligations under Articles 14 and 15 of Regulation 2019/788 during the procedure preceding the adoption of the contested communication.

38 Secondly, apart from the fact that they are both registered ECIs having reached the required support threshold, the applicant has in no way explained how the ECI is comparable to the 'End the Cage Age' ECI, in particular in the light of their respective aims and the political or legal difficulties they present.

39 Subject to compliance with the requirements stemming from Articles 14 and 15 of Regulation 2019/788, the number of meetings organised by the Commission with the organisers of an ECI may vary, depending, inter alia, on the nature or complexity of the ECI, with the result that the Commission is not required to organise an identical number of meetings with the organisers of every ECI. Moreover, as stated in recital 28 of Regulation 2019/788, the Commission is required to examine ECIs in accordance with the principle of sound administration as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter').

40 In the light of the foregoing considerations, it must be concluded that, in its examination of the ECI which led to the contested communication, the Commission was entitled, without breaching the principle of equal treatment, to consider that it was sufficiently informed by the written and oral information available to it and to find that further meetings were not necessary.

41 For the same reasons, Hungary's complaint alleging breach of the principle of sound administration in that the Commission afforded greater attention to the 'End the Cage Age' ECI than to the ECI must also be rejected.

***The second plea, alleging an error of law and several manifest errors of assessment***

*The first part of the second plea, alleging an error of law and several manifest errors of assessment by the Commission as regards proposal 1*

42 As a preliminary point, the Court observes that the aim of proposal 1 is the adoption of a Council recommendation defining ways to protect and promote cultural and linguistic diversity, in particular for the protection of the use of regional or minority languages in the areas of public administration, public services, education, culture, in the judiciary, media, healthcare, commerce and consumer protection (including labelling).

43 Nevertheless, in the proposed ECI, the applicant refers only to the second indent of Article 165(4) and the second indent of Article 167(5) TFEU as legal bases for the recommendation envisaged by proposal 1 (point (a) of recital 4 of Decision 2017/652). However, it is clear that those legal bases cover only the areas of education and culture.

44 Furthermore, it follows from a combined reading of Article 2(5), Article 6(c) and (e), Article 165(1) and Article 167(2) TFEU that the Member States are to have broad competence in the areas of culture and

education (see, to that effect, judgment of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 74), the European Union having competence in those areas only 'to carry out actions to support, coordinate or supplement the actions of the Member States', without, however, that competence of the European Union replacing that of the Member States.

45 Consequently, it is in the light of the objective pursued by proposal 1 and the legal bases referred to by the applicant as regards that proposal that it is necessary to assess whether the contested communication is vitiated by an error of law and manifest errors of assessment in the present case.

– *The first complaint, alleging an error of law*

46 By the first complaint, the applicant, supported by Hungary, claims, in essence, that the Commission erred in law in finding that the European Union lacked competence to adopt recommendations on the promotion and protection of regional or minority languages.

47 The Commission, supported by the Hellenic Republic and by the Slovak Republic, disputes that line of argument.

48 In that regard, it should be pointed out that, in the evaluation of proposal 1, the Commission stated that the European Union had no 'legislative competence' in this instance, and not that it had no competence in this area. While, admittedly, that reason does not justify the refusal to adopt a proposal for a Council recommendation, which is not a legislative act, it should nevertheless be noted that that has no bearing on the merits of the contested communication in so far as it concerns proposal 1, since, as is apparent from point 3.1 of the contested communication, the Commission's refusal to submit to the Council a proposal for the adoption of a recommendation is based on the finding that the aim pursued by proposal 1 can be achieved by other existing instruments and by ongoing initiatives. That finding, which, according to the applicant, is vitiated by several manifest errors of assessment, will be examined in the context of the second complaint, in paragraphs 50 to 89 below.

49 Consequently, the first complaint must be rejected as ineffective.

– *The second complaint, alleging several manifest errors of assessment*

50 By a second complaint, the applicant, supported by Hungary, claims, in essence, that the Commission made several manifest errors of assessment in refusing to take action on proposal 1.

51 The Commission, supported by the Hellenic Republic and by the Slovak Republic, disputes that line of argument.

52 In that regard, where the EU institutions enjoy, as the Commission does in this case, a broad discretion and, in particular, when they are required to make choices that are, in particular, of a political nature and to undertake complex assessments, the judicial review – which, by its very nature, is limited – of the assessments that underpin the exercise of that discretion must consist in determining the absence of manifest errors (see, to that effect, judgment of 19 December 2019, *Puppinck and Others* v *Commission*, C-418/18 P, EU:C:2019:1113, paragraphs 95 and 96 and the case-law cited, and of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, EU:T:2018:210, paragraphs 169 and 170 and the case-law cited).

53 Furthermore, an error may be classified as manifest only where it can be readily detected. Therefore, in order to establish that the Commission committed a manifest error in assessing the facts such as to justify the annulment of the contested communication, the evidence, which it is for the applicant to adduce, must be sufficient to make the Commission's findings implausible. In other words, the plea alleging a manifest error of assessment must be rejected if, despite the evidence adduced by the applicant, the disputed assessment may still be accepted as justified and consistent (see, to that effect, judgment of 2 April 2019, *Fleig* v *EEAS*, T-492/17, EU:T:2019:211, paragraph 55 (not published) and the case-law cited).

54 In the first place, the applicant submits, in essence, that the existence of the European Charter for Regional or Minority Languages of the Council of Europe of 5 November 1992 (*European Treaty Series* – No 148; 'the Council of Europe Charter') cannot be relied upon, as the Commission did in the contested communication, to justify the Commission's refusal to act on proposal 1. First, the European Union is not a party to the Council of Europe Charter. Secondly, several EU Member States have not signed or ratified it.

55 In that regard, the Commission states in the contested communication that the European Union encourages its Member States to sign the Council of Europe Charter and that it regularly refers to that charter as the legal instrument defining the guidelines for the promotion and protection of regional or minority languages.

56 The fact that the European Union is not a party to the Council of Europe Charter does not establish that the Commission committed a manifest error of assessment, since the applicant does not dispute that the European Union regularly refers to that charter as the legal instrument defining the guidelines for the promotion and protection of regional and minority languages. Furthermore, the fact that certain Member States have not yet signed or ratified it is irrelevant to evaluate the European Union's action in this field.

57 Furthermore, Hungary's claim that certain Member States which have ratified the said charter restrict the protection conferred by that instrument to a limited number of languages, whereas the aim of proposal 1 is to support all minority languages in all Member States, is irrelevant.

58 The Commission cannot be required to take into consideration, in this instance, only those acts which concern all Member States and all regional or minority languages concerned by proposal 1, and there is no provision of Regulation 2019/788 to that effect. An act may thus legitimately be taken into consideration by the Commission even if it meets the objectives pursued by the relevant proposal only in part. In other words, it is immaterial that an act, taken in isolation, does not enable the objective pursued by proposal 1 to be fully achieved if all the acts mentioned in the contested communication are capable, collectively, of achieving that objective.

59 Lastly, the applicant is wrong to assert that the Commission cannot refuse to take action by referring to other instruments of international law and that the European Union is required to exercise the competences conferred on it by the Member States.

60 On that point, it is sufficient to point out that it is clear from the very wording of Article 11(4) TEU that an ECI is designed to 'invite' the Commission to submit an appropriate proposal for the purpose of implementing the Treaties, and not, as the applicant claims, to oblige that institution to take the action or actions envisaged by the ECI concerned (judgment of 19 December 2019, *Puppinck and Others* v *Commission*, C-418/18 P, EU:C:2019:1113, paragraph 57). Furthermore, the explanations given by the Commission in the contested communication attest to the effective exercise by the European Union of the limited competences conferred on it by the Treaties. By encouraging the Member States to sign the Council of Europe Charter and by referring to it, the European Union supports and supplements the actions of the Member States in that area.

61 In the second place, the applicant submits, in essence, that the measures taken by the Commission pursuant to Article 7 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted at the General Conference of UNESCO in Paris on 20 October 2005 and approved on behalf of the European Community by Council Decision 2006/515/EC of 18 May 2006 (OJ 2006 L 201, p. 15; 'the UNESCO Convention'), cannot be relied upon, as the Commission did in the contested communication, to justify the refusal to act on proposal 1. According to the applicant, there is no connection between the implementing measures referred to in the contested communication which focus on social inclusion, and the objective pursued by proposal 1, namely the protection and promotion of regional or minority languages.

62 That argument cannot succeed. As stated in the contested communication, Article 7 of the UNESCO Convention is intended to encourage individuals, 'including persons belonging to minorities', and social

groups to create, produce, disseminate, distribute and have access to their own cultural expressions. Furthermore, as the contested communication also makes clear, the UNESCO Convention recalls that linguistic diversity is a fundamental element of cultural diversity, and reaffirms the fundamental role that education plays in the protection and promotion of cultural expressions.

63 Contrary to the applicant's claim, the UNESCO Convention is therefore not manifestly unrelated to the objective pursued by proposal 1.

64 Similarly, the implementing measures adopted by the Commission on the basis of Article 7 of the UNESCO Convention, namely convening Member States and cultural sector dialogues on the themes of culture for social inclusion and intercultural dialogue, are not manifestly unrelated to the objectives pursued by proposal 1.

65 It is true that the focus of proposal 1 is not social inclusion. Nevertheless, and as the Commission argues, convening those dialogues is capable, in the light of the objectives pursued by the UNESCO Convention, of promoting and protecting regional or minority languages, even if only in the area of culture. The fact that the implementing measures in question promote social inclusion does not therefore mean that those measures cannot, at the same time, contribute to the promotion and protection of regional or minority languages.

66 Furthermore, contrary to the applicant's assertion in the reply, the adoption of those implementing measures attests to the effective exercise by the European Union of the limited competences conferred on it by the Treaties. By convening Member States and cultural sector dialogues pursuant to Article 7 of the UNESCO Convention, the European Union supports and supplements the actions of the Member States in that area.

67 In the third place, the applicant submits, in essence, that the Council's Work Plan for Culture 2019-2022 and the concrete measures which the multilingualism and translation expert group, set up under that work plan, is expected to recommend are unrelated to the objective pursued by proposal 1, since they make no reference to regional or minority languages. Consequently, that work plan and those concrete measures cannot be relied upon, as the Commission did in the contested communication, to justify the Commission's refusal to act on that proposal.

68 That argument must be rejected. Annex I to the Council conclusions on the Work Plan for Culture 2019-2022 (OJ 2018 C 460, p. 12) provides that the Work Plan for Culture is based on eight guiding principles. The third of those guiding principles expressly states that cultural and linguistic diversity is a key asset of the European Union and its protection and promotion is central to cultural policy at European level (Annex I, Chapter I, third indent). Similarly, the Council notes, in the description of the third priority, relating to 'an ecosystem supporting artists, cultural and creative professionals and European content', in that annex, that the cultural sector in Europe is characterised by, inter alia, cultural and linguistic diversity (Annex I, Chapter II, point C).

69 Furthermore, that same annex provides that members of the multilingualism and translation expert group will exchange best practices on supporting translation in the book and publishing sector, as well as in other cultural and creative sectors, and will recommend concrete measures under the 'Creative Europe' programme to promote linguistic diversity and the circulation of works (Annex I, Chapter IV, point C).

70 Thus, the work plan in question and the actions to be undertaken by the multilingualism and translation expert group are not manifestly unrelated to the objective pursued by proposal 1, namely the promotion and protection of regional or minority languages, even if only in the area of culture.

71 That conclusion is not invalidated by the fact that neither the work plan in question nor the description of the actions of the multilingualism and translation expert group make express reference to regional or minority languages. In that regard, it is sufficient to note that the Council conclusions on the Work Plan for Culture 2019-2022 do not expressly exclude regional or minority languages. Similarly, nowhere do those

Council conclusions state that the work plan in question and the actions of the multilingualism and translation expert group are limited to the official languages of the European Union.

72 In the fourth place, the applicant submits, in essence, that the Council Recommendation of 22 May 2018 on promoting common values, inclusive education and the European dimension of teaching (OJ 2018 C 195, p. 1) is unrelated to the objective pursued by proposal 1, since it does not propose concrete solutions for the protection and promotion of cultural and linguistic diversity. Consequently, that recommendation cannot be relied upon, as the Commission did in the contested communication, to justify the Commission's refusal to act on that proposal.

73 That argument must be rejected. It is expressly stated in that recommendation, the specific implementation of which falls primarily within the competence of the Member States, that it seeks, inter alia, to promote the common values on which the European Union is based, from an early age and at all levels of education. Respect for minority rights, laid down in Article 2 TEU, read in conjunction with the objective of respecting its rich cultural and linguistic diversity, referred to in the fourth subparagraph of Article 3(3) TEU and Article 165(1) TFEU, is among those values of the European Union (see, to that effect, judgments of 20 January 2022, *Romania* v *Commission*, C-899/19 P, EU:C:2022:41, paragraph 54, and of 24 September 2019, *Romania* v *Commission*, T-391/17, EU:T:2019:672, paragraph 56).

74 Accordingly, the Commission did not commit a manifest error of assessment in finding that the recommendation in question, in so far as it seeks to promote the European Union's values in the area of education, is capable of contributing, even if only in part, to the achievement of the objective pursued by proposal 1.

75 In the fifth place, the applicant submits, in essence, that the Council Recommendation of 22 May 2019 on a comprehensive approach to the teaching and learning of languages (OJ 2019 C 189, p. 15) is unrelated to the objective pursued by proposal 1, since it focuses solely on the learning of the official languages of the European Union with a view to strengthening economic competitiveness and labour mobility. Consequently, that recommendation cannot be relied upon, as the Commission did in the contested communication, to justify the Commission's refusal to act on that proposal.

76 That argument must be rejected. That recommendation, the purpose of which is to improve the teaching and learning of languages, is not expressly limited to the official languages of the European Union.

77 Similarly, contrary to the applicant's claim, the annex to the recommendation in question, relating to language awareness in schools, is not limited to the learning of the official languages of the European Union.

78 Those factors are sufficient to enable the conclusion to be reached that neither the recommendation in question nor the annex thereto is limited to the teaching and learning of the official languages of the European Union.

79 Lastly, the applicant is wrong to claim that, in any event, proposal 1 concerns not the teaching and learning of languages, but the possibility for persons to use their mother tongue, where that language is a regional or minority language, 'in all areas of life'.

80 As pointed out in paragraph 43 above, proposal 1 falls only within the areas of culture and education. The use of regional or minority languages in other 'areas of life' was therefore not part of the Commission's examination. Furthermore, and in any event, the applicant stated that the recommendation envisaged by proposal 1 should, inter alia, present and propose best solutions on how to 'halt the extinction' of regional or minority languages in the European Union. The applicant also stated in the proposed ECI that that recommendation should take into account the decline in linguistic diversity and 'language learning' in the European Union. The applicant itself therefore established a clear and direct link between proposal 1 and 'language learning'.

81 In the light of the foregoing considerations, the applicant has not shown that the Commission committed a manifest error of assessment in considering that the recommendation in question, in so far as it seeks to promote the teaching and learning of languages, is capable of contributing to the achievement of the objective pursued by proposal 1.

82 In the sixth place, the applicant submits, in essence, that the measures contained in the Communication from the Commission to the European Parliament and the Council headed 'A Union of Equality: EU Roma strategic framework for equality, inclusion and participation' (COM(2020) 620 final) and in the Proposal for a Council Recommendation on Roma equality, inclusion and participation (COM(2020) 621 final) do not address the objective pursued by proposal 1 and are limited in scope in that they target a specific group of persons, namely Roma. Consequently, neither that communication nor that proposal for a recommendation can be relied upon, as the Commission did in the contested communication, to justify the Commission's refusal to act on that proposal.

83 That argument must be rejected. Even though the communication and the proposal for a recommendation in question focus on Roma, that does not detract from their relevance in the present case. The applicant itself referred to that community of persons in the proposed ECI, stating, inter alia, that it was 'the largest and most excluded group of minorities in Europe'. The scope of the persons covered by that communication and that proposal for a recommendation is therefore in part the same as that of proposal 1. In any event, the Commission cannot be required to take into account, when examining an ECI, only those EU acts which concern all persons to whom that ECI relates, and there is no provision in Regulation 2019/788 to that effect. As stated in paragraph 58 above, it is immaterial that an act, taken in isolation, does not enable the objective pursued by proposal 1 to be fully achieved if all the acts mentioned in the contested communication are capable, collectively, of achieving that objective.

84 In addition, the applicant is wrong to claim that the communication and the proposal for a recommendation in question are unrelated to the objective pursued by proposal 1. In that regard, it is sufficient to point out that the applicant never disputed, either in the application or in the reply, the Commission's assertion, contained in the contested communication, that the proposal for a recommendation in question, inter alia, calls on 'Member States to include the Romani language … in school curricula and textbooks for both Roma and non-Roma students'. That assertion is, moreover, borne out by point 2(g) of that proposal for a recommendation, which calls on Member States to promote awareness of the Roma language, 'inter alia through action providing relevant training for teachers and designing appropriate school curricula'.

85 In the seventh place, the applicant submits, in essence, that the inclusion of minority-related issues in the Commission's annual reports on the application of the Charter does not have any added value for the purposes of proposal 1. According to the applicant, the applicability of the Charter is limited, since the use of languages falls primarily within the competence of the Member States. Consequently, the inclusion of minority-related issues in the annual reports on the application of the Charter cannot be relied upon, as the Commission did in the contested communication, to justify the Commission's refusal to act on that proposal.

86 On that point, while it is true that the use of languages falls primarily within the competence of the Member States, the European Union is not, however, without competence in that regard in the areas of education and culture (see paragraph 44 above). Moreover, it is clear from paragraphs 54 to 84 above that the European Union has specifically exercised its competence in the areas covered by proposal 1, inter alia, by approving and implementing the UNESCO Convention, as indicated in paragraphs 64 to 66 above. As a result, it is not inconceivable that the Charter may apply to situations covered by proposal 1 and that, if necessary, the Commission may refer to those situations in its annual thematic reports.

87 Furthermore, the applicant's argument that including the issue of promoting regional and minority languages in the annual thematic reports does not contribute in any substantial way to the aim of proposal 1 must be rejected. The reasons in the contested communication for not acting on proposal 1 are not based exclusively on the inclusion of that issue in the annual thematic reports. As indicated in the contested

communication, and also by the applicant in paragraph 52 of the reply, the Commission based its refusal on a set of measures. Thus, as already pointed out in paragraphs 58 and 83 above, it is therefore irrelevant that those annual thematic reports, taken in isolation, may have less added value than the recommendation envisaged in proposal 1.

88 In the light of all the foregoing considerations, the applicant has not shown that the Commission committed manifest errors of assessment in considering, on the basis of the facts and law as they stood on the date of adoption of the contested communication and for the reasons set out in points 2.1 and 3.1 of that communication, that no additional legal act was necessary to achieve the objective pursued by proposal 1, since that objective was capable of being achieved by all the acts mentioned in the contested communication taken together. Accordingly, the Commission did not commit a manifest error of assessment in refusing to act on proposal 1.

89 Consequently, the second complaint must be rejected and, accordingly, the first part of the second plea must be rejected in its entirety.

*The second part of the second plea, alleging several manifest errors of assessment by the Commission as regards proposal 3*

90 In the second part of the second plea, the applicant, supported by Hungary, claims, in essence, that the Commission committed a manifest error of assessment in refusing to act on proposal 3, which concerned the creation of a centre for linguistic diversity in the field of regional and minority languages, financed by the European Union and responsible for strengthening awareness of the importance of regional and minority languages and for promoting diversity at all levels, and whose tasks would include making knowledge and expertise accessible for all relevant players in the field of such languages, giving priority, in particular, to the smallest and most vulnerable language communities in Europe. According to the applicant, the other measures preferred by the Commission in this respect – in particular the maintenance and development of its cooperation with the Council of Europe's European Centre for Modern Languages ('the ECML') – are not appropriate for achieving the objectives pursued by that proposal.

91 The Commission, supported by the Hellenic Republic and by the Slovak Republic, disputes that line of argument, contending that the second part of the second plea is unfounded.

92 As a preliminary point, the Court notes that proposal 3, as registered, invited the Commission to adopt a proposal for a decision or a regulation of the Parliament and of the Council, the subject matter of which was to create a centre for linguistic diversity that would strengthen awareness of the importance of regional and minority languages, promote diversity at all levels and be financed mainly by the European Union.

93 In points 2.3 and 3.3 of the contested communication, first, the Commission states that the European Union's efforts to raise awareness of the importance of linguistic diversity, including language learning, are focused on working in close connection with the Council of Europe whose action in this area is based on the Council of Europe Charter referred to in paragraph 54 above and on the ECML, which serves as a competence centre for language teaching and learning and supports teaching in the student's mother tongue, including as regards minority languages. The Commission explains that it supports the ECML and cooperates with it under specific common agreements aimed at improving the quality, efficiency and attractiveness of language education and developing testing and assessment of learning outcomes, thus progressively establishing a common basis for evaluation systems based on the Common European Framework of Reference for Languages ('the CEFR'). Secondly, the Commission states that it supports EU Member States with the implementation of the recommendation on a comprehensive approach to the teaching and learning of languages, referred to in paragraph 75 above. It takes the view, in essence, that it is effective and essential to maintain and develop cooperation through the ECML and to support the Member States with the implementation of that recommendation in order to ensure an adequate EU focus and avoid the risk of duplication of efforts and resources, and that no additional legal act is necessary.

94 In the first place, the applicant, supported in essence by Hungary, argues that the ECML is not suited to fulfilling the tasks and achieving the objectives pursued by a centre for linguistic diversity in the field of regional or minority languages. First, the competences of the ECML do not extend to those tasks and objectives, as demonstrated by the fact that its statutes make no reference to such languages or to the other tasks mentioned in proposal 3. Secondly, the ECML's activities do not cover the promotion of regional or minority languages, or the objectives pursued by proposal 3, as demonstrated by the fact that those languages are not explicitly mentioned in any of the projects under the ECML's 2020-2023 programme and that no reference is made in that programme's training and consultancy activities to any significant activities relating to the promotion of such languages. Furthermore, in accordance with the institutional architecture of the Council of Europe, it is the Council of Europe's secretariat which is responsible for promoting regional or minority languages, on the basis of the Council of Europe Charter referred to in paragraph 54 above. However, several countries which have refused to sign or ratify the Council of Europe Charter have joined the ECML agreement. Hungary states that the ECML and the Council of Europe department responsible for minority languages are distinct organisational units between which there is no link or cooperation.

95 That line of argument must be rejected.

96 First, the fact that there is no specific reference to regional and minority languages in the ECML's statutes does not mean that those languages are excluded from its tasks and objectives.

97 Secondly, as mentioned in point 2.3 of the contested communication and in the Commission's written pleadings, the ECML's tasks and strategic and operational objectives, described in Article 1 of its statutes, include the implementation of language policies, the promotion of innovative approaches to the learning and teaching of 'modern' languages, the practice of the learning and teaching of modern languages, the promotion of dialogue and exchange, the provision of support for research projects and the collection and dissemination of good practice in the field of modern language learning and teaching. There is nothing to indicate that those tasks and objectives are not capable of contributing, at least to a certain extent, to strengthening awareness of the importance of all the 'modern' languages of the countries concerned, including regional or minority languages, and to promoting diversity, even if only linguistic and cultural, these objectives being those pursued by proposal 3, as registered.

98 Thirdly, as regards the ECML's activities, it is apparent from the material before the Court that the ECML's 2020-2023 programme mentions, inter alia, a project entitled 'Enhancing language education in cross-border vocational education', the aim of which recalls the particularly important role played by the promotion of language learning in cross-border regions. That project does not appear manifestly unrelated to the achievement of the objectives pursued by proposal 3 of strengthening awareness of the importance of multilingualism, in particular as regards regional or minority languages, and of promoting diversity, particularly in educational and vocational areas.

99 In addition, as regards the ECML's training and consultancy activities, it is apparent from the material in the file that that centre offers training entitled 'Plurilingual and intercultural approaches' concerning the 'framework of reference for pluralistic approaches', the scope of which covers languages frequently taught and minority languages. Similarly, it offers training entitled 'Quality education in Romani for Europe (QualiRom)'. That training refers to the objective of an initiative called 'QualiRom', which consists, inter alia, in promoting the inclusion of the Romani language in education systems and in facilitating the integration of Roma children. It also refers to the 'QualiRom' teaching materials, which have been developed in six varieties of the Romani language, covering primary, secondary and tertiary levels, and which constitute the largest resource of its kind for the teaching and learning of the Romani language. Those factors are sufficient to demonstrate that, as indicated in point 2.3 of the contested communication, regional and minority languages form an integral part of the ECML's 2020-2023 programme.

100 It follows that the Commission did not commit a manifest error of assessment in finding, in essence, that the ECML's activities are capable of contributing to the achievement of the objectives pursued by proposal

3, as registered, of strengthening awareness of the importance of regional and minority languages and of promoting diversity at all levels.

101 Fourthly, the applicant and Hungary have not put forward any concrete evidence calling into question the existence of the close links, referred to in the contested communication and in the Commission's written pleadings, between the Council of Europe and the ECML.

102 In the second place, the applicant, supported in essence by Hungary, submits that the Commission does not have the possibility of influencing the ECML's activities or concluding cooperation agreements with it in the relevant areas of proposal 3, since the European Union is not a party to the agreement establishing that centre and the promotion of regional or minority languages does not fall within the ECML's competences. Furthermore, it states, in essence, that the 2020-2021 contribution agreement, referred to in the contested communication, shows that the promotion of regional or minority languages has not been of relevance for the Commission in its cooperation with the ECML, given that the workshop on 'holistic approaches to language learning, literacy and teaching including the language of schooling, foreign languages, regional and minority languages and home languages' and the webinar on 'the situation of regional and minority languages during the COVID-19 pandemic', referred to in that agreement, clearly do not constitute appropriate alternatives to the centre for linguistic diversity described in proposal 3. In addition, the cooperation between the Commission and the ECML is essentially aimed at establishing a common basis for national evaluation systems based on the CEFR. Lastly, the reference in the contested communication to the next cooperation agreement is irrelevant, since no negotiations are ongoing and hypothetical developments cannot be taken into account in assessing the legality of the contested communication.

103 That line of argument must be rejected.

104 First of all, as pointed out in paragraphs 96 and 97 above, the ECML's statutes contain no express limitation on the 'modern' languages covered by its tasks and objectives, and some of its activities expressly cover regional or minority languages. The Commission did not, therefore, commit a manifest error of assessment in considering that the tasks performed, the objectives pursued and the activities undertaken by the ECML are capable of contributing to the achievement of the objectives pursued by proposal 3, as registered, of strengthening awareness of the importance of, inter alia, regional or minority languages and of promoting diversity at various levels.

105 Next, contrary to the applicant's assertion, while it is true that the European Union is not a party to the 'enlarged partial agreement' of the Council of Europe establishing the ECML, the 2020-2021 contribution agreement, referred to in the contested communication, attests to the Commission's ability to influence the ECML's activities and conclude cooperation agreements in the areas relating to proposal 3. That contribution agreement also confirms, as indicated in the contested communication, that regional or minority languages are included in the range of activities in which the ECML participates.

106 It is apparent from the material before the Court that the 2020-2021 contribution agreement, which concerns action relating to 'Innovative Methodologies and Assessment in Language Learning', is part of a long-term cooperation, that is to say, of seven years' duration, between the Commission and the ECML and of jointly agreed areas of action. As stated by the Commission, the 'Supporting Multilingual Classrooms' initiative under the abovementioned action offers a series of modules addressing, inter alia, whole-school language-awareness and support for the languages of schooling using approaches that value learners' home languages, in particular as regards regional or minority languages. Furthermore, that action is intended to include not only the workshop and the webinar referred to by the applicant, but also a 'summer academy' and a series of think tanks the focus of which includes 'valuing learners' linguistic repertoires', the challenges facing, inter alia, regional or minority languages, the preparation of scientific studies and a colloquium.

107 Lastly, the considerations set out in paragraph 106 above support the conclusion that, contrary to the applicant's claim and as stated in the contested communication, the cooperation between the Commission

and the ECML is not limited to establishing a common basis for national evaluation systems based on the CEFR and the needs relating to linguistic diversity are taken into account in the context of that cooperation.

108 In the third place, the applicant – supported, in essence, by Hungary – claims that it was manifestly inappropriate for the Commission to refuse to act on proposal 3 by referring to an international agreement to which the European Union is not a party and which is not an integral part of the EU legal order.

109 That argument must be rejected. First, as noted in paragraph 60 above, there is no obligation on the Commission to take the actions proposed by a registered ECI which has received the required support. Secondly, as pointed out, in essence, by the Commission, both Article 165(3) and Article 167(3) TFEU, which constitute the legal bases of proposal 3, call on the European Union to foster cooperation inter alia with the competent international organisations in the areas of education and culture, and, in particular, with the Council of Europe. Therefore, the Commission did not commit a manifest error of assessment in the contested communication in considering, in essence, that maintaining and developing cooperation with another international organisation in areas corresponding to those which the applicant wished to assign to the centre for linguistic diversity, namely with the ECML, to which the majority of the Member States of the European Union have acceded and which is closely linked to the Council of Europe, is capable of contributing to the attainment of the objectives pursued by proposal 3, as registered, and of preventing the duplication of efforts and resources.

110 In the light of the foregoing considerations, the applicant has not shown that the Commission committed a manifest error of assessment vitiating the reasons set out in points 2.3 and 3.3 of the contested communication.

111 Consequently, the second part of the second plea must be rejected.

*The third part of the second plea, alleging several manifest errors of assessment by the Commission as regards proposal 6*

112 In the third part of the second plea, the applicant, supported by Hungary, submits, in essence, that the Commission was wrong not to act on proposal 6, the aim of which was to guarantee approximately equal treatment between stateless persons belonging to national minorities and EU citizens, by equating the situation of such stateless persons to that of migrants and EU citizens with a migrant background.

113 The Commission, supported by the Hellenic Republic and by the Slovak Republic, disputes that line of argument.

114 As a preliminary point, the Court notes that the aim of proposal 6 was to amend Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12), Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ 2004 L 375, p. 12), Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ 2005 L 289, p. 15), and Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ 2009 L 155, p. 17) in order to align the status of stateless persons with that of EU citizens by giving them easier access to long-term resident status and ensuring that they enjoy greater rights than those granted to third-country nationals.

115 The applicant acknowledged, however, that proposal 6 ‘focused in particular on Directive 2003/109/EC’. Furthermore, the applicant made no reference, either in the application or in the reply, to the other directives mentioned in paragraph 114 above.

116 In points 2.6 and 3.6 of the contested communication, the Commission took the view that it was not necessary to amend Directive 2003/109 in order to further approximate the rights of third-country nationals to the rights enjoyed by EU citizens. By contrast, it stated that other measures could be adopted, in the context of EU policy on the integration of migrants, to address the situation of stateless persons. In that regard, the Commission refers in particular to its communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled 'Action plan for Integration and Inclusion 2021-2027' (COM(2020) 758 final; 'the action plan').

117 However, the applicant disputes that the action plan applies to stateless persons belonging to national minorities. The action plan, it is argued, is aimed at migrants and EU citizens with a migrant background, but makes no reference to those stateless persons. Furthermore, the content of the action plan is incapable of responding to the needs of stateless persons belonging to national minorities. The action plan focuses on the integration and inclusion of migrants and EU citizens with migrant backgrounds, but fails to take into consideration the specific situation of those stateless persons. In contrast to persons who have recently arrived in the European Union from third countries, the stateless persons covered by proposal 6 belong to national minorities who have been living in the European Union for a long time and are part of the native population. Moreover, those stateless persons encounter problems related to the lack of official documents and arbitrary deprivation of nationality, which prevents them from participating in economic, social and political life in the Member State of their birth or in the host Member State. Thus, according to the applicant, the Commission committed a manifest error of assessment by equating the situation of stateless persons belonging to national minorities with that of migrants and EU citizens with migrant backgrounds, although their respective situations are different.

118 That argument must be rejected. It is true that the term 'stateless persons' is not expressly used in the action plan and that the action plan's scope 'covers both migrants and EU citizens with a migrant background'. However, those factors are not sufficient to find that those stateless persons are excluded from the scope of the action plan.

119 According to Article 67(2) TFEU, 'stateless persons shall be treated as third-country nationals' for the purposes of Title V relating to the area of freedom, security and justice.

120 Consequently, stateless persons belonging to national minorities are included within the scope of the action plan, since, first, that action plan applies to all third-country nationals who legally reside in the European Union and, secondly, stateless persons are to be treated as third-country nationals.

121 Furthermore, as the Commission states, the action plan does not benefit only migrants who are newly arrived in the European Union. It includes a number of initiatives focusing on long-term integration and social cohesion. In particular, the action plan seeks, inter alia, to improve the access of third-country nationals, and thus also stateless persons, to education, employment, healthcare and housing. Similarly, it seeks to counter isolation, segregation and discrimination. Lastly, it also aims to promote the participation of third-country nationals, and therefore also stateless persons, in consultative and decision-making processes at local, regional, national and European level.

122 It follows that the Commission did not commit a manifest error of assessment in considering that the action plan is capable of responding to situations of social exclusion and the difficulties in accessing healthcare, education and social assistance encountered by third-country nationals as well as stateless persons belonging to national minorities, regardless of the fact that those two categories of persons may be from different geographical, historical, personal, cultural and religious backgrounds.

123 Lastly, and in any event, in so far as the applicant's objective, as set out in the proposed ECI, is to obtain the 'extension of citizen-related rights to stateless persons and their families, who have been living in their country of origin for the whole of their lives', it should be borne in mind that the authors of the Treaties established an inseparable and exclusive link between possession of the nationality of a Member State and not only the acquisition, but also the retention, of the status of citizen of the Union. That being so, possession of the nationality of a Member State is an essential condition for a person to be able to acquire

and retain the status of citizen of the Union and to benefit fully from the rights attaching to that status. In those circumstances, rights connected with the status of citizen of the Union cannot be extended to persons who do not possess the nationality of a Member State (see, to that effect, judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraphs 48 and 57).

124 In the light of the foregoing considerations, the applicant has not shown that the Commission committed a manifest error of assessment in considering that the action plan is capable of taking account of the need for stateless persons to be better integrated in society via better employment, education and social opportunities.

125 Nor has the applicant shown that the Commission committed a manifest error of assessment in considering that it was not necessary to amend Directive 2003/109 in order to confer greater rights on stateless persons belonging to national minorities.

126 Consequently, the third part of the second plea must be rejected.

*The fourth part of the second plea, alleging several manifest errors of assessment by the Commission as regards proposal 8*

127 In the fourth part of the second plea, the applicant, supported by Hungary, claims, in essence, that the Commission committed a manifest error of assessment in refusing to act on proposal 8, the aim of which was to improve cross-border access for national minorities to audiovisual content from other Member States in which the same language is spoken. It states, in essence, that access to that content is important, since the number of persons belonging to national minorities in a given Member State is too small for the establishment, in that Member State, of media of their own. Moreover, such access contributes to the preservation and promotion of the different regional or minority languages and of linguistic and cultural diversity. According to the applicant, the measure favoured by the Commission in the present case, namely the application, without further revision, of Directive 2010/13, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (OJ 2018 L 303, p. 69), is not apt to achieve the objectives pursued by that proposal.

128 The Commission, supported by the Hellenic Republic and by the Slovak Republic, disputes that line of argument, contending that the fourth part of the second plea is unfounded.

129 As a preliminary point, the Court notes that the aim of proposal 8, as registered, was to amend Directive 2010/13 in order to ensure the freedom to provide services and the reception of audiovisual content in regions of the Member States where national minorities reside.

130 In points 2.8 and 3.8 of the contested communication, the Commission concludes that the existing legislative framework provides substantial support for the achievement of the applicant's objectives in relation to proposal 8 and that, since that is sufficient, no additional amendment of Directive 2010/13 is necessary. In that regard, first, the Commission states that Directive 2010/13 facilitates the cross-border circulation of audiovisual media services while ensuring that there are minimum harmonised rules of general public interest, that is to say, concerning, inter alia, the protection of minors, advertising and promotion of European works. That directive is based on the country of origin principle, with the result that Member States may not restrict audiovisual media services originating in another Member State if those services comply with the rules of Directive 2010/13 in the Member State of origin. It points out, however, that Directive 2010/13 does not cover copyright-related retransmission issues and that the cross-border availability of audiovisual content may be affected by reasons outside the scope of Directive 2010/13, such as intellectual property rights, availability of technical resources or business or financial considerations. Secondly, the Commission states that the revisions made to that directive by Directive 2018/1808 reinforced the promotion of European works and cultural diversity within the European Union. Now, in accordance with Article 13(1) of Directive 2010/13, providers of on-demand audiovisual media services ('VOD services') are to offer a minimum 30% share of European works in their catalogues and

are to give prominence to those works. Furthermore, the Commission states that the objective of promoting cultural diversity can be effectively achieved only if the 30% share of European works is secured in each of the national catalogues offered by multi-country providers of VOD services. That approach ensures that, in each Member State where the provider offers national catalogues, viewers have the required exposure to European works. That approach is also likely to incentivise the circulation and availability of European works across the European Union. Lastly, the Commission states that it will regularly monitor the application of those rules, on the basis of reports from Member States and an independent study.

131 In the first place, the applicant disputes that the 30% share of European works which suppliers of VOD services are required, under Article 13(1) of Directive 2010/13, to offer in their catalogues and give prominence to is capable of contributing to the achievement of the objective of proposal 8. Since that share does not include any requirements as to the origin or the language of the European works and since the definition of 'European works' in Article 1(1)(n) of that directive does not address this point, the 30% share could be met even if the provider of VOD services offered content from Member States other than neighbouring Member States, or if the provider only offered content produced in the majority language of the Member State concerned, without taking into account the national minorities living there. Moreover, providers of VOD services have no economic incentive to acquire rights to content which may be of interest to persons belonging to national minorities.

132 In that regard, it should be borne in mind that, at the time of the application for registration of the proposed ECI, proposal 8 envisaged an amendment to Directive 2010/13, as in force at the time, intended to ensure freedom to provide services and freedom of reception of audiovisual content (both analogue/digital broadcasting and on-demand services, terrestrial and satellite) in those regions where national minorities reside. That proposal was registered in similar terms (see paragraph 129 above).

133 However, as stated in the contested communication and without that point being contradicted by the applicant, Article 2(1) and Article 3(1) of Directive 2010/13 already facilitate the reception and retransmission of audiovisual media services throughout the European Union, including of audiovisual content from neighbouring Member States of a given Member State, in languages likely to be of interest to persons belonging to national minorities residing in the latter.

134 As the Commission states, in essence, in the contested communication and in its written pleadings, Directive 2010/13 gives expression, in the field of audiovisual media services, to the freedom to provide services guaranteed in Article 56 TFEU by introducing, as stated in recital 104 of that directive, 'an area without internal frontiers' for those services (judgment of 4 July 2019, *Baltic Media Alliance*, C-622/17, EU:C:2019:566, paragraph 65).

135 In accordance with the principle of the Member State of origin, enshrined in Article 2(1) of Directive 2010/13, audiovisual media service providers are, in principle, subject only to the rules and jurisdiction of the Member State in which they are established.

136 While complying with those rules, audiovisual media service providers are then free to distribute their services throughout the European Union, since, in accordance with Article 3(1) of Directive 2010/13, Member States are to ensure freedom of reception and not restrict retransmission on their territory of services from other Member States for reasons which fall within the fields coordinated by the directive.

137 It follows that the Commission did not commit a manifest error of assessment in concluding, in the contested communication, in essence, that the objective of proposal 8, as registered, namely to ensure the freedom to provide services and the reception of audiovisual content, had already been achieved throughout the European Union, and therefore also in regions of the European Union where national minorities reside.

138 Admittedly, certain factors, both intrinsic and unrelated to Directive 2010/13, may reduce the cross-border availability of audiovisual content, inter alia, the fact that that directive does not impose on media service

providers a retransmission obligation across frontiers and that its scope does not extend to intellectual property rights, in particular copyright, and business considerations. That said, the applicant has not put forward any specific evidence calling into question the Commission's assessment that the obligation on VOD service providers to offer at least a 30% share of European works in their catalogues and to give prominence to those works, provided for in Article 13(1) of Directive 2010/13 and referred to in the contested communication, is capable of contributing to improving cultural diversity and giving access to a wider cross-border range of audiovisual content, even in the absence of any more specific requirements as to the origin or language of the European works in question.

139 In the second place, the applicant disputes the relevance of the Commission's monitoring of the application of Directive 2010/13, as mentioned in the contested communication, on the ground that the appropriateness of the proposed measures can be assessed only in the light of the information available at the time of the adoption of the contested communication.

140 That line of argument must be rejected.

141 The monitoring of the application of Directive 2010/13 described in the contested communication reflects the obligations imposed on the Member States and on the Commission in accordance with Article 13(4) and (5) and Article 33 of that directive. In view of the use of the imperative in those provisions, the Commission was entitled, on the date of adoption of the contested communication, to refer to future obligations. That conclusion is all the more compelling since those obligations relate to the assessment of rules, existing on the date of adoption of the contested communication, on which the Commission relied in concluding that no amendment of Directive 2010/13 was necessary to achieve the objective pursued by proposal 8.

142 Furthermore, in accordance with Article 13(5) of Directive 2010/13, the report which the Commission is to submit to the Parliament and the Council, inter alia on the application of Article 13(1) of that directive, on the basis of the information provided by Member States and an independent study, is to take account, inter alia, of the objective of cultural diversity. Thus, the Commission did not commit a manifest error of assessment in finding that the monitoring of the application of that directive is capable of contributing to achieving one of the objectives pursued by proposal 8, as set out in the reply, namely to improve access to audiovisual content of various origins and languages.

143 Lastly, Hungary disputes that the existing legal framework is capable of achieving the objective pursued by proposal 8. First, the problem which proposal 8 is intended to address is the territorial restrictions on content of major importance to society – in particular, international sporting events – contained in licence agreements between rights holders and audiovisual media service providers. Those restrictions, which impede the online retransmission of sporting or other events of major importance to society, also disadvantage national or linguistic minorities. According to Hungary, an amendment to Article 14 of Directive 2010/13 is necessary. Secondly, as regards VOD services, the problem is not that there is not enough content in each language, but rather that access to certain content of major importance to society is impeded.

144 That line of argument must be rejected. First, as stated in paragraph 129 above, proposal 8, as registered, makes no mention of territorial restrictions on events of major importance to society. Secondly, as pointed out in paragraph 138 above, the scope of Directive 2010/13 does not extend to intellectual property rights.

145 In the light of the foregoing considerations, the applicant has not shown that the Commission committed a manifest error of assessment in considering, for the reasons set out in points 2.8 and 3.8 of the contested communication, that the existing rules of Directive 2010/13 are capable of providing substantial support for the achievement of the applicant's objectives and of incentivising the circulation and availability of European works across the European Union, with the result that no additional amendment of that directive was necessary as regards proposal 8.

146 Consequently, the fourth part of the second plea must be rejected and, accordingly, the second plea must be rejected in its entirety.

147 Since all the pleas in the action have been rejected, the action must be dismissed.

**Costs**

148 Under Article 134(1) of the Rules of Procedure, 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 applicant has been unsuccessful, it must be ordered to pay the Commission's costs, in accordance with the form of order sought by the Commission.

149 The Slovak Republic also contended that the applicant be ordered to pay the costs. However, under Article 138(1) of the Rules of Procedure, the Member States which have intervened in the proceedings are to bear their own costs. It follows that the Hellenic Republic, Hungary and the Slovak Republic must each bear their own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the Hellenic Republic, Hungary and the Slovak Republic to each bear their own costs.**

Svenningsen Mac Eochaidh Laitenberger

Delivered in open court in Luxembourg on 9 November 2022.

E. Coulon M. van der Woude

Registrar President

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* Language of the case: English.