Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 7 March 2017 [1]

Case C-589/15 P

Alexios Anagnostakis
v

European Commission

(Appeal — Citizens' initiative 'One million signatures for "a Europe of solidarity"' inviting the European Commission to submit a legislative proposal establishing the principle of the state of necessity — Application for registration — Rejection by the Commission — Obligation to state reasons — Article 122 TFEU — Article 136 TFEU)

I – Introduction

1. By the present appeal, Mr Alexios Anagnostakis asks the Court to set aside the judgment of the General Court of the European Union of 30 September 2015, *Anagnostakis* v *Commission* [2] ('the judgment under appeal'), by which the General Court dismissed his action for annulment against Commission Decision C(2012) 6289 final of 6 September 2012 rejecting the application for registration of the European citizens' initiative 'One million signatures for a Europe of solidarity' ('the contested decision').

2. This case gives the Court an opportunity for the first time to consider the legal regime associated with the citizens' initiative. Introduced by the Treaty of Lisbon and enshrined in Article 11(4) TEU, the citizens' right of initiative permits 'not less than one million citizens who are nationals of a significant number of Member States [to] take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties'. It is a fundamental instrument for European participatory democracy which can be difficult to put into practice. Whilst the idea is to give citizens an active role in the development of EU law, it must be ensured that this right of initiative is not subject to the satisfaction of procedural or substantive conditions which are too strict or too complex — and thus ultimately difficult to understand — for non-specialists in EU law; in addition, it must be borne in mind that the EU legal order is governed by the principle of conferral of powers and participatory democracy, which Article 11(4) TEU seeks to bring to life, can thus be exercised only within these limits.

1 Original language: French.

2 T-450/12, EU:T:2015:739.

3. In accordance with the requirements of Article 24(1) TFEU, Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative [3] clarified the conditions in which a European citizens' initiative (ECI) may be lodged. Recital 2 states that 'the procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible. They should strike a judicious balance between rights and obligations'. It is this balance that must be sought in the considerations set out below.

4. The ECI is defined as an 'initiative submitted to the Commission … inviting [it], within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties, which has received the support of at least one million eligible signatories coming from at least one quarter of all Member States'. [4] The procedure is as follows: before signatures are collected, the organisers — that is to say, — those from whom the proposed ECI originates — are required to apply for registration of the proposed initiative in the Commission's online register [5] by submitting certain information at that time. [6] The Commission has two months to examine the proposed initiative, allocate it a registration number and inform the organisers. Registration initiates the signature collection process. [7] Once all the conditions relating to collection have been fulfilled and verified, [8] the organisers may submit the ECI. [9] The Commission publishes it and receives the organisers. [10] In particular, it sets out, within three months, 'in a communication its legal and political conclusions on the ECI, the action it intends to take, if any, and its reasons for taking or not taking that action'. [11]

5. Registration, an essential formality preceding collection, is thus a necessary but not sufficient condition for the Commission to take positive and specific action in response to the proposed ECI. Article 4(2) of Regulation No 211/2011 sets out the conditions which the proposed ECI must fulfil in order to be registered by the Commission. Among those conditions, Article 4(2)(b) of the regulation requires that the proposed initiative 'does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties'.

6. That provision lies at the heart of the present appeal. Article 4(2)(b) of Regulation No 211/2011, on the basis of which the Commission may refuse to register a proposed ECI, is a genuine filter which can be used by the Commission. This condition should not be interpreted too broadly, in my view, as the European right of initiative, the importance of which I have already stressed, would become devoid of substance. [12] Whilst this will be a guiding principle in the entire analysis below, I must also point out that the role played by the Court in the appeal is limited and that its positions on different issues are greatly dependent on the arguments raised before it.

3 OJ 2011 L 65, p. 1

4 Article 2(1) of Regulation No 211/2011.

5 The registration form is available at http://ec.europa.eu/citizens-initiative/public/registration/.

6 This information is set out in Annex II to Regulation No 211/2011.

7 See Article 5 et seq. of Regulation No 211/2011.

8 See Articles 8 and 9 of Regulation No 211/2011.

9 Article 9 of Regulation No 211/2011.

10 See Article 10 of Regulation No 211/2011.

11 Article 10(1)(c) of Regulation No 211/2011.

12 It should be noted in this regard that failure to fulfil the condition laid down in Article 4(2)(b) of Regulation No 211/2011 is the ground for refusal most often used by the Commission; see Report from the Commission to the European Parliament and the Council — Report on the application of Regulation No 211/2011 (COM(2015) 145 final).

7. It must be stated in this regard that the present appeal perhaps does not offer all the necessary qualities to allow the Court to give the expected clarifications with a view to a better definition of the legal regime for the ECI since, after reading all the documents in the case, it is still difficult to establish a precise idea of what exactly the appellant expected from the European action which he wished to be initiated. [13]

II – Background to the dispute, procedure before the General Court and judgment under appeal

8. On 13 July 2012, the appellant submitted to the Commission a proposed ECI entitled 'One million signatures for a Europe of solidarity'. The objective of the proposed initiative was the establishment in EU law of the principle of 'the state of necessity, in accordance with which, when the financial and political existence of a Member State is threatened by the servicing of abhorrent debt, the refusal to repay that debt is necessary and justifiable'. [14] The proposed ECI referred to 'economic and monetary policy (Articles 119 to 144 TFEU)' as the legal basis for its adoption.

9. On 6 September 2012, after recalling the wording of Article 4(2) of Regulation No 211/2011 and examining the provisions of the FEU Treaty referred to in the ECI, in particular Article 136(1) TFEU, and 'all other possible legal bases', [15] the Commission refused to register the proposed ECI lodged by the appellant on the ground that it manifestly fell outside the scope of its powers to submit a proposal for the adoption of a legal act of the Union for the purpose of implementing the Treaties.

10. On 11 October 2012, the appellant brought an action for annulment of the contested decision at the General Court. The single plea in the action sought a declaration that the Commission had infringed Article 4(2)(b) of Regulation No 211/2011. The appellant claimed in this regard that his proposed ECI could give rise to a proposal by the Commission for the adoption of a legal act on the basis of Article 122(1), Article 122(2) and Article 136(1)(b) TFEU and rules of international law.

11. In the judgment under appeal, after raising of its own motion a plea relating to the obligation to state reasons for individual decisions, the General Court examined the different complaints put forward by the appellant as part of his single plea, before dismissing the action and ordering the appellant to pay the costs.

III – Procedure before the Court of Justice and forms of order sought

12. On 30 November 2015, the appellant brought an appeal against the judgment under appeal. In the form of order which he seeks, Mr Anagnostakis claims that the Court should grant the present appeal, set aside the judgment under appeal in its entirety, annul the contested decision, order the Commission to register his proposed ECI and any other measure required by law, and order the Commission to pay the costs. Mr Anagnostakis maintained his claims in his reply.

13. In its response, the Commission claims that the Court should dismiss the appeal as inadmissible in part and as unfounded in part and, in the alternative, dismiss the appeal as unfounded in its entirety and order the appellant to pay the costs. The Commission maintained its claims in its rejoinder.

14. The parties presented oral argument to the Court at the hearing which took place on 13 December 2016.

13 A reading of the case file suggests that the appellant 'clarified' his idea as proceedings were introduced before the European Union Courts. The application brought by the appellant before the General Court is very lacking, moreover, in terms of specific information showing what he intended to see established through this principle of the state of necessity.

14 See paragraph 3 of the judgment under appeal.

15 Paragraph 27 of the judgment under appeal, citing the contested decision.

IV – Legal analysis

15. Although it is built around four pleas in law, I would like to reorganise the appeal around two pleas. The first plea alleges an error in law in the assessment of whether the statement of reasons for the contested decision was adequate and the second alleges an error in law as to the review of whether the reasoning is well founded and in the application of Article 4(2)(b) of Regulation No 211/2011. The first complaint in this second plea alleges a failure to comply with Article 122 TFEU, the second complaint alleges a failure to comply with Article 136 TFEU and, lastly, the third complaint alleges a failure to comply with rules of international law.

A – The first plea, alleging an error in law in the assessment of whether the statement of reasons for the contested decision was adequate

1. The judgment under appeal

16. In paragraph 29 et seq. of the judgment under appeal, the General Court held that the Commission had complied with its obligation to state reasons, which, moreover, depends on the nature of the measure in question and on the context in which it was adopted. The General Court relied on the lack of clarity and precision in the proposed ECI in respect of the identification of a legal basis for the Commission's competence to submit a proposal for a legal act, in particular because the proposed initiative merely made a general reference to 26 articles of the Treaty. It was only in his action for annulment that the appellant identified Articles 122 and 136 TFEU more precisely as a legal basis for the Commission's competence. The General Court thus ruled that 'the Commission cannot, therefore, be criticised for failing to analyse in detail in the contested decision the various provisions of the FEU Treaty that were referred to in general fashion in the proposed ECI or for merely observing that those provisions were not relevant, whilst at the same time addressing the provision which appeared to it to be the least irrelevant and, moreover, setting out the reasons for which that particular provision could not serve as a legal basis'.[16] The General Court therefore concluded that the statement of reasons for the contested decision was adequate in the light of the context in which it was adopted, as the appellant was able to understand the reasons for the refusal to register his proposed ECI and the Courts of the European Union were able to review those reasons.

2. Summary of the arguments of the parties

17. The appellant asserts that neither the sole reference to Article 4(2)(b) of Regulation No 211/2011 contained in the contested decision nor the examination of Articles 119 to 144 TFEU to which that decision makes reference is sufficient to constitute the clear, detailed statement of reasons required where the manifest nature of the Commission's lack of competence is claimed. The manifest nature of the Commission's lack of competence cannot be justified by the context. On the contrary, the great complexity of the context in which the proposed ECI seeks to be introduced makes it necessary for the European Union Courts to require a detailed, specific statement of reasons for decisions refusing to register proposed ECIs. The contested decision contains only a paraphrase of Article 136(1) TFEU followed by a single generic reference to Articles 119 to 144 TFEU. The General Court completely disregarded this aspect of the case concerning the inadequacy of the statement of reasons. Furthermore, it erred in law by ruling that the statement of reasons for an act depends on the nature and on the context of the act, as Article 296 TFEU does not contain any reference to such context. The appellant also denies that the alleged lack of clarity and precision of the proposed ECI has any bearing. In any event, the context of economic and monetary union is complex and no case-law was available to guide citizens in their proposed initiatives in this area at the time when the proposed ECI

16 Paragraph 31 of the judgment under appeal.

was submitted. Different meanings and interpretations are given to the provisions on economic and monetary union. The appellant cites the examples of the European Financial Stability Facility and the European Financial Stabilisation Mechanism, both based on Article 122 TFEU. Simply reproducing provisions is not sufficient to constitute an adequate statement of reasons in the light of both Article 296 TFEU and Article 4(2)(b) of Regulation No 211/2011.

18. The Commission submits that the General Court did not err in law in its reasoning. In particular, it was entitled to rule that the contested decision was adequately reasoned both because it referred to Article 4(2)(b) of Regulation No 211/2011 and because it set out the reasons why Articles 119 to 144 TFEU, and more specifically Article 136(1) TFEU, cannot form the basis for the adoption of the principle of the state of necessity. The General Court correctly applied the settled case-law under which the statement of reasons must be assessed by reference to the nature and the context of the act. The Commission stresses in particular that the proposed ECI merely provided a list of provisions that were assumed to be relevant and that the appellant made no effort to identify in a more precise and reasoned manner a possible basis on which the Commission could act. The Commission further asserts that it was on its own initiative that in its contested decision it examined in greater detail Article 136(1) TFEU, which it deemed to be the least unlikely provision. The Commission argues that it cannot be expected to respond to a non-existent, hypothetical argument when it was technically possible for the appellant to give clarification and explanation. The lack of clarity and the complexity of the rules of EU law cannot be such as to call into question the finding that the Commission objectively and manifestly lacked competence to be able to act on the proposed ECI. Lastly, the appellant does not claim any error in the General Court's assessment of the adequacy of the statement of reasons contained in the contested decision, but criticises the proper foundation of the reasoning for that decision. Consequently, the arguments which he puts forward cannot be examined in the context of a ground of appeal concerning the General Court's assessment of the adequacy of the statement of reasons contained in the Commission decision. The Commission claims that this plea should be rejected as unfounded.

3. Analysis

19. The obligation to state reasons is enshrined in primary law by Article 296 TFEU and implemented, in the context of the ECI, by the second subparagraph of Article 4(3) of Regulation No 211/2011. [17]

20. According to settled case-law, the purpose of the obligation to state the reasons on which an act adversely affecting an individual is based, which is a corollary of the principle of respect for the rights of the defence, is, first, to provide the person concerned with sufficient information to make it possible to ascertain whether the act is well founded or whether it is vitiated by a defect which may permit its legality to be contested before the Courts of the European Union and, secondly, to enable those Courts to review the legality of that act. The statement of reasons required by Article 296 TFEU must be appropriate to the nature of the measure at issue and the context in which it was adopted. [18] The requirement that reasons be given must be assessed according to the circumstances of the case, [19] and in particular the content of the measure in question, the nature of the reasons relied on and the interest which addressees will have in obtaining explanations. It is not necessary for the reasoning to go into all of the relevant facts and points of law, [20] since the adequacy of a statement of reasons must

17 Under which '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'.

18 See, among many others, judgment of 8 September 2016, *Iranian Offshore Engineering & Construction* v *Council* (C-459/15 P, not published, EU:C:2016:646, paragraph 24).

19 See, inter alia, judgment of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission* (C-131/15 P, EU:C:2016:989, paragraph 47).

20 See, among many others, judgments of 18 June 2015, *Estonia* v *Parliament and Council* (C-508/13, EU:C:2015:403, paragraph 58); of 9 June 2016, *Pesce and Others* (C-78/16 and C-79/16, EU:C:2016:428, paragraph 88); of 8 September 2016, *Iranian Offshore Engineering & Construction* v *Council* (C-459/15 P, not published, EU:C:2016:646, paragraph 24); and of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission* (C-131/15 P, EU:C:2016:989, paragraph 47).

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. Thus, the reasons given for a measure are sufficient if that measure was adopted in a context which was known to that person and which enables him to understand the reasons why that measure was adopted.

21. This is well established case-law which has clarified the parameters of the obligation to state reasons. I note that these basic principles were reaffirmed by the General Court in the section of the judgment under appeal relating to the plea, raised of its own motion, concerning a possible infringement of that obligation. [21]

22. After making these general remarks, the General Court stressed the importance of complying with the obligation to state reasons for decisions refusing to register proposed ECIs, given that such decisions may 'impinge upon the very effectiveness of the right of Union citizens to submit a citizens' initiative'. [22] Consequently, the grounds must be 'clearly' [23] disclosed, according to the General Court. The intended reinforcement of the democratic functioning of the Union by the ECI mechanism is difficult to reconcile with an arbitrary exercise of the Commission's decision-making power in this regard.

23. The General Court went on to recall the content of the contested decision, then stated that the decision was based on Article 4(2)(b) of Regulation No 211/2011 and expressly mentioned that, according to the Commission, neither the provisions relating to the Union's economic and monetary policy mentioned in the proposed ECI [24] nor any other legal basis, including Article 136(1) TFEU, could constitute the appropriate legal basis for that proposed initiative. [25] The General Court also linked the statement of reasons as provided by the Commission in its decision refusing the initiative with the content of the proposed ECI. In doing so, it contextualised its assessment of the obligation to state reasons. It noted that some vagueness surrounded the proposed initiative, in particular because it merely referred to Articles 119 to 144 TFEU without any effort to provide explanation. [26]

24. I am convinced that the role conferred on the Commission by Regulation No 211/2011 in the registration process for proposed ECIs is a key role and that, in view of the rationale behind the ECI mechanism, it is important that, in its decisions refusing registration, that institution demonstrates a very explanatory approach, given that not all authors of such proposed initiatives are necessarily experienced specialists in EU law. However, I do not think it reasonable to impose on the Commission, as the appellant would wish, an obligation to state reasons such that it is required to explain the reasons why no provision of the Treaties can form the basis for Union action, at least where the initial lack of precision — which I have already underlined [27] and which has continued in the course of the appeal proceedings [28] — is attributable to the authors of the proposed ECI. This would amount to requiring that institution, contrary to the stipulations of case-law, to specify all the 'relevant' points of law, even those which might not have been envisaged by the authors of the proposed ECI and even though, at this stage of the analysis, the real question is only whether the addressee of the decision was able to understand the reasons for the rejection of his application. It is, in my view, perfectly clear from the contested decision that the Commission refused to register the proposed ECI because it considered that it manifestly fell outside its powers.

21 See paragraphs 21 to 34 of the judgment under appeal, in particular paragraphs 21 to 24 of that judgment.

22 Paragraph 25 of the judgment under appeal.

23 Paragraph 25 of the judgment under appeal.

24 Namely Articles 119 to 144 TFEU.

25 See paragraph 28 of the judgment under appeal.

26 See paragraph 31 of the judgment under appeal.

27 See point 7 of this Opinion.

28 See point 30 et seq. of this Opinion.

25. In these circumstances, the General Court did not err in law by concluding, in the circumstances of the case, that there was no infringement of the obligation to state reasons. It is not therefore correct to argue, as the appellant claims, that the aspect of the case concerning the adequacy of the statement of reasons was disregarded whereas the General Court endeavoured specifically to ascertain that the reasons put forward by the Commission in the contested decision were adequate for the appellant to be able to understand the reasons for the refusal and, if necessary, to apply to the European Union Courts to review its legality.

26. In addition, the appellant denies any causal link between the alleged lack of precision of the proposed ECI and the extent of the obligation to state reasons imposed on the Commission. Nevertheless, this vagueness is among the circumstances which must be taken into account by the Courts in assessing compliance with the obligation to state reasons, in view of its influence on the ability of the Commission properly to understand and to analyse the ins and outs of the proposed ECI so as to be able to determine a legal basis for its potential action.

27. Lastly, the review of compliance with the obligation to state reasons, which, in this case, seeks to determine whether the information provided by the Commission in the contested decision was sufficient to allow the appellant to understand the reasons which led that institution to refuse to register the proposed ECI, must be distinguished from the examination of whether the reasoning was well founded, which consists in reviewing the substantive legality of the contested decision,[29] that is to say, whether those reasons were valid.[30] It follows that the complaints and arguments disputing that the reasoning is well founded because, in view of the difficulties in interpreting the rules governing the Union's economic and monetary policy, the proposed ECI does not manifestly fall outside the Commission's powers are irrelevant in the context of a plea alleging a defective or inadequate statement of reasons. Even assuming that statement of reasons for the contested decision is based on an incorrect interpretation of the provisions of the Treaty mentioned in the proposed ECI, such an error does not constitute an infringement of the obligation to state reasons under Article 296 TFEU and the second subparagraph of Article 4(3) of Regulation No 211/2011. These complaints relating to a misinterpretation of the provisions of the Treaty which can form the basis for Union action with a view to the establishment of a principle of the state of necessity will therefore be examined in connection with the following plea.[31]

28. For all the above reasons, the first plea must be rejected as unfounded.

B – The second plea, alleging an error in law in respect of the review of whether the reasoning is well founded

29. According to the appellant, the General Court wrongly concluded that the condition laid down in Article 4(2)(b) of Regulation No 211/2011, namely that the proposed ECI does not manifestly fall outside the framework of the Commission's powers, was not fulfilled by misinterpreting Article 122 and Article 136(1)(b) TFEU and rules of international law.

29 See paragraph 33 of the judgment under appeal.

30 With regard to the distinction between the review of the obligation to state reasons and the review of whether the reasoning is well founded, see, in recent case-law, judgments of 29 September 2011, *Elf Aquitaine* v *Commission* (C-521/09 P, EU:C:2011:620, paragraph 146 and the case-law cited); of 14 September 2016, *Trafilerie Meridionali* v *Commission* (C-519/15 P, EU:C:2016:682, paragraph 40); and of 30 November 2016, *Commission* v *France and Orange* (C-486/15 P, EU:C:2016:912, paragraph 79).

31 See, by analogy, judgment of 8 September 2016, *Iranian Offshore Engineering & Construction* v *Council* (C-459/15 P, not published, EU:C:2016:646, paragraphs 30 to 32).

30. In determining whether the General Court correctly assessed whether the reasoning for the contested decision is well founded, regard should be had to the purpose of the proposed ECI, which, according to that proposed initiative, is to establish 'the principle of the state of necessity, in accordance with which, when the financial and political existence of a Member State is threatened by the servicing of abhorrent debt, the refusal to repay that debt is necessary and justifiable'. This description and the reference to Articles 119 to 144 TFEU were the only information available to the Commission when it decided on the application for registration of the proposed ECI.

31. It is further evident from the appeal that the proposed ECI relates only to the 'abhorrent' part of sovereign debt and does not therefore seek the full, unilateral cancellation of debt.[32] The establishment of the principle of the state of necessity should permit the *cancellation*,[33] that is to say, the non-repayment, of a State's abhorrent debt *vis-à-vis other Member States and also the Union*.[34] The mechanism would be triggered with the agreement of the Member States where servicing the debt threatens the economic and political situation of one of them.[35] The proposed initiative would not replace the monetary sovereignty of the Union or the budgetary and economic sovereignty of the Member States. Nor is it a financing mechanism.[36] The establishment of a principle of the state of necessity should merely permit, in a spirit of solidarity between Member States, *unilateral action* by the State encountering severe difficulties.[37] Further on, the appellant states that the adoption of such a principle would apply to all the Member States, not only those in the euro area, that it would not cover financial stability and that it would allow a timely response. Lastly, the possibility of invoking the state of necessity could be subject to conditions proposed by the Commission.[38] The initiative for declaring the state of necessity would lie with the Member State entitled to do so, subject to strict conditions.[39] The Union would then approve the declaration of the state of necessity and the Member State concerned would benefit from a *temporary suspension* of repayment of *its debts*.[40] Prior to this, the Union would have to approve the text before a Member State could benefit from such a mechanism.[41] The adoption of the principle of the state of necessity would cover only debt *of a Member State vis-à-vis the Union*.[42] Further on again, the appellant asserts that the adoption of a principle of the state of necessity would permit a Member State faced with severe difficulties to *suspend temporarily* repayment of *all* its debts in order to focus its economic policy on growth.[43] He also mentions 'debt remission'.[44]

1. The complaint alleging an error in law in the interpretation of Article 122 TFEU

(a) The judgment under appeal

32. In paragraphs 41 to 43 of the judgment under appeal, the General Court stated that the Court had held, in *Pringle*,[45] that Article 122(1) TFEU did not constitute an appropriate legal basis for possible financial assistance from the Union by way of the implementation of a funding mechanism for Member States in severe difficulties. The General Court goes on to state that measures based on that

32 Paragraph 4 of the appeal. Abhorrent debt is defined in paragraph 7 of the appeal.

33 The italicised items illustrate the contradictions in the explanations given by the appellant with regard to his proposed ECI.

34 See paragraphs 10, 12 and 13 of the appeal.

35 See paragraph 9 of the appeal.

36 See paragraph 40 of the appeal.

37 See paragraph 40 of the appeal.

38 See paragraph 46 of the appeal.

39 See paragraph 46 of the appeal.

40 See paragraph 47 of the appeal.

41 See paragraph 47 of the appeal.

42 See paragraph 48 of the appeal.

43 See paragraph 51 of the appeal.

44 See paragraph 51 of the appeal.

45 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

article must express solidarity and assistance between Member States and, for that reason, it cannot constitute an appropriate legal basis for the adoption in EU law of a principle of the state of necessity under which a Member State would be entitled unilaterally to decide not to repay all or part of its debt because of the difficulties with which it is confronted.

33. Furthermore, in paragraphs 47 to 50, the General Court noted that the Court had held, again in *Pringle*,[46] that Article 122(2) TFEU enabled the Union to grant ad hoc financial assistance to a Member State, subject to certain conditions, without, however, being able to justify the introduction into the legislation of a mechanism for the abandonment of debt, such as the appellant proposes, because such a mechanism would be general and permanent. The General Court also recalled that the subject matter of Article 122 TFEU is solely financial assistance granted by the Union and not that granted by the Member States. The adoption of a principle of the state of necessity would, according to the General Court, cover not only debts owed by the Member States to the Union, but also debts owed by the Member States to other natural or legal persons, both public and private, and that situation is clearly not addressed by Article 122 TFEU. The General Court concluded that the adoption of the principle of the state of necessity is clearly not a measure of financial assistance which the Council of the European Union is entitled to take on the basis of Article 122(2) TFEU.

(b) Summary of the arguments of the parties

34. The appellant puts forward, in essence, a series of four arguments.

35. First, it complains that the General Court interpreted Article 122 TFEU in isolation when that provision must be interpreted together with Articles 119 to 126 TFEU, with which it forms a 'whole'.

36. Second, it alleges that the General Court erred in law in the interpretation of Article 122(1) TFEU as that provision confers on the Commission a broad discretion for proposing to the Council the adoption of measures appropriate to the economic situation in response to severe difficulties, without any specific form for those proposed measures being prescribed. In addition, those measures should be adopted in a spirit of solidarity between Member States. Relying on the Court's case-law based on Article 103 EC, the appellant claims that proposed economic policy measures must be necessary in order to avoid jeopardising the objectives pursued by the Union. The fact that Article 122(2) TFEU expressly mentions financial assistance provided to a Member State in difficulty does not preclude recognition of the possibility for the Commission, by virtue of the wide power of initiative conferred on it by Article 122(1) TFEU, to propose measures in the form of financial assistance. The adoption of a principle of the state of necessity therefore constitutes an appropriate measure within the meaning of Article 122(1) TFEU. In any event, it is wrong to consider such adoption to be manifestly outside the framework of the Commission's powers.

37. Third, the appellant contests the General Court's finding that Article 122(1) TFEU cannot constitute an appropriate legal basis for the adoption of a principle of the state of necessity. The General Court misinterpreted the judgment in *Pringle*.[47] Unlike the European Stability Mechanism (ESM) to which that judgment related, the proposed ECI is not intended to replace Member States' monetary, budgetary or economic sovereignty or to implement a funding mechanism. The objectives of the proposed ECI are not comparable with those of the introduction of the ESM. The principles set out in the judgment in *Pringle*[48] are not therefore automatically applicable or even relevant to the present appeal. In addition, if, as the General Court held in paragraph 42 of the judgment under appeal, 'the spirit of solidarity between Member States that must inform the adoption by the Council of measures appropriate to the economic situation, within the meaning of Article 122(1) TFEU,

46 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

47 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

48 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

indicates that such measures must be founded on assistance between the Member States', the latter concept is not defined in that article. The applicant claims that the General Court was therefore wrong to rule that such assistance can only take the form of organised, structured rescue mechanisms and that the adoption of a principle of the state of necessity cannot embody one of the forms of financial assistance mentioned by that provision.

38. Fourth and last, the appellant reiterates his argument seeking to distinguish the ESM, on the one hand, from the establishment of the principle of the state of necessity, on the other. The appellant states on this occasion that the principle of the state of necessity would apply to all the Member States, not only those in the euro area, and it would not cover financial stability. It would merely allow a timely response to severe difficulties faced by a Member State. That State would be able to invoke the state of necessity, subject to any conditions to be specified by the Commission. The initiative would lie with the Member State in difficulty, but the Union would decide whether or not to grant the benefit of the state of necessity. It would be the Union that approved the declaration of the state of necessity. It would indeed be the Union which, in a spirit of solidarity, approved the declaration of a state of necessity so that the Member State in difficulty would be authorised temporarily to suspend its debt repayments. The General Court was therefore wrong to hold that the procedure is initiated by the Member States and not by the Union. It would also be the Union that approved, in a spirit of solidarity, the declaration of the state of necessity such that the Member State in difficulty was authorised to suspend temporarily its debt repayments. The General Court was also wrong to hold, in paragraph 49 of the judgment under appeal, that the objective of the proposed ECI clearly did not correspond to financial assistance within the meaning of Article 122(2) TFEU, when, according to the appellant, the adoption of that principle covers only the debt of a Member State vis-à-vis the Union. That aspect manifestly falls within the scope of Article 122(2) TFEU. As that provision served as the legal basis for the adoption of Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism,[49] the adoption of the principle of the state of necessity could be based on the same model. At worst, it would fall to the Commission to act on the proposed ECI only partially, limiting the suspension of repayment solely to the debt of a Member State vis-à-vis the Union. The appellant states that in the contested decision the Commission did not in any case justify its refusal on the ground of the scope of the principle of the state of necessity.

39. The Commission criticises the appeal for failing to explain the real nature of the error in the interpretation of Article 122 TFEU. The argument concerning a contextualised interpretation of Article 122 TFEU in conjunction with Articles 119 to 126 TFEU is new. The case-law on Article 103 EC is not relevant as it deals with only ad hoc financial assistance and not the introduction of a general mechanism. Furthermore, the Commission cannot see any error by the General Court in the judgment under appeal where it interpreted the judgment in *Pringle*.[50] The spirit of solidarity which drives Article 122(1) TFEU and which is stressed by the appellant has no connection with the notion of financial assistance and, according to the Commission, solidarity between Member States cannot take the form of a unilateral decision not to make repayments. The Commission also criticises the appellant's attempt to limit the scope of the proposed ECI solely to the part of the debt of a Member State vis-à-vis the Union when such a limitation had never been mentioned previously and the proposed ECI had previously related to servicing of debt 'in particular vis-à-vis the Member States'. In any event, even if the proposed ECI were deemed to be limited solely to the part of the debt held by the Union, the fact remains that the introduction of a principle of the state of necessity would still not come under the notion of financial assistance within the meaning of Article 122(2) TFEU. Lastly, it is not possible to draw a comparison with the mechanism introduced by Regulation No 407/2010. That regulation provided for financial assistance to be granted to a Member State by Council decision,

49 OJ 2010 L 118, p. 1.

50 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

whereas the proposed ECI seeks to establish a mechanism permitting a Member State to decide unilaterally to cancel its debt vis-à-vis the Union. The Commission reiterates that such a mechanism does not come under the notion of financial assistance. It claims that the plea should be rejected as inadmissible in part and unfounded in part.

(c) Analysis

40. I must observe once again that the appellant's arguments in connection with this second plea develop his position considerably compared with the submissions in his application to the General Court. The arguments concerning the Court's case-law based on Article 103 EC, Regulation No 407/2010 and the possibility for the Commission to act on the proposed ECI only partially seem to be new. Moreover, they did not lead to any position being taken by the General Court. It is the judgment of the General Court that is being reviewed by the Court in the appeal.

41. In any event, it follows, in essence, from Article 122(1) TFEU that the Council may decide, on a proposal from the Commission, in a spirit of solidarity between Member States upon 'the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy'. Article 122(2) TFEU provides that the Council, again on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to a Member State which is in difficulties 'caused by natural disasters or exceptional occurrences beyond its control'.

42. In my view, it is sufficient simply to recall the content of paragraphs 116 and 118 of the judgment in *Pringle*[51] to establish that Article 122 TFEU manifestly cannot serve as the legal basis for the establishment of a principle of the state of necessity. With regard to Article 122(1) TFEU, the Court ruled that that provision 'does not constitute an appropriate legal basis for any financial assistance from the Union to Member States who are experiencing, or are threatened by, severe financing problems'.[52] The introduction of a mechanism by which a Member State decided unilaterally not to repay its debt cannot therefore be classified under the appropriate measures implemented pursuant to Article 122(1) TFEU, a fortiori where those measures are supposed to be driven by a spirit of solidarity. In addition, such measures are necessarily ad hoc, whereas the proposed ECI, as is rightly noted by the General Court,[53] envisages the establishment of a general and permanent mechanism which would continue to be available to Member States if they were to encounter severe difficulties. Furthermore, even assuming that the establishment of a principle of the state of necessity constitutes a form of financial assistance covered by the notion of 'appropriate measures' for the purposes of Article 122(1) TFEU, the judgment in *Pringle*,[54] delivered by the Full Court, would seem to have clearly precluded recourse to that article in the case of a Member State experiencing financing problems.

43. The Court thus ruled, more generally, that the subject matter of Article 122 TFEU is solely financial assistance granted by the Union and not that granted by the Member States. As we are reduced to making assumptions, if the proposed ECI is to be interpreted as seeking to introduce a mechanism by which a Member State decides unilaterally not to repay its debt with regard to the Union,[55] this cannot be regarded as 'financial assistance' granted by the Union to the Member State concerned within the meaning of Article 122(2) TFEU. However, if the proposed initiative is to be

51 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

52 Judgment of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756, paragraph 116).

53 See paragraph 48 of the judgment under appeal.

54 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

55 See paragraphs 10, 12 and 13 of the appeal.

interpreted to the effect that abhorrent debt solely or also covers debt held by the Member States, the condition relating to the provision of such assistance 'by the Union' is not fulfilled either. In addition, the permanent nature of the mechanism is once again an obstacle to its establishment on the basis of Article 122(2) TFEU.

44. Lastly, the argument relating to the possibility that the Commission would have to act on a proposed ECI only partially is not, in principle, without interest. However, the judgment under appeal does not contain any argument in this regard which could be discussed before the Court in the appeal. In any event, it cannot call into question the General Court's conclusion, with which I concur, that the appellant's proposed ECI — perhaps above all on account of its intrinsically haphazard nature — manifestly could not give rise to the adoption of an act on the basis of Article 122 TFEU.

2. The complaint alleging an error in law in the interpretation of Article 136(1) TFEU

(a) The judgment under appeal

45. After recalling the wording of Article 136(1) TFEU, the General Court held, in paragraphs 57 to 60 of the judgment under appeal, that the adoption of a principle of the state of necessity, under which a Member State may unilaterally decide to write off its public debt, does not serve the objective of coordinating budgetary discipline or fall within the scope of the economic policy guidelines mentioned in that article which the Council is entitled to draw up in order to ensure the proper functioning of economic and monetary union. Citing the judgment in *Pringle*,[56] the General Court stated that the role of the Union in the area of economic policy is restricted to the adoption of coordinating measures and that the adoption of a legislative act authorising a Member State not to repay its debt goes beyond the scope of the notion of economic policy guidance within the meaning of Article 136(1) TFEU, as such an act would result in replacing the free will of contracting parties with a legislative mechanism for the unilateral writing-off of sovereign debt. The Commission was right, according to the General Court, to conclude that the appellant's proposed ECI clearly did not fall within the scope of Article 136(1) TFEU. The General Court further added that such refusal is not inconsistent with the solidarity clause contained in Article 222 TFEU, as that clause clearly does not relate to economic and monetary policy or economic circumstances of the Member States, even if in difficulty.

(b) Summary of the arguments of the parties

46. According to the appellant, Article 136 TFEU is a complex provision which, in the view of legal writers, must be seen as complementary to Articles 121 and 126 TFEU. Recognition of the principle of the state of necessity in EU law pursues the objective set out in Article 136(1) TFEU, which is the proper functioning of economic and monetary union. The General Court wrongly held that such recognition would establish a legislative mechanism for the unilateral writing-off of debt in so far as the principle of the state of necessity simply permits a Member State encountering severe financial difficulties temporarily to suspend payment of all its debts in order to focus its economic policy on growth by encouraging economic investment. The appellant further asserts that the first procedure for Greek debt consolidation was initiated on 21 July 2011 at a euro area summit during which a decision was taken to that effect. There is thus certainly a legal basis in EU law for the cancellation of sovereign debt. In addition, such cancellation would undoubtedly ensure the proper functioning of economic and monetary union, which is the objective pursued by Article 136(1) TFEU. That provision also authorises the Council to adopt measures to establish economic policy guidelines. A measure focusing on economic recovery and growth is fully consistent with the requirements of Article 121 TFEU. The Commission is therefore fully entitled to propose such measures to the Council, especially since

56 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

Article 352 TFEU entitles it to propose a measure necessary to attain one of the objectives of the Treaties, such as the stability of the euro area. That being the case, the General Court wrongly held that the proposed ECI manifestly falls outside the Commission's powers as it falls within the scope of Article 136(1) TFEU. It also follows from the appellant's argument that, in his view, a stability and financial assistance mechanism as authorised by Article 136(3) TFEU could, with the agreement of the Member States and where one of them is in a state of necessity, include suspension of repayment of its debt.

47. The Commission submits that the appellant puts forward a new argument in connection with this third plea to the effect that the introduction of a financial assistance mechanism in the form of non-payment of abhorrent debt may be proposed on the basis of Article 352 TFEU having regard to the wording of Article 136(1) TFEU. The part of the plea relating to Article 352 TFEU must therefore be declared inadmissible. In any event, the appellant has not explained how the adoption of an act as prescribed by the proposed ECI is necessary in order to attain the objective laid down in the Treaties relating to the stability of the euro area. In the alternative, the Commission invokes the judgment in *Pringle*,[57] in which the Court ruled that Article 136(1) TFEU creates no new legal basis for the Union to be able to undertake any action. The Commission also maintains that the argument concerning the decision taken at the meeting of euro area countries on 21 July 2011 relating to the restructuring of sovereign debt is new. In any event, such a decision was not taken on the basis of the Treaties. Furthermore, the General Court did not err in concluding that authorising a Member State unilaterally to decide not to repay its debt could not be classified as an economic policy guidance measure which the Council may adopt on the basis of the Treaties. Article 136(1) TFEU, under which it is possible to adopt only a necessarily non-binding economic policy guidance measure, cannot therefore serve as the basis for the proposed ECI. In the view of the Commission, this plea must be declared inadmissible in respect of Article 136(3) and Article 352 TFEU and as unfounded in respect of Article 136(1) TFEU.

48. In his reply, the appellant disputes that the arguments concerning Article 136(3) and Article 352 TFEU are new as they stem from the discussion initiated between the parties regarding the judgment in *Pringle*.[58] The decision of 21 July 2011 should be taken into account by the Court of its own motion as an event in the common experience and European political life. In any case, he requests the Court to modify its case-law on the inadmissibility of pleas and arguments newly introduced at the appeal stage. In its rejoinder, the Commission maintains its position.

(c) Analysis

49. Article 136(1) TFEU provides that 'in order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126 …, adopt measures specific to those Member States whose currency is the euro: (a) to strengthen the coordination and surveillance of their budgetary discipline; (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance'. Article 136(3) TFEU[59] provides that 'the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality'.

57 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

58 Judgment of 27 November 2012 (C-370/12, EU:C:2012:756).

59 Which was introduced by European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ 2011 L 91, p. 1) and entered into force on 1 May 2013.

50. First of all, I note a certain contradiction in that the appellant claims that Article 136 TFEU could constitute a possible connection between the proposed ECI and a power of the Commission when, according to certain passages of the appeal, the establishment of a principle of the state of necessity could apply to all the Member States, not only those in the euro area, and 'would not cover financial stability'. [60]

51. A problem is also raised by the fact that I cannot find any trace — either in the application to the General Court or in the judgment under appeal — of considerations relating to Article 352 TFEU or the decision of 21 July 2011. These arguments, raised for the first time at the appeal stage, are therefore inadmissible, it being understand that nothing leads me to think that the Court should, as the appellant requests, modify its case-law on this point. It should therefore be recalled that to allow a party to put forward for the first time before the Court of Justice an argument which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. [61]

52. Similarly, because the amendment of the Treaty giving rise to the insertion of Article 136(3) TFEU entered into force on 1 May 2013, it is not possible that the appellant envisaged that provision as a legal basis for his proposed ECI, which was lodged on 13 July 2012. The argument based on that provision is thus also inadmissible.

53. With regard to the alleged mischaracterisation by the General Court to the effect that the proposed ECI sought to establish a legislative mechanism for the unilateral writing-off of debt, I would reiterate that the words used in the appeal to describe the proposed ECI do not preclude such unilateralism. [62] Whilst I freely admit that the lack of precision of the proposed ECI might have prompted the General Court to make that assumption, it must be stated that it has not been denied at the appeal stage by the appellant. Even though the proposed ECI could give rise only to the adoption of a non-binding act, the Commission would not be entitled to refuse to register it or, subsequently, not to take any action on it for that reason alone. [63]

54. Even if reference is made to the lowest common denominator [64] of all the variants of the proposed ECI envisaged by the appellant — namely, the establishment of a principle in accordance with which, when the existence of a Member State is threatened by the servicing of abhorrent debt, the refusal to repay that debt is necessary and justifiable — it is undeniable that this is a measure which is not only very powerful symbolically, but also — and perhaps most of all — far removed from considerations of budgetary discipline. On the contrary, it is more a matter of managing the consequences of budgetary *indiscipline*. Like the General Court, [65] I therefore still cannot see the link which might be made, according to the appellant, between the principle of the state of necessity as I have just described it and 'the coordination and surveillance' of the budgetary discipline of the Member States. The establishment of such a principle also does not come under the notion of 'economic policy guidelines'. Guidelines are a more or less strong exhortation to follow a direction. The establishment of the principle of a state of

60 Paragraph 46 of the appeal.

61 See, inter alia, judgment of 21 September 2010, *Sweden and Others* v *API and Commission* (C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 126 and the case-law cited).

62 See point 31 of this Opinion and paragraph 40 of the appeal.

63 In the interests of clarity, I wish to point out that, contrary to what the Commission seems to claim, a proposed ECI does not necessarily have to be able to give rise to the adoption of a binding act of the Union to be eligible for registration. Article 11(4) TEU refers to a 'legal act of the Union … required for the purpose of implementing the Treaties' (see also Article 2(1) of Regulation No 211/2011). Article 288 TFEU lists the legal acts of the Union, which include recommendations and opinions.

64 That is to say, according to the proposed ECI.

65 See paragraph 57 of the judgment under appeal.

necessity goes further, not because the appellant envisaged only a 'binding' version of that principle,[66] but in so far as it is much more precise than mere guidelines and prescribes the introduction of a specific mechanism[67] and bearing in mind that EU law does not confer a power of life or death over the debts of the Member States.

55. Lastly, the appellant's claim that the non-payment of debt by a pressed Member State ensures the proper functioning of economic and monetary union and is thus consistent with the objective pursued by Article 136 TFEU seems a little premature. It is uncertain that the economic health of other Member States, and thus of economic and monetary union, is not affected if those Member States held that non-repaid debt.

56. Consequently, the General Court was entitled to rule that the Commission had validly concluded that the proposed initiative to establish the principle of the state of necessity as conceived by the appellant manifestly did not fall within the terms of Article 136(1) TFEU. The third plea must therefore be declared inadmissible in part and unfounded in part.

3. The complaint alleging an error in law in the interpretation of rules of international law

(a) The judgment under appeal

57. In paragraph 65 of the judgment under appeal, the General Court ruled that, even if the principle of the state of necessity, in accordance with which a Member State would be authorised not to repay its sovereign debt in exceptional circumstances, exists in international law, it would not suffice, in any event, as a basis for an ECI like that of the appellant since there is no conferral of powers to that effect in the Treaties.

(b) Summary of the arguments of the parties

58. The appellant challenges the General Court's finding that the adoption of a principle of the state of necessity in a legal act of the Union manifestly falls outside the framework of the Commission's powers. In addition, he alleges that the General Court failed to respond to his arguments seeking to show that that principle actually exists in international law. The principles of international law constitute directly integrated and applied sources of EU law. In these circumstances, the Commission is entitled, even if the Treaties are silent, to propose the application of such higher-ranking principles in an act of EU law.[68]

59. The Commission asserts that there was no reason for the General Court to rule on whether or not a principle of the state of necessity exists in international law, as no principle of international law may, in itself, serve as the legal basis for a Commission proposal. The Treaties alone can form the basis for EU legislative action in accordance with the principle of conferral of powers.

66 Which is disputed by the appellant, moreover. It cannot be ruled out entirely, however, in view of the suggested different variants of the proposed ECI.

67 Albeit still vague.

68 See paragraph 20 of the appeal.

(c) Analysis

60. At the outset, I note a certain contradiction in the argument put forward by the appellant, who initially interprets the judgment under appeal as 'implying indirectly but clearly that there exists a principle of international law'[69] like the state of necessity before subsequently criticising the General Court for failing to examine whether his arguments concerning the existence of that principle are well founded.[70]

61. In any event, Article 5 TEU provides that the limits of Union competences are governed by the principle of conferral[71] and, consequently, the Union is to act only within the limits of the competences conferred upon it by the Member States *in the Treaties* to attain the objectives set out *therein*, with the result that competences not conferred upon the Union *in the Treaties* remain with the Member States.[72] For the Union's institutions, this principle means that each of them must act within the limits of the powers conferred on it *by the Treaties*, and in conformity with the procedures, conditions and objectives set out in *them*.[73]

62. It is indeed the founding treaties on which the Union is built — and they alone — which are capable of forming the basis for the Commission's power to propose an act. It follows from the application of the principle of conferral of powers as defined above that that institution cannot derive any power from the existence in international law of a possible principle of the state of necessity. It is true that by using the expression 'even if' in paragraph 65 of the judgment under appeal, the General Court did not take a view on whether or not there exists a principle of the state of necessity in international law. However, for the reasons I have just mentioned, there was no reason for it to do so. Even if such a principle did exist in international law, the appellant's argument would have been manifestly ineffective in any event because, as I have just stated, the EU legal order is governed by the principle of conferral of powers and only the founding treaties of the Union may be the source of those powers. In other words, the proposed ECI must fall within the limit of the powers conferred on the Commission by primary law in order for the Commission to be able to act on it.

63. This complaint must therefore be rejected as unfounded. Consequently, the second plea must be rejected and the appeal in its entirety must be dismissed. If necessary, it is for the appellant to submit a new proposed ECI which, if better reasoned and more detailed and precise, might not then be rejected at the registration stage.

V – Costs

64. Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, which are applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission has applied for costs against the appellant and, in my view, the appellant must be unsuccessful, he should be ordered to pay the costs of the appeal.

69 Paragraph 20 of the appeal.

70 See paragraph 54 of the appeal.

71 Article 5(1) TEU. See also order of the President of the Court of 28 October 2010, *Bejan* (C-102/10, not published, EU:C:2010:654, paragraph 29), and order of 14 August 2012, *Commission* v *Council* (C-114/12, not published, EU:C:2012:365, paragraph 74).

72 Article 5(2) TEU.

73 Article 13(2) TEU.

VI – Conclusion

65. Having regard to all the foregoing considerations, I propose that the Court should:

– dismiss the appeal, and

– order Mr Alexios Anagnostakis to bear his own costs and to pay the costs incurred by the European Commission.