

15 EUROPEAN MINORITIES WIN A BATTLE IN LUXEMBOURG THE JUDGMENT OF THE GENERAL COURT IN THE CASE MINORITY SAFEPAK EUROPEAN CITIZENS' INITIATIVE*

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Abstract

The Lisbon Treaty introduced the European Citizens' Initiative (ECI), a brand new tool of transnational participatory democracy aiming to bring Europe closer to the people. Five years after the first ECI was lodged, we have yet to see an ECI that would pass the full procedure and end up as a proposal for a legal act. The European Commission (hereinafter: Commission) refused to register almost one third of the initiatives lodged on the basis that they fall manifestly outside the framework of the Commission's powers to submit a proposal for a legal act. The organizers of the refused Minority SafePack ECI challenged the Commission's decision before the Court of Justice of the European Union. The General Court approved the claims of the organizers of an ECI for the first time in this case. The General Court's findings with regard to the Commission's duty to give proper reasoning with respect to the refusal of an ECI may be a small but important step in achieving the goals of the ECI.

In July 2013 the Citizens Committee¹ of the 'Minority SafePack – one million signatures for diversity in Europe' European Citizens' Initiative (MSPI) submitted its proposal to the European Commission. The aim of the proposal was to call upon the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union. The European Commission refused to register the initiative by its Decision C(2013) 5969 final of September 13, 2013 (hereinafter: the contested decision) on the grounds that it manifestly fell outside the powers of the Com-

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1 Consisting of: Hans Heinrich Hansen (Denmark), Kelemen Hunor (Romania), Karl Heinz Lambertz (Belgium), Jannewitske Annie De Vries (The Netherlands), Valentin Inzko (Austria), Alois Durnwalder (Italy) and Anke Spoorendonk (Germany).

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mission to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties of the European Union (hereinafter: Treaties).² As a result, the organizers could not even start collecting signatures for the MSPI. In November 2013, the decision of the Commission was brought before the General Court.³ The General Court with its judgment on February 3, 2017 approved the claims of the applicants and annulled the contested decision (hereinafter: Judgement).⁴ This was the first time the claims of the organizers of an ECI were approved by the Court of Justice of the European Union in relation to the rejection of the Commission's decision.

15.1 THE MINORITY SAFEPAK EUROPEAN CITIZENS' INITIATIVE (MSPI)

15.1.1 *The Aim and Subject Matter of the MSPI*

It follows from the required information that the objectives pursued by the MSPI consist of calling upon the European Union 'to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union' and that those acts 'shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support'.⁵ If we look at the required information of the proposed initiative it is clear that the proposal respects the terminological and legal scope of the European Union. Firstly, the initiative aims to improve the protection of persons belonging to national and linguistic minorities. The organizers adhere to the individualistic approach of minority protection reflected in Article 2 of the Treaty on the European Union (TEU) ('persons belonging to'). They focus on the rights of persons belonging to minorities as a core value of the European Union. At the same time, they clarify this goal with the personal scope of Article 21 of the Charter of Fundamental Rights of the European Union, namely, national and linguistic minorities.⁶ Secondly, the initiative focuses on strengthening the cultural and linguistic diversity in the Union described in Article 167 of the Treaty on the Functioning of the European Union (TFEU).

2 C(2013)5969 final. <https://www.fuen.org/fileadmin/user_upload/downloads/2_Rejection_COM.pdf>.

3 The Citizens' Committee for the Citizens' Initiative Minority SafePack – One Million Signatures for Diversity in Europe and Others (the "applicants") v. the Commission (the "defendant").

4 Judgment of the General Court on 3 February 2017 in the Case T-646/13, Minority SafePack – One Million Signatures for Diversity in Europe v. European Commission.

5 <<http://ec.europa.eu/citizens-initiative/public/initiatives/open/details/2017/000004/en?lg=en>>.

6 In fact, Art. 21 literally speaks only about national minorities, but as it prohibits discrimination based on any grounds, included language and membership of a national minority, we can say that the term "national or linguistic minority" does not exceed the scope of this article.

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The organizers included a more detailed annex⁷ to the MSPI as part of the required information (hereinafter: Annex)⁸ in accordance with the final paragraph of Annex II Regulation No 211/2011 (hereinafter: ECI Regulation).⁹ Accordingly, the aim of the proposal is to secure the adoption of a series of legal acts listed and described in Sections 2 to 7 of the Annex (Judgment, 2017: point 2). More specifically, the proposed ECI seeks the adoption of (Judgment, 2017: 25):

1. a recommendation by the Council 'on the protection and promotion of cultural and linguistic diversity in the Union';
2. a proposal for a decision or a regulation to adapt 'funding programmes so that they become accessible for small regional and minority language communities';
3. a proposal for a decision or a regulation to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages, and promote diversity at all levels and be financed mainly by the European Union;
4. a proposal for a regulation to adapt the common provisions relating to EU regional funds in such a way that the protection of minorities and the promotion of cultural and linguistic diversity are included therein as thematic objectives;
5. a proposal for a regulation to amend 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 EU;
6. a proposal for a directive, regulation or decision to strengthen the place of citizens belonging to a national minority within the EU, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament (EP);
7. proposals for effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of existing Council directives on the subject of equal treatment;
8. a proposal for the amendment of the directive on audiovisual media services, for the purpose of ensuring the freedom to provide services and the reception of audio-visual content in regions where national minorities reside; and

7 <https://www.fuen.org/fileadmin/user_upload/main-activities/MSPI/MSPI-Safepack-EN-mit-aufkleber_260215.pdf>.

8 In accordance with Annex II of the ECI Regulation, the required information, the "corpus" of the initiative, as the Commission refers to it, are the following: title (no more than 100 characters), description of the subject matter (no more than 200 characters), and the description of the objectives of the proposed citizens' initiative on which the Commission is invited to act (no more than 500 characters). The organizers of a proposed ECI also have the opportunity to 'provide more detailed information on the subject, objectives and background to the proposed citizens' initiative in an annex. They may also, if they wish, submit a draft legal act.'

9 Regulation (EU) No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the Citizens' Initiative (OJ 2011 L65, 1).

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9. a proposal for a regulation or a proposal for a decision with a view to the block exemption of projects promoting national minorities and their culture.

15.1.2 *National Minorities as a Legal and Political Term*

The organizers specified in the Annex that a:

‘national minority/ethnic group should be understood as a community, (i) that is resident in an area of a state territory or scattered around a state territory, (ii) that is of smaller number than the rest of the state population, (iii) the members of which are citizens of that state, (iv) the members of which have been resident in the area in question for generations, (v) that is distinguishable from the state’s other citizens by reason of their ethnic, linguistic or cultural characteristics, and who wish to preserve these characteristics. (Year)’

This explanation follows the definition used internally by Federal Union of European Nationalities (FUEN) in its charter since 2006.¹⁰ It is also very similar to the definition of Recommendation 1201/1993 of the Parliamentary Assembly of the Council of Europe.¹¹

At this point, it is worth elaborating on the coherence of this definition with the wording of the current international and European law documents. It is widely known that the term ‘national minority’ or simply ‘minority’ does not have any generally accepted definition enshrined in a legally-binding international or European law document. Some of the EU member states have precise legal definitions for their national minorities, while others have not provided such legally-binding concepts (Framework Convention, 1995: 1). Therefore, for several reasons, the definition of ‘national minorities’ was never a matter of European consensus.¹² Accordingly, European decision makers could not find a description of the term minority which would be acceptable for all EU member states. Notwithstanding the above, in the past few decades scholars and institutions have offered

10 <https://www.fuen.org/fileadmin/user_upload/downloads/Charter.pdf>.

11 ‘...the expression “national minority” refers to a group of persons in a state who: (a) reside on the territory of that state and are citizens thereof; (b) maintain longstanding, firm and lasting ties with that state; (c) display distinctive ethnic, cultural, religious or linguistic characteristics; (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; and (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.’

12 One of the reasons why there is no consensus in defining the concept of minority and establishing an effective system of protection in Europe is that member states are demographically varied and as such, the constitutional status of national or ethnic minorities living in the territory of a member state is mainly determined by its demographic position and historical aspects. See for more information: Balázs Vizi, ‘Protection without Definition – Notes on the Concept of “Minority Rights” in Europe’. *Minority Studies*. 15 (2013): 7-24.

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some well-described definitions. A prominent example is the previously mentioned definition proposed by the Parliamentary Assembly of the Council of Europe in 1993.¹³

15.2 THE JUDGMENT OF THE GENERAL COURT

Soon after the Commission had declined to register the initiative, the organizers decided to challenge it before the Court of Justice of the European Union. They filed an application at the General Court on November 25, 2013.¹⁴ The applicants sought for the General Court to annul the contested decision and order the Commission to pay the costs.

In support of the action, the applicants rely on two pleas in law. Firstly, the applicants stated that the contested decision infringed on essential procedural requirements, violating requirements laid down in Article 296(2) TFEU and Article 4(3)¹⁵ of Regulation No 211/2011 (hereinafter: ECI Regulation).¹⁶ Firstly, the applicants argued that the Commission's reasoning was incomprehensible, because the Commission in its reasoning: (i) failed to identify which among the eleven topics in its opinion fall outside the framework of its powers to submit a proposal for a legal act, although the Commission admitted that some of the acts requested in the Annex might be acceptable; (ii) the Commission further failed to state why those topics fall outside that framework; and (iii) the Commission did not state why the ECI Regulation does not confer a power to register at least a part or parts of a planned citizens' initiative. Secondly, the applicants alleged that the contested decision infringed on the provisions of the Treaties and the provision for the implementation of the Treaties, thereby amounting to a material infringement. They claim that Article 11 TEU, Article 24(1) TFEU and Article 4(2) and (3) of the ECI Regulation were violated. The applicants stated that none of the topics in relation to which the Commission was called upon to submit proposals lie manifestly 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. They add that, even if one of the topics were to fall

13 It does not have any binding effect on states, however, since the proposal was not approved by the Committee of Ministers of the Council of Europe.

14 By order of the President of the First Chamber of September 4, 2014, Hungary was granted leave to intervene in support of the form of order sought by the applicant, and the Slovak Republic and Romania were granted leave to intervene in support of the form of order sought by the Commission. On September 16, 2016 the hearing for the Minority SafePack Initiative took place at the General Court of the EU in Luxembourg. See FUEN Press Releases, September 16, 2016. <<https://www.fuen.org/news/single/article/european-minorities-optimistic-after-hearing-at-the-eu-court>>.

15 According to Art. 296 TFEU 'legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties'. Art. 4(3) of the ECI Regulation states that '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'.

16 Regulation (EU) No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the Citizens' Initiative (OJ 2011 L65, 1).

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outside that framework, the Commission should have registered the planned citizens' initiative with respect to the topics which, in its opinion, did not fall manifestly outside that framework.¹⁷ Thus, the applicants believe all the proposals are valid, therefore, the complete proposal should have been registered.

15.2.1 *The Commission's Obligation to Give Appropriate Reasoning upon Refusal of an ECI*

The applicants criticize the Commission for not fulfilling its duty to give appropriate reasoning regarding the refusal of the proposal. The Commission merely stated in the contested decision, without further specification, that some of the themes described in the Annex fell within the framework of its powers, to then conclude that the registration of the proposed ECI must be refused in its entirety, because the partial registration of a proposed ECI is not provided for in the ECI Regulation (Judgment, 2017: 9). Respect for the obligation to state reasons is, the applicants argue, especially important because the ECI is the tool of direct democracy and citizens' participation that should be accessible and easy to implement, and the organizers of ECI proposals are not legal professionals (Judgment, 2017: 9). Accordingly, the applicants argue that the Commission should have specified the proposals that, in its view, fell outside the framework of its powers, and also should have stated the reasons for which it came to that conclusion. Without a proper reasoning the organizers cannot identify which parts of the proposed ECI are well founded and they cannot draw conclusions in order to submit a new proposal. Furthermore, the applicants state that Commission's attitude induced the authors of the proposal to submit the 11 measures provided in it separately, which is contrary to the principle of procedural economy and does little to encourage participation by citizens and make the European Union more accessible (Judgment, 2017: 10).

The General Court recalls the settled case-law (*Anagnostakis* case, 2015),¹⁸ according to which the purpose of the obligation to state the reasons for an individual decision described by Article 296 TFEU is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which could make it possible for its validity to be contested, and to enable the Courts of the European Union to review its lawfulness (Judgment, 2017: 15). The General Court also concludes that the statement of reasons must be appropriate to the nature of the measure in question, in particular the content of the measure and the

17 <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=151054&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=281572>>.

18 Judgment of 30 September 2015, *Anagnostaki v. Commission*, T-450/12, at present under appeal, EU: T:2015:739, paras. 22 and 23.

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nature of the reasons given, and it must be assessed not only with respect to its wording but also its context (Judgment, 2017: 16).

The General Court traces the duty to give appropriate reasoning back to the right of citizens to submit a citizens' initiative (Article 24 TFEU) when concluding that the refusal to register the proposed ECI is an action that may impinge upon the very effectiveness of the right of citizens to submit a citizens' initiative. Consequently, such a decision must disclose clearly the grounds justifying the refusal (Judgment, 17). It concludes that a citizen who has submitted a proposed ECI must be placed in a position to be able to understand the reasons for which it was not registered by the Commission. According to the General Court, this follows from the very nature of the right of a citizen to submit a citizens' initiative, which is intended to reinforce citizenship of the Union and to enhance the democratic functioning of the European Union through the participation of citizens in its democratic life (Judgment, 2017: 18).

The Commission's obligation to give proper reasons is set forth under recital 20 of the ECI Regulation,¹⁹ which helps explain the reasons that led the Commission to its decision. From the appropriate reasoning, citizens can draw conclusions and launch a corrected proposal that is liable to pass the admissibility test of the Commission. The General Court conclusively states in its judgment that the rejection of a proposal for an ECI shall be comprehensible and interpretable without involving experts of EU law. This interpretation is consistent with the requirements of recital 2 of the ECI Regulation.²⁰ If the decision on rejecting a proposal for an ECI does not make it clear which part of the proposal is inadmissible and why, the organizers do not know where exactly there are differences in their legal opinions regarding the competences of the Commission. This could encourage the organizers to resubmit their proposals separately for the different topics. Consequently, such an approach of the Commission as applied in 2013 would not reduce the growing gap between the EU and its citizens, but by contrast, would exacerbate the democratic deficit of the EU. In its report the European Parliament also stresses that 'all further assessment of the instrument should be aimed at attaining maximum user-friendliness, given that it is a primary means of linking the citizens of Europe to the EU' (Report, 2015: 3).

Therefore, the judgment of the General Court is correct when concluding that without proper reasoning, the submission of a new, corrected proposal based on the opinion of the Commission about the limits of its competences would be hampered, thereby also violating the goals of the ECI. The General Court's declaration that a refusal to register a proposed ECI may influence the effectiveness of the right of citizens to submit a citizens'

19 Recital 20 of the ECI Regulation: '...the Commission should explain in a clear, comprehensible and detailed manner the reasons for its intended action, and should likewise give its reasons if it does not intend to take any action'.

20 Recital 2 of the ECI Regulation: '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.'

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initiative is also a progressive statement. Emphasizing the importance of the right to an ECI is the crucial point of the judgment, just like the General Court's argumentation when it traced the Commission's obligation to provide an appropriate reasoning to organizers back to the right of citizens to submit a citizens' initiative.

15.2.2 *The Possibility to Register Proposals Partially*

According to the applicants, the contested decision should have stated the reasons that led the Commission to arrive at the conclusion that the ECI Regulation did not permit it to register only part of a proposed ECI. Neither the text of the regulation nor the Treaties support such an interpretation of the Commission (Judgment, 2017: 12). Moreover, in Section 8 of the Annex the organizers note that they realize that

'differences of legal opinion can arise when interpreting the Treaties. The authors therefore expect each proposal to be verified on its own merits; if one of the proposals is deemed to be inadmissible, this should have no effect on the other proposals made.' (Annex, Year: 14)

Thus, the organizers requested that the Commission examine each of the 11 proposals individually and register the proposal partially, where appropriate. The organizers argue that the exercise of their rights by citizens, who are not specialized legal professionals, and the importance of the ECI as an instrument of direct democracy, impose an obligation on the Commission (Judgment, 2017: 12) to fully examine the ECI and allow the partial registration of the proposals. By contrast, the Commission argued that the conclusion cannot be called into question by the fact that its authors invited the Commission to examine whether the proposal was manifestly inadmissible with regard to each of the themes referred to in that Annex (Judgment, 2017: 13). The Commission states that the contested decision indicated clearly that a proposed ECI cannot be registered when part of it falls, and the Commission is not required to state reasons for the interpretation of Article 4(2)(b) of the ECI Regulation (Judgment, 2017: 14).

The General Court concludes in its judgment that in spite of the fact that it follows clearly from the contested decision that the Commission rejects the registration of the proposed ECI due to a non-fulfilment of the condition laid down in Article 4(2)(b) of the ECI Regulation, it must be held that its reasoning is manifestly inadequate in view of the case-law cited above, and the content of the Annex that listed specific legal acts in order to achieve the purpose of the proposal (Judgment, 2017: 22). The General Court states that it is clear from the contested decision that the Commission failed to identify in any way which of the 11 proposals for legal acts manifestly did not, in its view, fall within the framework of powers under which it is entitled to submit a proposal for a legal act of the

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European Union. The Commission also failed to provide any reasons in support of that assessment, notwithstanding the precise suggestions provided by the organizers on the proposed type of act as well as the respective legal bases and the content of those acts (Judgment, 2017: 27).

The General Court recalls the Commission's reasoning that parts of a proposed ECI cannot be registered, and thus the application had to be rejected in its entirety, whatever its content. According to the General Court, even assuming that this position is well founded, the organizers were not placed in a position to be able to identify those parts of the proposals which, in the Commission's view, fell outside the framework of its powers, or to reconstruct the reasons which led to that assessment. Consequently, the organizers could not challenge the merits of the assessment, just as the General Court is prevented from exercising its review of the legality of the Commission's assessment. Moreover, without a complete statement of reasons, the possible introduction of a new proposed ECI, taking into account the Commission's objections on the admissibility of certain proposals, would be seriously compromised, as would also be the achievement of the objectives, referred to in recital 2 of the ECI Regulation, i.e. encouraging participation by citizens in democratic life and rendering the European Union more accessible (Judgment, 2017: 28-29).

Although the Commission argues that the ECI Regulation does not permit the Commission to register only those parts of the proposal that fall inside the framework of its powers, the General Court rightly finds this conclusion to lack substance. It should be underlined that the ECI Regulation does not exclude the possibility of a partial registration; in fact, it does not even regulate this issue. Therefore, it cannot be stated that the ECI Regulation does not permit the partial registration of an ECI (Karatzia, 2015: 526). Accordingly, we must arrive at the conclusion that, without a written provision of the Treaties or the ECI Regulation on excluding it, partial registration is possible, and at least the parts falling inside the powers of the Commission should have been registered. Treating the proposal strictly as an indivisible package, and thus, rejecting the proposal in its entirety, including the parts that according to the Commission fall inside the framework of the EU, is a solicitous decision (Gordos, 2014: 144-145; Gordos, 2015: 88-89). Moreover, the European Parliament in its report invites the Commission 'to consider the possibility of registering only part of an initiative in the event that the entire ECI does not fall within the Commission's powers' and to

'give the organizers, at the time of registration, an indication as to which part they could register, recognising that dialogue and engagement with ECI organizers is essential throughout the process, and to inform Parliament of its decision concerning the registration of the ECI.' (Report, 2015:16)

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The Commission's interpretation of the provisions on the registration of an ECI is contrary to the interests of the citizens, violates the efficiency and enforcement of the ECI's goals (Organ, 2014: 432), and is in conflict with the settled case law and principles of interpretation developed by the Court of Justice of the European Union (CJEU). EU law does not expressly permit the partial annulment of legal acts either; however, according to the settled case law of the CJEU, partial annulment is possible where elements whose annulment are sought may be severed from the remainder of the decision.²¹ The General Court concluded several times that the requirement of severability is not satisfied, and thus, partial annulment is not permitted, when the partial annulment of an act would have the effect of altering its substance.²² Where the General Court consistently applies a principle, such as the core principle of partial annulment of legal acts, the latter, in analogy, has to prevail in other cases as well. Thus, if the partial annulment of legal acts is possible without an express provision of EU law to this end, the partial registration of the proposals for an ECI shall be possible too, where the proposal is severable.

The General Court finds in its judgment that the Commission's reasoning is manifestly inadequate in view of *Anagnostakis v. Commission* (*Anagnostakis* case, 2015: 25-26), but it left open the question of the partial registration of a proposed ECI. It was not examined in the article which of the proposed issues fall outside the scope of the Commission's powers to submit a proposal for an EU legal act. In the judgment, the General Court says that 'even assuming that the position expressed by the Commission on the substance, according to which a proposed ECI cannot, whatever its content, be registered if it is deemed in part inadmissible by that institution, is well founded', the organizers were not placed in a position to be able to identify the issues which, in the Commission's view, fall outside its powers to submit a proposal for a legal act. Therefore, the judgment does not provide a conclusion on the question whether is it even possible to register the proposed ECI partially.

21 See Judgment of the Court of 10 December 2002 in Case C-29/99, *Commission of the European Communities v. Council of the European Union*, 45-46.; Judgment of the Court of 30 September 2003 in Case C-239/01, *Federal Republic of Germany v. Commission of the European Communities*, 12; Judgment of the Court (Second Chamber) of 30 March 2006 in Case C-36/04, *Kingdom of Spain v. Council of the European Union*, 9; Judgment of the Court (Grand Chamber) of 18 March 2014 in Case C-427/12, *European Commission v. European Parliament and Council of the European Union*, 16; Judgment of the Court (Second Chamber) of 18 June 2015 in Case C-508/13, *Republic of Estonia v. European Parliament and Council of the European Union*, 11.

22 See Judgment of the Court of 31 March 1998 in Joined Cases C-68/94 and C-30/95, *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC) v. Commission of the European Communities*, 257; Judgment of the Court of 10 December 2002 in Case C-29/99, *Commission of the European Communities v. Council of the European Union*, 46.; Judgment of the Court (Grand Chamber) of 24 May 2005 in Case C-244/03, *French Republic v. European Parliament and Council of the European Union*, 13; Judgment of the Court (Second Chamber) of 29 March 2012 in Case C-504/09P, *European Commission v. Republic of Poland*, 98.

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15.2.3 *Taking into Account the Annex*

With regard to the importance of the Annex, the applicants claim that, contrary to the position expressed by the Commission, the information provided additionally has the same importance as the compulsory information (Judgment, 2017: 11). The Commission, however, argued that the subject matter of a proposal is fixed definitively in its body, thus, only the “corpus” can determine the content of the initiative, whereas the explanations given in the Annex are purely indicative and informative, and are thus incapable of expanding or limiting the subject matter (Judgment, 2017: 13).

The General Court recalled its judgment in the *Izsák and Dabis v. Commission* case and concluded that the information set out in Annex II to the ECI Regulation is not limited to the minimum information which must be provided under that annex. Since the organizers have a right to provide Annex, the Commission has to consider that information as any other information provided pursuant to that Annex, including the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case and, therefore, to state the reasons for its decision in the light of all of that information (Judgment, 2017: 32). The Commission’s decision on taking into account the Annex is truly controversial in the light of the *Izsák and Dabis v. Commission* case,²³ where the General Court concluded that the Annex must be taken into account by the Commission, without the Commission being entitled nor obliged to ask itself whether or not the taking into account of that information is in the organizers’ interests. Therefore, the General Court would contradict itself if it would agree with the Commission in this case (*Izsák and Dabis* case, 2016: 49, 50, 56-57).

15.2.4 *Falling Manifestly outside the Framework of the Commission’s Powers to Submit a Proposal for a Legal Act*

In light of the foregoing considerations, the General Court held that the contested decision manifestly fails to clarify elements to enable the applicant to ascertain the reasons for the refusal to register the proposed ECI with regard to the various information contained in that proposal and to react accordingly, and to enable the General Court to review the lawfulness of the refusal to register. Consequently, it concluded that the Commission has failed to comply with its obligation to state reasons by not indicating those measures which, among those set out in the Annex to the proposed ECI, did not fall within its competence, nor the reasons in support of that conclusion, and that, therefore, for that reason alone, the action must be upheld, without any need to examine the second plea (Judgment, 2017: 33-34).

²³ Judgment of the General Court of 10 May 2016 in Case T-529/13, *Balázs-Árpád Izsák and Attila Dabis v. European Commission*, ECLI:EU:T:2016:282 (at present under appeal).

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In this case, just as in the past few years, the Commission refused to set the issue of national minorities in its agenda (Crepaz, 2014). Nevertheless, the author is of the view that in the current case the proposal respected the framework of the Commission's powers. However, this cannot be certain, as the General Court refused to examine the second plea in law regarding the material mistake of the Commission, namely, the arguments of the applicants that none of the topics of the proposal lie manifestly outside the framework of the Commission's powers to submit a proposal for a Union legal act. The General Court concluded that since the Commission has failed to comply with its obligation to state reasons on the rejection of the proposed ECI, the General Court was not in the position to exercise its review of the legality of the Commission's decision (Judgment, 2017: 29). Accordingly, the General Court upheld the action, without examining the second plea, withdrawing itself from the duty to interpret the term 'falling manifestly outside the powers enabling the Commission to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties'.

There may be serious legal concerns regarding the contested decision both generally speaking and from the aspects of the current case. First of all, neither the ECI Regulation, nor the Treaties define what shall be meant by the term 'manifestly falling outside the framework of the Commission's powers'. In the Commission's interpretation, these are situations when 'there is no Treaty provision, which allows for a legal act to be adopted following a proposal from the Commission, which can serve as the legal basis for a Union act covering the subject matter of the proposed initiative' (ECAS, 2014: 3-4). Secondly, with respect to this specific case, it should be highlighted that the Commission in the contested decision informed the organizers that 'the in-depth examination of the provisions of the Treaties that you suggested and of all other possible legal bases' has led to its conclusion. We may ask the question: why was the in-depth examination necessary at all, if the initiative 'manifestly' fell outside the framework of the Commission's powers to submit a proposal for the adoption of a legal act?

In the *Costantini v. Commission* case²⁴ the interpretation of Article 4(2)(b) was a key argument. The applicants contend that, in the light of the regulation's objectives and spirit, the Commission cannot interpret and apply this condition overly strictly, because it would be contrary to the objective of the ECI mechanism, which is to increase the democratic participation of citizens. The applicants also argued that the Commission can only refuse a proposal if it manifestly falls outside the framework of the Commission's powers (*Costantini* case, 2016: 10). The Commission, on the contrary, argued that the condition set out in Article 4(2)(b) of the ECI Regulation must be examined at the registration stage, and this legal review must be full in order to prevent the procedure from progressing although it is clear that the Commission cannot propose the adoption of an act (*Costantini* case, 2016: 13). However, the General Court did not explain what

²⁴ Judgment of the General Court of 19 April 2016 in Case T-44/14, *Bruno Costantini v. European Commission*, ECLI:EU:T:2016:223.

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does 'manifestly' mean, therefore, we still cannot be sure what it actually means. The author is of the view that if the initiative falls manifestly outside the Commission's powers, with regard to the grammatical interpretation of the formula, the in-depth examination would be obsolete. Consequently, the proposal cannot manifestly fall outside the framework of the Commission's powers if such an examination was necessary to draw this conclusion.

15.3 COMMISSION REGISTERS THE MINORITY SAFEPAK ECI

As a result of the judgment the European Commission had to issue a new decision on the proposal. On March 29, 2017 the Commission decided to partially register the Minority SafePack ECI.²⁵ Accordingly, from April 3, 2017, the organizers have one year to collect the necessary one million statements of support, with respect to the registered 9 proposals, from at least seven different member states. As it was previously highlighted, the Commission made it clear in the contested decision that some of the proposed topics fall inside the framework of its powers, while others do not, since the ECI Regulation does allow for the registration of only parts of a proposed initiative, the registration of the ECI was not possible. However, the Commission in its new decision expressed that while 2 of the 11 acts manifestly fall outside the framework of the Commission's power to propose legislation,²⁶ 9 of them do not, and, as such, the Commission took the decision to register the ECI partially regarding these 9 topics.²⁷ Consequently, we may come to the conclusion that the Commission in this new decision accepted the possibility to register only parts of proposed ECIs; however, this is contrary to the previous statement put forward in the contested decision. This change of attitude is particularly interesting with regard to the fact that the General Court did not make any clear statement on the possibility of partial registration of an ECI. Nonetheless, the Commission stresses in its press release of March 29, 2017 that the 'decision to register the Initiative concerns only

²⁵ C(2017)2200 final.

²⁶ The Commission refused to register the adoption of a legal act for the purpose of strengthening the place of citizens belonging to a national minority within the EU, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of members of the European Parliament. Moreover, in the Commission's view a legal act cannot be adopted either as regards effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of the existing Council directives on the subject of equal treatment. See C(2017)2200final, recitals 7, 8.

²⁷ As Lóránt Vincze, president of FÜEN expounded: some of the proposed topics are highly important for the organizers and if the Commission rejects these proposals, even if it partially registers the proposal although some topics would be rejected by the Commission, the organizers will lodge a new initiative in line with the Commission's decision. Presentation of the president of the FÜEN in Budapest on February 10, 2017 at a conference organized by the Research Institute for the Hungarian Communities Abroad. <<https://www.fuen.org/dk/nyheder/single/article/fuen-president-lorant-vincze-spoke-about-the-minority-safepack-in-budapest/>>.

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the legal admissibility of the proposal', and has not analysed the substance at this stage. The Commission underlines that after the organizers successfully collected the necessary signatures, the 'Commission can decide either to follow the request or not, and in both instances would be required to explain its reasoning'.²⁸ Therefore, the Commission drew the attention of the organizers to the fact that it has no obligation to submit a proposal for a legal act, and it still can drop the initiative after the successful collection of the supportive signatures.

The organizers underlined that this decision 'is not only important for the minorities, but for all European citizens, since it makes it easier to register new citizens' initiatives', as a 'major hurdle has been removed now for everyone who wants to use the instrument'. They pointed out that as a result of the Minority SafePack Initiative the EU could adopt more than nine different EU legal, which is 'more than what has been achieved in regard to minority rights protection inside the EU since the signing of the Rome Treaty sixty years ago'.²⁹

15.4 CONCLUSION

The judgment is a win for the organizers and for European minorities as well.³⁰ It also has historical relevance since this was the first time that the organizers of an ECI successfully challenged the decision of the Commission rejecting the registration of the initiative, and their claims were upheld by the General Court. The judgment draws several important conclusions. The General Court emphasized, for instance, the importance of enforcement of the right of citizens to submit a citizens' initiative and the need for a clear, simple and user-friendly ECI. Reducing the gap between the citizens and the EU is one of the main goals of the ECI. An efficient tool of transnational participatory democracy, which should be strengthened through guaranteeing the right enshrined in Article 24 TFEU, may contribute to reaching this goal. The main conclusion of the judgment is the identification of the Commission's obligation to give appropriate reasoning in respect of the refusal of a proposal for an ECI, in order allow organizers to resubmit their proposal with due consideration to the reasons for refusal. This could be a progressive step in the enforcement of the efficient functioning of the ECI. At the same time, the General Court left open the question of partial registration, and, due to the lack of proper reasoning, the General Court could not review the legality of the Commission's assessment either. Thus, the

28 European Commission. 'Commission Registers "Minority Safepack" European Citizens' Initiative'. European Commission Press Release, Brussels, March 29, 2017. <www.europa.eu>.

29 FUEN. 'Green Light for the Minority SafePack Initiative'. FUEN Press Release, March 29, 2017. <www.fuen.org>.

30 FUEN. 'European Minorities win Minority SafePack Case against the European Commission'. FUEN Press Release, February 3, 2017. <<https://www.fuen.org/hu/hirek/single/article/european-minorities-win-minority-safepack-case-against-the-european-commission/>>.

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General Court left the term 'manifestly outside of the framework of the Commission's powers' uninterpreted. Unfortunately, the unclear meaning of this requirement seems to be a free pass for the Commission to reject ECIs in the admissibility test. Therefore, the judgment is relevant for its conclusion regarding procedural law, as it requires an appropriate reasoning from the Commission when it rejects the registration of an ECI in order to provide the organizers with the opportunity to resubmit their proposals. As such, the judgment is a step forward in promoting the efficient functioning of this agenda-setting tool and helps to fulfil its goals.

