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LIST OF CASES

C-409/13

T-754/14

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Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 April 2015 *

(Action for annulment — Macro-financial assistance to third countries — Decision of the Commission to withdraw a proposal for a framework regulation — Articles 13(2) TEU and 17 TEU — Article 293 TFEU — Principle of conferral of powers — Principle of institutional balance — Principle of sincere cooperation — Article 296 TFEU — Obligation to state reasons)

In Case C-409/13,

ACTION for annulment under Article 263 TFEU, brought on 18 July 2013,

Council of the European Union, represented by G. Maganza, A. de Gregorio Merino and I. Gurov, acting as Agents,

applicant,

supported by:

Czech Republic, represented by M. Smolek, J. Vláčil and J. Škeřík, acting as Agents,

Federal Republic of Germany, represented by T. Henze, acting as Agent,

Kingdom of Spain, represented by M. Sampol Pucurull, acting as Agent,

French Republic, represented by G. de Bergues, D. Colas and N. Rouam, acting as Agents,

Italian Republic, represented by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato, with an address for service in Luxembourg,

Kingdom of the Netherlands, represented by M. Bulterman, B. Koopman and J. Langer, acting as Agents,

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

Republic of Finland, represented by H. Leppo, acting as Agent,

Kingdom of Sweden, represented by U. Persson and A. Falk, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by V. Kaye, acting as Agent, and R. Palmer, Barrister,

interveners,

* Language of the case: French.

v

European Commission, represented by B. Smulders, P. Van Nuffel and M. Clausen, acting as Agents, with an address for service in Luxembourg,

defendant,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts (Rapporteur), Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, C. Vajda, S. Rodin and K. Jürimäe, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský, E. Levits, J.L. da Cruz Vilaça and F. Biltgen, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 23 September 2014,

after hearing the Opinion of the Advocate General at the sitting on 18 December 2014,

gives the following

Judgment

1 By its application, the Council of the European Union seeks the annulment of the decision of the European Commission of 8 May 2013 by which it withdrew its proposal for a regulation of the European Parliament and of the Council laying down general provisions for macro-financial assistance to third countries ('the contested decision').

Background to the dispute and the contested decision

Proposal for a framework regulation

2 Macro-financial assistance ('MFA') has the aim of granting financial assistance of a macro-economic nature to third countries that are experiencing short-term balance of payments difficulties. Initially, it was granted by Council decisions adopted, case by case, on the basis of Article 235 of the EC Treaty and then of Article 308 EC (provisions to which Article 352 TFEU corresponds). Since the entry into force of the Treaty of Lisbon, MFA has been granted by decisions taken case by case, on the basis of Article 212 TFEU, by the European Parliament and the Council in accordance with the ordinary legislative procedure, without prejudice to the urgency procedure provided for in Article 213 TFEU.

3 On 4 July 2011, the Commission submitted a proposal for a regulation of the European Parliament and of the Council, founded on Articles 209 TFEU and 212 TFEU, laying down general provisions for macro-financial assistance to third countries ('the proposal for a framework regulation').

4 Recitals 2 to 4, 6 to 8 and 13 of the proposal for a framework regulation stated:

'(2) At present, macro-financial assistance to third countries is based on ad-hoc country specific decisions of the European Parliament and of the Council. This reduces the efficiency and effectiveness of the assistance by causing unnecessary delays between requests for macro-financial assistance and their actual implementation.

(3) A framework for delivering macro-financial assistance to third countries with which the Union has important political, economic and commercial ties should make the assistance more effective. In particular, it should be possible to provide macro-financial assistance to third countries to encourage them to adopt economic policy measures likely to solve a balance of payments crisis.

(4) The European Parliament, in its resolution on the implementation of macro-financial assistance to third countries of 3 June 2003 …, called for a framework regulation for macro-financial assistance in order to expedite the decision-making process and provide this financial instrument with a formal and transparent basis.

...

(6) In 2006, the Union overhauled and streamlined its external assistance framework to make it more effective. For all the key external financial instruments, it adopted framework regulations granting implementation powers to the Commission. The only major instrument that does not currently have a framework regulation is macro-financial assistance.

(7) In its conclusions of 8 October 2002, the Council established criteria (the so-called Genval criteria) to guide the EU's macro-financial assistance operations. … It is appropriate to formalise these criteria in a legal act endorsed by both the Parliament and the Council while updating and clarifying them.

(8) Appropriate procedures and instruments should be provided for in advance to enable the Union to ensure that macro-financial assistance can be made available expeditiously, especially when circumstances call for immediate action. This would also increase the clarity and transparency of the criteria applicable to the implementation of macro-financial assistance.

...

(13) Macro-financial assistance should be complementary to the resources provided by the International Monetary Fund and other multilateral financial institutions and there should be a fair burden sharing with other donors. Macro-financial assistance should ensure the added value of the involvement of the Union.'

5 Article 1 of the proposal for a framework regulation, entitled 'Aim and scope of the assistance', provided:

'1. This Regulation lays down general provisions for the granting of macro-financial assistance to eligible third countries and territories as set out in Article 2.

2. Macro-financial assistance shall be an exceptional financial instrument of untied and undesignated balance-of-payments support to eligible third countries and territories. It shall aim at restoring a sustainable external finance situation for countries facing external financing difficulties. It shall underpin the implementation of strong adjustment and structural reform measures designed to remedy balance of payments difficulties.

3. Macro-financial assistance may be granted on condition of the existence of a significant and residual external financing gap jointly identified with the multilateral financial institutions over and above the resources provided by the International Monetary Fund (IMF) and other multilateral institutions, despite the implementation of strong economic stabilisation and reform programmes.

4. Macro-financial assistance shall be of a temporary nature and shall be discontinued as soon as the beneficiary country's external financial situation has been brought back into a sustainable situation.'

6 Article 2 of the proposal for a framework regulation related to the countries eligible for MFA and referred, in that regard, to Annex I, entitled 'Countries and territories eligible under Article 2(a) and (b)'. It provided also for the possibility of granting such assistance to third countries other than those referred to in that annex, in exceptional and duly justified circumstances and as long as those countries were politically, economically and geographically close to the European Union.

7 Article 3 of that proposal governed the form of MFA (a loan, a grant or a combination of both) and the manner in which it was to be financed.

8 Article 4 of that proposal set out the conditions for ensuring the compatibility of MFA with the relevant financial provisions in EU law. Article 5 laid down the rules for determining the amount of MFA.

9 Article 6 of the proposal, entitled 'Conditionality', provided:

'1. A pre-condition for granting macro-financial assistance shall be that the recipient country respects effective democratic mechanisms, including multi-party parliamentary systems, the rule of law and respect for human rights.

2. Macro-financial assistance shall be conditional on the existence of an IMF programme entailing the use of IMF resources.

3. The disbursement of the assistance shall be conditional on a satisfactory track record of an IMF programme. It shall also be conditional on the implementation, within a specific time frame, of a series of clearly defined economic policy measures focusing on structural reforms, to be agreed between the Commission and the beneficiary country and to be laid down in a Memorandum of Understanding.

4. With a view to protecting the Union's financial interests and reinforcing beneficiary countries' governance, the Memorandum of Understanding shall include measures aiming at strengthening the efficiency, transparency and accountability of public finance management systems.

5. Progress on mutual market opening, the development of rules-based and fair trade and other priorities in the context of the Union's external policy should also be duly taken into account in designing the policy measures.

6. The policy measures shall be consistent with the existing partnership agreements, cooperation agreements or association agreements concluded between the Union and the beneficiary country and with the macroeconomic adjustment and structural reform programmes implemented by the beneficiary country with the support of the IMF.'

10 Article 7 of the proposal for a framework regulation related to the procedure for granting MFA.

11 Article 7(1) of that proposal provided that the country seeking to be granted MFA was to send a request in writing to the Commission.

12 Article 7(2) of the proposal, read in conjunction with Article 14(2), provided that, if the conditions referred to in Articles 1, 2, 4 and 6 were met, the assistance requested was to be granted by the Commission acting in accordance with the 'examination' procedure established in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2001 L 55, p. 13).

13 Article 7(3) of the proposal related to the details that had to be included in, respectively, a decision to provide a loan and a decision to provide a grant. That provision stated that, in both cases, the period of availability of the MFA could not, as a rule, exceed three years.

14 Article 7(4) of the proposal, read in conjunction with Article 14(3), provided that, following the approval of the decision granting MFA, the Commission, acting in accordance with the 'advisory' procedure established in Article 4 of Regulation (EU) No 182/2011, was to agree with the third country the policy measures referred to in Article 6(3) to (6) of the proposal.

15 Article 7(5) of the proposal provided that, following the approval of the decision granting MFA, the Commission was to agree the detailed financial terms of that assistance with the beneficiary in a grant or loan agreement.

16 Articles 8 and 9 of the proposal entrusted the Commission with the responsibility for implementation, financial management and disbursement of MFA and with the power to suspend, reduce or cancel such disbursement in certain situations. Article 10 of the proposal related to support measures.

17 Finally, Article 11 of the proposal was devoted to protection of the European Union's financial interests, Article 12 to evaluation of the efficiency of MFA and Article 13 to the annual report on implementation of MFA.

Inter-institutional negotiations relating to the proposal for a framework regulation

18 After several meetings of the Council's Working Party of Financial Counsellors, the proposal for a framework regulation was the subject of a 'general approach' of the Council, which was approved by the Permanent Representatives Committee (Coreper) on 15 December 2011. In that 'general approach', the Council suggested in particular, so far as concerns Article 7(2) of the proposal, that the conferral of implementing power on the Commission be replaced by application of the ordinary legislative procedure for the purpose of the adoption of each decision granting MFA.

19 At its plenary sitting of 24 May 2012, the Parliament adopted the report of its Committee on International Trade relating to the proposal for a framework regulation. That report proposed, inter alia, that delegated acts be used for the adoption of each decision granting MFA.

20 The first three tripartite meetings between the Parliament, the Council and the Commission, held on 5 and 28 June and 19 September 2012, confirmed the divergences in those three institutions' views on the issue of the procedure for granting MFA set out in Article 7 of the proposal for a framework regulation. In particular, the Parliament and the Council expressed their concern regarding insufficient political and democratic scrutiny of the decision-making process provided for in that article.

21 In January 2013, the Commission put forward, for the purpose of the fourth tripartite meeting, a working document entitled 'Landing zone on implementing acts, delegated acts and co-decision in the MFA Framework Regulation', which was designed to reconcile the respective positions of the three institutions concerned on that issue and to address the concerns of the Parliament and the Council.

22 The result of the negotiations which took place at the fourth tripartite meeting, on 30 January 2013, was that the Parliament and the Council were able to agree on a solution consisting, within the framework of the proposed regulation, in using the ordinary legislative procedure for the adoption of each decision granting MFA, in providing for a Commission implementing act for adoption of the memorandum of understanding with the beneficiary country and in delegating to the Commission the power to adopt certain acts connected with the MFA granted.

23 At the fifth tripartite meeting, which was held on 27 February 2013, the representatives of the Parliament and the Council confirmed their intention to retain use of the ordinary legislative procedure for the adoption of each decision granting MFA. The representative of the Commission stated that, as such an approach distorted the proposal for a framework regulation, the Commission could envisage withdrawing that proposal.

24 The replacement of implementing power of the Commission with the ordinary legislative procedure for the purpose of the adoption of decisions granting MFA was agreed in principle between the Parliament and the Council, an agreement which was expressed at the 6th tripartite meeting on 25 April 2013. On that occasion, the representative of the Commission officially indicated the latter's disagreement with that approach, stating that the Commission might consider withdrawing the proposal for a framework regulation if use of the ordinary legislative procedure were retained for the adoption of each decision granting MFA, since, according to the Commission, such an alteration would distort that proposal and give rise to significant constitutional problems.

25 In a letter to Mr Rehn, the Vice-President of the Commission, dated 6 May 2013, the Chairman of Coreper, while deeply regretting the announcement made by the representative of the Commission at the sixth tripartite meeting, requested the Commission to reconsider its position, having regard, in particular, to the fact that agreement between the Parliament and the Council appeared very close.

26 By letter of 8 May 2013, Mr Rehn informed the President of the Parliament and the President of the Council that, at its 2045th meeting, the College of Commissioners had decided, in accordance with Article 293(2) TFEU, to withdraw the proposal for a framework regulation.

Forms of order sought and procedure before the Court

27 The Council claims that the Court should annul the contested decision and order the Commission to pay the costs.

28 The Commission contends that the Court should dismiss the action as unfounded and order the Council to pay the costs.

29 The Czech Republic, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the form of order sought by the Council.

The action

30 The Council sets out three pleas in law in support of its action. The first plea alleges infringement of the principle of conferral of powers laid down in Article 13(2) TEU and of the principle of institutional balance. The second plea alleges infringement of the principle of sincere cooperation laid down in Article 13(2) TEU. The third plea alleges infringement of the obligation to state reasons, laid down in the second paragraph of Article 296 TFEU.

Arguments of the parties

31 In the context of the first plea, the Council and all the intervening Member States contend that the Commission infringed, in this instance, the principle of conferral of powers which is laid down in Article 13(2) TEU, a principle that reflects the principle of institutional balance.

32 In the first place, the Council and those Member States submit, by way of general considerations, that the Treaties do not confer upon the Commission a general prerogative to withdraw proposals that it has submitted to the EU legislature.

33 In this connection, they contend, first, that the Commission cannot derive from its right of legislative initiative enshrined in Article 17(2) TEU a symmetrical right to withdraw a proposal if it in its discretion thinks fit.

34 The Commission's right of withdrawal must be limited to objective circumstances, such as where the legislative proposal has been rendered obsolete or pointless by the passage of time or by the emergence of new circumstances or of data, where a lack of notable progress in the legislative procedure for a considerable time presages failure, or where there is a common strategy shared with the EU legislature in a spirit of sincere cooperation and of observance of the institutional balance.

35 Second, the Commission cannot be recognised as having a general prerogative of withdrawal on the basis of Article 293 TFEU. Recognition of such a prerogative would, on the contrary, effectively render redundant the Council's right, laid down in Article 293(1) TFEU, to amend the Commission's proposal within the limits of its subject-matter and objective.

36 Third, recognition that the Commission has a discretion enabling it to withdraw a legislative proposal whenever it disagrees with the amendments agreed between the co-legislators or is not satisfied with the final outcome of negotiations would amount to granting it an unjustified means of exerting pressure on the conduct of legislative work and a right of veto over legislative action, on the basis of considerations of political expediency.

37 Fourth, according to the Council and the Federal Republic of Germany, to recognise that the Commission has such a discretion to withdraw proposals would be contrary to the principle of democracy which, as provided in Article 10(1) and (2) TEU, finds expression in the Parliament and in the fact that the members of the Council belong to governments politically accountable to national parliaments.

38 Following those general considerations, the Council and the intervening Member States contend, in the second place, that, in adopting the contested decision, the Commission prevented the Parliament and the Council from exercising their legislative prerogatives by opposing, without an objective reason and on the basis of considerations of pure political expediency, the compromise which they were preparing to finalise.

39 In this connection, the Council and those Member States contend, first, that an alleged distortion of the legislative proposal, alleged serious interference with the institutional balance or alleged manifest unlawfulness of the act envisaged by the co-legislators does not authorise the Commission to withdraw its proposal.

40 In the alternative, the Council and those Member States maintain, second, that in any event none of those circumstances arose in this instance.

41 In that regard, the Council and the intervening Member States maintain, so far as concerns the alleged distortion of the legislative proposal, that such distortion is conceivable only where the legislature intends to deviate from the proposal's scope, subject-matter or objective. However, that was not so in this instance, as the compromise between the Parliament and the Council did not deprive the proposal for a framework regulation of its practical effect and *raison d'être* or jeopardise attainment of the objectives pursued.

42 The element of the proposal for a framework regulation relating to the procedure for granting MFA was secondary and instrumental in scope, and therefore did not constitute the keystone of the proposal, without which its other elements would have lost their meaning. The objective of that compromise consisted, at most, in remedying the defect in the proposal for a framework regulation, a proposal which, by transferring an implementing decision-making power to the Commission, would have compromised the powers which Articles 209 TFEU and 212 TFEU reserve for the EU legislature in the matter of MFA, given the political dimension of that matter.

43 The Council, the Federal Republic of Germany, the French Republic, the Kingdom of Sweden and the United Kingdom further contend that the compromise envisaged by the Parliament and the Council likewise did not jeopardise the general objective pursued by the proposal for a framework regulation, consisting in the rationalisation of the procedure for granting MFA by formalising and clarifying the rules relating to the implementation of MFA, with a view to reinforcing the transparency and predictability of that instrument.

44 As regards the objective of coherence that is also assigned to the envisaged framework regulation, the French Republic observes that MFA cannot be equated with the other EU instruments relating to financial assistance, referred to in the preamble to the proposal for a regulation. Consequently, it was not necessary to bring the procedures applicable in respect of MFA into line with those applicable in the context of those other instruments.

45 So far as concerns the risk of serious interference with the institutional balance, the Council, the Federal Republic of Germany, the Italian Republic, the Republic of Finland and the United Kingdom contend that such a risk was precluded in this instance, in the light, in particular, of the completeness of the system of legal remedies and the procedures for judicial review of EU legislative measures.

46 The French Republic and the Kingdom of Sweden further submit that the compromise reached by the co-legislators was such as to preserve the Commission's freedom, in the event of a request that MFA be granted, to decide whether it was expedient to submit a proposal for the grant of such assistance to the EU legislature and, as the case may be, to determine its amount and to implement and monitor it.

47 In the context of the second plea relied upon, the Council and all the intervening Member States submit that in this instance the Commission infringed the principle of sincere cooperation laid down in Article 13(2) TEU.

48 They complain that the Commission did not express any reservation or give any warning when, in December 2011 and May 2012 respectively, the co-legislators adopted their positions on the proposal for a framework regulation. They also complain that the Commission failed to inform the co-legislators in good time of its intention to withdraw the proposal for a framework regulation and thereby prevented them from avoiding the planned withdrawal by amending their common approach. They contend, moreover, that the Commission rushed to withdraw that proposal on the very day that the Parliament and the Council were preparing to finalise an agreement which would have led to the adoption of an act that did not suit it.

49 The Commission's failure to observe the principle of sincere cooperation is aggravated by the fact that it did not exhaust the procedural means provided for in Articles 3(2) and 11(1) of the Council's Rules of Procedure annexed to the Council Decision of 1 December 2009 adopting the Council's Rules of Procedure (OJ 2009 L 325, p. 35), in order to determine whether the unanimity required by Article 293(1) TFEU to amend the proposal for a framework regulation was attained in this instance.

50 The Italian Republic and the United Kingdom add that the Commission ruled out from the outset any discussion and any negotiation with the co-legislators on the content of Article 7 of the proposal for a framework regulation, whereas the co-legislators shared a common approach in that regard.

51 In the context of the third plea, the Council and all the intervening Member States submit that a decision withdrawing a legislative proposal is an act amenable to judicial review and must, consequently, comply with the requirement to state reasons that is laid down in the second paragraph of Article 296 TFEU.

52 However, the letter of 8 May 2013 by which the Vice-President of the Commission informed the President of the Parliament and the President of the Council of the contested decision contains nothing relating to the grounds for that decision. Those grounds appear only in internal Commission documents, with which the Council did not become acquainted until the present judicial proceedings.

53 That complete failure to state reasons confirms the arbitrariness of the contested decision.

54 In response to the first plea, the Commission states, in the first place, that withdrawal of a legislative proposal, like the submission or alteration of such a proposal, is one of the expressions of its right of initiative in the general interest of the European Union, which is laid down in the first sentence of Article 17(1) TEU. That right of withdrawal is one of the means by which the Commission discharges the responsibilities that are conferred upon it by the Treaties in procedures leading to the adoption of EU acts.

55 Consequently, just as it is for the Commission alone to decide whether or not to submit a legislative proposal or whether or not to alter its initial proposal or a proposal that has already been altered, it is for the Commission alone, where its proposal has not yet been adopted, to decide whether to maintain the proposal or to withdraw it.

56 In this instance, the Commission adopted the contested decision not in the light of considerations of expediency or political choice the upholding of which it allegedly sought by usurping a role as 'third branch' of the EU legislature, but on the ground that the act which the co-legislators were minded to adopt constituted a distortion of its proposal for a framework regulation and involved serious interference with the institutional balance, on account of the agreement in principle of the Parliament and the Council to replace, in Article 7 of that proposal, the conferral of an implementing power on the Commission with use of the ordinary legislative procedure for the purpose of the adoption of each decision granting MFA.

57 The Commission disputes, in the second place, the fact that the contested decision infringed the principle of conferral of powers and the principle of institutional balance.

58 In that regard, it submits that the powers of the EU legislature do not include the unfettered power to adopt an act which would fundamentally change the sense of its proposal or remove the proposal's *raison d'être*.

59 The Commission further submits that the contested decision did not in any way fail to have regard to Article 293(1) TFEU and could legitimately be founded on Article 293(2) TFEU, a provision which is an illustration of the general responsibility owed by it in the course of the ordinary legislative procedure.

60 Finally, the Commission contests the argument that that decision affected the principle of democracy, stating that, like the other EU institutions, it has a democratic legitimacy of its own.

61 In response to the second plea, the Commission, recalling the events concerning the work that preceded the adoption of the contested decision, contends that the Council's two allegations against it, concerning an alleged infringement of the principle of sincere cooperation, are unfounded.

62 In response to the third plea, the Commission contends that the contested decision is an internal procedural decision, to which the obligation to state reasons, laid down by Article 296 TFEU, is not applicable. It adds that, in any event, it complied fully with its duty to inform the Parliament and the Council of the adoption of the contested decision and of the grounds for it. Those grounds were in fact constantly repeated by the representatives of the Commission at the various meetings of the Council's Working Party of Financial Counsellors and at the tripartite meetings that were held between 26 February and 7 May 2013.

Findings of the Court

63 By its three pleas, which it is appropriate to examine together, the Council, supported by the intervening Member States, submits that the contested decision was adopted in breach of Article 13(2) TEU and the second paragraph of Article 296 TFEU.

64 Under Article 13(2) TEU, each EU institution is to act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. That provision reflects the principle of institutional balance, characteristic of the institutional structure of the European Union (see judgment in *Meroni* v *High Authority*, 9/56, EU:C:1958:7, p. 152), a principle which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions (see, to this effect, judgments in *Parliament* v *Council*, C-70/88, EU:C:1990:217, paragraph 22, and *Parliament* v *Council*, C-133/06, EU:C:2008:257, paragraph 57).

65 Article 13(2) TEU provides, in addition, that the EU institutions are to practice mutual sincere cooperation.

66 The second paragraph of Article 296 TFEU provides, in particular, that legal acts of the European Union are to state the reasons on which they are based.

67 The line of argument of the Council and the intervening Member States consists, essentially, in the contention that, in withdrawing the proposal for a framework regulation by the contested decision, the Commission exceeded the powers conferred upon it by the Treaties and, in so doing, undermined the institutional balance, as the Treaties do not give it the power to withdraw a legislative proposal in circumstances such as those here. The Commission is also said to have infringed the principle of sincere cooperation. Furthermore, the contested decision is vitiated by a failure to state reasons.

68 In that regard, it should be noted that, by virtue of Article 17(2) TEU, EU legislative acts may be adopted only 'on the basis of a Commission proposal', except in the situation, irrelevant to the present case, where the Treaties provide otherwise.

69 Likewise, the ordinary legislative procedure, referred to by Articles 209 TFEU and 212 TFEU which were the legal basis cited in the proposal for a framework regulation, consists, as provided by Article 289 TFEU, in the joint adoption by the Parliament and the Council of a regulation, directive or decision 'on a proposal from the Commission'.

70 The power of legislative initiative accorded to the Commission by Articles 17(2) TEU and 289 TFEU means that it is for the Commission to decide whether or not to submit a proposal for a legislative act, except in the situation, not material to the present case, where it would be obliged under EU law to submit such a proposal. By virtue of that power, if a proposal for a legislative act is submitted it is also for the Commission, which, in accordance with Article 17(1) TEU, is to promote the general interest of the European Union and take appropriate initiatives to that end, to determine the subject-matter, objective and content of that proposal.

71 Article 293 TFEU couples that power of legislative initiative with a twofold safeguard.

72 First, Article 293(1) TFEU provides that, except in the cases referred to in the provisions of the FEU Treaty mentioned by it, where, pursuant to the Treaties, the Council acts on a proposal from the Commission, it may amend that proposal only by acting unanimously.

73 Second, Article 293(2) TFEU states that, as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of an EU act.

74 It follows from Article 17(2) TEU in conjunction with Articles 289 TFEU and 293 TFEU that, contrary to the contentions of the Council and certain intervening Member States, the Commission's power under the ordinary legislative procedure does not come down to submitting a proposal and, subsequently, promoting contact and seeking to reconcile the positions of the Parliament and the Council. Just as it is, as a rule, for the Commission to decide whether or not to submit a legislative proposal and, as the case may be, to determine its subject-matter, objective and content, the Commission has the power, as long as the Council has not acted, to alter its proposal or even, if need be, withdraw it. The very existence of that power of withdrawal is indeed not contested in the present case, only its scope and limits being under discussion. Furthermore, it is common ground that the Council had not yet acted in respect of the proposal for a framework regulation when the Commission decided to withdraw it.

75 The power of withdrawal which the Commission derives from the provisions mentioned in the preceding paragraph of the present judgment cannot, however, confer upon that institution a right of veto in the conduct of the legislative process, a right which would be contrary to the principles of conferral of powers and institutional balance.

76 Consequently, if the Commission, after submitting a proposal under the ordinary legislative procedure, decides to withdraw that proposal, it must state to the Parliament and the Council the grounds for the withdrawal, which, in the event of challenge, have to be supported by cogent evidence or arguments.

77 It must be noted in this connection that a decision to withdraw a proposal taken in circumstances such as those in this instance constitutes an act against which an action for annulment may be brought given that, by bringing the legislative procedure initiated by the submission of the Commission's proposal to an end, such a decision prevents the Parliament and the Council from exercising, as they would have intended, their legislative functions under Articles 14(1) TEU and 16(1) TEU.

78 The judicial review which the Court must be able to carry out if, as in this instance, an action for annulment is brought consequently justifies the requirement that a decision such as the contested decision be taken in compliance with the obligation to state reasons (see, to this effect, judgment in *Commission* v *Council*, C-370/07, EU:C:2009:590, paragraph 42).

79 In accordance with settled case-law, the question whether the statement of reasons for a decision meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context (see, to this effect, judgments in *Delacre and Others* v *Commission*, C-350/88, EU:C:1990:71, paragraph 16 and the case-law cited, and *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 53 and the case-law cited). In particular, the reasons given for a measure adversely affecting persons are sufficient if that measure was adopted in a context which was known to them (see, to this effect, judgment in *Council* v *Bamba*, C-417/11 P, EU:C:2012:718, paragraph 54 and the case-law cited).

80 In this instance, it is admittedly true, as the Council and certain intervening Member States point out, that, apart from a statement designating Article 293(2) TFEU as the basis for the contested decision, the letter of 8 May 2013 by which the Vice-President of the Commission informed the President of the Parliament and the President of the Council of the adoption of that decision is silent as to the grounds for the latter. However, it is clear from the documents before the Court that, at the meetings of the Council's Working Party of Financial Counsellors of 26 February and 9 April 2013 and at the

tripartite meetings of 27 February and 25 April 2013, the Commission stated that it could envisage withdrawing the proposal for a framework regulation on the ground that the alteration planned by the Parliament and the Council, so far as concerns Article 7 of the proposal, distorted the latter to the point of depriving it of its *raison d'être*, in a manner contrary to the various objectives pursued by the proposal.

81 It must therefore be held that the grounds for the contested decision were brought sufficiently to the attention of the Parliament and the Council.

82 As regards the substance, grounds such as those invoked in this instance by the Commission are capable of justifying the withdrawal of a proposal for a legislative act.

83 It must be accepted that, where an amendment planned by the Parliament and the Council distorts the proposal for a legislative act in a manner which prevents achievement of the objectives pursued by the proposal and which, therefore, deprives it of its *raison d'être*, the Commission is entitled to withdraw it. It may, however, do so only after having due regard, in the spirit of sincere cooperation which, pursuant to Article 13(2) TEU, must govern relations between EU institutions in the context of the ordinary legislative procedure (see, to this effect, judgment in *Parliament* v *Council*, C-65/93, EU:C:1995:91, paragraph 23), to the concerns of the Parliament and the Council underlying their intention to amend that proposal.

84 It is therefore necessary, first, to determine whether the arguments put forward by the Commission in this instance support the grounds relied upon by it in support of the contested decision.

85 As stated in recitals 2 and 8 in its preamble, the principal objective of the proposal for a framework regulation was to provide EU policy concerning MFA with a framework enabling such assistance to be made available expeditiously and an end to be put to the delays, harmful to that policy's effectiveness, that result from the taking of decisions, by the Parliament and the Council jointly, in respect of each case where MFA is granted.

86 As is apparent from recital 4 in the preamble to the proposal for a framework regulation, the Commission was seeking, by its legislative initiative, to act upon a resolution of the Parliament of 3 June 2003 in which the latter had called for a framework regulation for MFA, intended, in particular, to accelerate the decision-making process in that regard.

87 According to recitals 4 and 6 to 8 in its preamble, the proposal for a framework regulation also had the objectives of improving the transparency of EU policy concerning MFA, in particular as regards conditions for the grant of such assistance, and of ensuring the coherence of that policy with the other EU external assistance policies, which are governed by framework regulations conferring implementing powers on the Commission.

88 With a view to attaining those various objectives, the purpose of the proposal for a framework regulation was, as is apparent from paragraphs 5 to 9 of the present judgment, that the Parliament and the Council should adopt, on the basis of Articles 209 TFEU and 212 TFEU, a legislative framework for EU policy concerning MFA, which would have specified the countries eligible for such assistance, its form, the manner in which it was to be financed and the various conditions for its grant; those conditions related, in particular, to respect for democratic mechanisms, implementation of structural economic reforms and of measures to improve the management of public finances, and application of the principles regarding open, rules-based and fair trade.

89 In that context, Article 7 of the proposal for a framework regulation provided for the grant to the Commission of an implementing power to adopt, within the limits and under the conditions laid down by the proposed legislative framework, the decisions granting MFA and the memoranda of understanding required to be concluded with the countries receiving such assistance.

90 As the Commission has rightly submitted, the amendment which the Parliament and the Council were planning to make to Article 7, by substituting, in Article 7(2), the ordinary legislative procedure for the Commission's implementing power as regards the adoption of each decision granting MFA, would have distorted an essential element of the proposal for a framework regulation in a manner irreconcilable with the objective pursued by that proposal of improving the effectiveness of EU policy concerning MFA.

91 Such an amendment would have entailed keeping the process whereby MFA is granted, on a case by case basis, by the Parliament and the Council under the ordinary legislative procedure, whereas the principal objective of the proposal for a framework regulation sought specifically, by means of a legislative framework governing the conditions for implementing EU policy concerning MFA, to bring that decision-making process to an end, with a view to speeding up decision-taking and to improving, in that way, the effectiveness of that policy.

92 As the Commission indicated, according to the documents before the Court, at the meeting of the Council's Working Party of Financial Counsellors on 26 February 2013, the detailed rules inherent in the ordinary legislative procedure inevitably result in a decision-making process spread over a number of months, a situation which is such as to complicate the coordination of MFA with the grant of resources by the IMF or other multilateral financial institutions, which are resources that — as was stated in Articles 1(3) and 6(2) of the proposal for a framework regulation and recital 13 in its preamble — MFA is designed to complement.

93 Furthermore, the amendment planned by the Parliament and the Council would have run counter to achievement of the objective pursued by the proposal for a framework regulation consisting, in the interest of coherence, in bringing the procedure for grant of MFA into line with the procedure applicable to the other EU financial instruments relating to external assistance.

94 It follows from the analysis set out in paragraphs 85 to 93 of the present judgment that the Commission was entitled to consider that the amendment planned by the Parliament and the Council so far as concerns Article 7 of the proposal for a framework regulation was liable to distort that proposal, on the essential issue of the procedure for granting MFA, in a way which would have prevented the objectives pursued by the Commission through the proposal from being achieved and which, therefore, would have deprived the proposal of its *raison d'être*.

95 Consequently, the decision of the Commission to withdraw the proposal for a framework regulation in the light of such considerations did not infringe the principle of conferral of powers or the principle of institutional balance, laid down in Article 13(2) TEU.

96 As to the line of argument alleging an infringement of the principle of democracy laid down in Article 10(1) and (2) TEU, it is apparent from Article 17(2) TEU, read in conjunction with Articles 289 TFEU and 293 TFEU, that the Commission has the power not only to submit a legislative proposal but also, provided that the Council has not yet acted, to alter its proposal or even, if need be, withdraw it. Since that power of the Commission to withdraw a proposal is inseparable from the right of initiative with which that institution is vested and its exercise is circumscribed by the provisions of the abovementioned articles of the FEU Treaty, there can be no question, in this instance, of an infringement of that principle. Accordingly, this line of argument must be rejected as unfounded.

97 It is necessary, second, to examine, in the light of the complaints set out by the Council and the intervening Member States, whether the withdrawal decided upon by the Commission on 8 May 2013 was in compliance with the principle of sincere cooperation which is also laid down in Article 13(2) TEU.

98 In that regard, it must be stated, generally, that the Commission did not withdraw the proposal for a framework regulation until it became apparent that the Council and the Parliament were minded to amend that proposal in a way contrary to the objectives pursued by it.

99 In particular, it is clear from the documents before the Court that the Council and the Parliament initially expressed different views on the question, which Article 7 of the proposal for a framework regulation concerns, of the decision-making procedure for granting MFA. In a 'general approach' approved by Coreper on 15 December 2011, the Council had proposed, in that regard, that the ordinary legislative procedure be retained, whilst, in a report approved on 24 May 2012, the Parliament had recommended a solution based on the use of delegated acts.

100 Since there was no consensus between the co-legislators in respect of retaining the ordinary legislative procedure for the adoption of each decision granting MFA, the Commission cannot be reproached for not having already mentioned at that time the possibility that the proposal for a framework regulation would be withdrawn.

101 As shown by the working document, referred to in paragraph 21 of the present judgment, which was put forward in January 2013, and which the Commission drafted with a view to the tripartite meeting of 30 January 2013, it is clear that, faced with the common concern of the Parliament and the Council that the decision-making process for granting MFA that was laid down in Article 7 of the proposal for a framework regulation involved insufficient political and democratic scrutiny, the Commission, on the contrary, strove to reconcile the respective positions of the institutions concerned.

102 That document proposed a compromise solution based, in essence, on the combination of the following elements: a detailed framework regulation, as envisaged by the proposal for a framework regulation, defining the conditions, including political conditions, for granting MFA; mechanisms for informal consultation of the Parliament and the Member States on the draft implementing acts of the Commission relating to the grant of MFA; use of a limited number of delegated acts, in this instance four, intended to amend or supplement certain non-essential elements of the legislative framework, concerning, in particular, the list of countries eligible for MFA and the criteria for selecting the financial instrument (grant or loan); selective use of comitology; various evaluation mechanisms; and reports to the Parliament and the Council.

103 Contrary to the assertions of certain intervening Member States, the Commission, far from ruling out any discussion on the procedure for granting MFA, thereby sought to reach a solution which, while safeguarding the objectives pursued by the proposal for a framework regulation in respect of MFA, sought to take the concern of the Parliament and the Council into account.

104 As soon as it became apparent, as from the fourth tripartite meeting which was held on 30 January 2013, that the Parliament and the Council had a common intention to retain the ordinary legislative procedure for the purpose of the adoption of each decision granting MFA, the Commission, as is attested by the documents before the Court, mentioned, at the meeting of the Council's Working Party of Financial Counsellors of 26 February 2013 and at the fifth tripartite meeting held on 27 February 2013, the possibility of withdrawal of the proposal for a framework regulation and the grounds for the contemplated withdrawal. It did likewise at the meeting of the Council's Working Party of Financial Counsellors of 9 April 2013 and at the sixth tripartite meeting held on 25 April 2013. Both the documents relating to the tripartite meeting of 27 February 2013 and the letter which the Chairman of Coreper sent to the Vice-President of the Commission on 6 May 2013 following the tripartite meeting of 25 April 2013 show that the co-legislators clearly perceived those warnings from the Commission.

105 The argument that the Commission's announcement of its intention to withdraw the proposal for a framework regulation was belated is therefore unfounded.

106 Furthermore, in the circumstances noted in paragraph 104 of the present judgment, and in the absence of anything in the documents before the Court showing that the Parliament and the Council might have foregone amending Article 7 of the proposal for a framework regulation, neither the fact that the Commission did not make use of the power, provided for in Articles 3(2) and 11(1) of the Council's Rules of Procedure, to request a vote of the Council on that proposal nor the fact that the contested decision was adopted on the very day that the Parliament and the Council were allegedly on the verge of formalising their agreement on the proposal can be regarded as amounting to a breach by the Commission of the principle of sincere cooperation.

107 It follows from all the foregoing considerations that the adoption by the Commission of the contested decision did not infringe the principle of conferral of powers, the principle of institutional balance or the principle of sincere cooperation, laid down in Article 13(2) TEU, or the principle of democracy enshrined in Article 10(1) and (2) TEU. Furthermore, the Commission satisfied in this instance the obligation to state reasons, laid down in the second paragraph of Article 296 TFEU.

108 The three pleas relied upon by the Council in support of its action must, therefore, be rejected as unfounded.

109 It follows that the action must be dismissed.

Costs

110 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Council has been unsuccessful, the latter must be ordered to pay the costs. In accordance with Article 140(1) of the Rules of Procedure, under which the Member States which have intervened in the proceedings are to bear their own costs, the Czech Republic, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom must be ordered to bear their own costs.

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

1. **Dismisses the action;**

2. **Orders the Council of the European Union to pay the costs;**

3. **Orders the Czech Republic, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

[Signatures]

Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

10 May 2017 *

(Law governing the institutions — European citizens' initiative — Transatlantic Trade and Investment Partnership — Comprehensive Economic and Trade Agreement — Manifest lack of powers of the Commission — Proposal for a legal act for the purpose of implementing the Treaties — Article 11(4) TEU — Article 2(1) and Article 4(2)(b) of Regulation (EU) No 211/2011 — Equal treatment)

In Case T-754/14,

Michael Efler, residing in Berlin (Germany), and the other applicants whose names are listed in the annex, represented by B. Kempen, professor, [1]

applicants,

v

European Commission, represented initially by J. Laitenberger and H. Krämer, subsequently by H. Krämer and finally by H. Krämer and F. Erlbacher, acting as Agents,

defendant,

ACTION under Article 263 TFEU for the annulment of Commission Decision C(2014) 6501 final of 10 September 2014 rejecting the request for registration of the proposal for a citizens' initiative entitled 'Stop TTIP',

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, E. Buttigieg (Rapporteur) and L. Calvo-Sotelo Ibáñez-Martín, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 13 September 2016,

gives the following

* Language of the case: German.

1 — The list of the other applicants is included only in the annex to the version notified to the parties.

Judgment

Background to the dispute

1 By decision of 27 April 2009, the Council of the European Union authorised the Commission of the European Communities to open negotiations with Canada with a view to concluding a free-trade agreement, subsequently referred to as the 'Comprehensive Economic and Trade Agreement' ('the CETA'). By decision of 14 June 2013, the Council authorised the Commission to open negotiations with the United States of America with a view to concluding a free-trade agreement, subsequently referred to as the 'Transatlantic Trade and Investment Partnership' ('the TTIP').

2 On 15 July 2014, Mr Michael Efler and the other applicants whose names are listed in the annex, submitted, in their capacity as members of the citizens' committee set up for that purpose, a request for registration of the proposed European citizens' initiative ('the ECI') entitled 'Stop TTIP' ('the ECI proposal'). In respect of its purpose, the ECI proposal states that 'the European Commission … recommends that the Council cancel the negotiating mandate for the [TTIP] and not conclude [the CETA]'. In respect of the aims pursued, the ECI proposal states that they consist in 'preventing the TTIP and the CETA because they contain several critical issues such as procedures for the resolution of disputes between investors and States and provisions on regulatory cooperation which threaten democracy and the rule of law …, avoiding opaque negotiations leading to a weakening of the rules on employment protection, social protection, environmental protection, protection of private life and of consumers and preventing public services (for example, water supplies) and culture from being deregulated' and supporting 'a different trade and investment policy in [the European Union]'. The ECI proposal refers to Articles 207 and 218 TFEU as the legal bases of that initiative.

3 By Decision C(2014) 6501 of 10 September 2014 ('the contested decision'), the Commission refused to register the ECI proposal in accordance with Article 4(2)(b) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ 2011 L 65, p. 1).

4 The contested decision states, in essence, that a Council decision authorising the Commission to open negotiations with a view to concluding an agreement with a third country is not a European Union legal act and that a recommendation relating thereto does not therefore constitute an appropriate proposal within the meaning of Article 11(4) TEU and Article 2(1) of Regulation No 211/2011, in so far as such a decision constitutes a preparatory measure in the light of the subsequent decision of the Council to authorise the signing of the agreement, as negotiated, and to conclude that agreement. Such a preparatory decision would produce legal effects solely between the institutions concerned, without changing European Union law, contrary to the case of the decision to sign and conclude a specific agreement, which could be covered by an ECI. The Commission inferred from that that the registration of the ECI proposal, in so far as it seeks to invite it to submit a recommendation to the Council to adopt a decision withdrawing authorisation to open negotiations with a view to concluding the TTIP, must be refused.

5 The contested decision states moreover that, in so far as the ECI proposal could be understood as inviting the Commission not to submit to the Council proposals for Council decisions for the signing and conclusion of the CETA or the TTIP or to submit proposals to the Council for decisions not to authorise the signing of those agreements or not to conclude them, such an invitation also does not come within the scope of application of Article 2(1) of Regulation No 211/2011, according to which the ECI seeks the adoption of legal acts necessary for the implementation of the Treaties and producing independent legal effects.

6 The contested decision concludes that the ECI proposal is, therefore, 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 in accordance with Article 4(2)(b) of Regulation No 211/2011, read in conjunction with Article 2(1) of that regulation.

Procedure and forms of order sought

7 By application lodged at the Court Registry on 10 November 2014, the applicants brought the present action.

8 By a separate document, lodged with the General Court Registry on 15 April 2016, the applicants brought an application for interim relief, which was dismissed by Order of 23 May 2016, *Efler and Others* v *Commission* (T-754/14 R, not published, EU:T:2016:306). By a document of 17 July 2016, the applicants brought an appeal in accordance with the second subparagraph of Article 57 of the Statute of the Court of Justice of the European Union, which was dismissed by Order of the Vice-President of the Court of 29 September 2016, *Efler and Others* v *Commission* (C-400/16 P(R), not published, EU:C:2016:735).

9 The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

10 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Law

11 In support of their action, the applicants invoke two pleas in law, the first alleging an infringement of Article 11(4) TEU, of Article 2(1) and Article 4(2)(b) of Regulation No 211/2011, the second alleging an infringement of the principle of equal treatment.

12 As regards the first plea in law, the applicants note in the first place that, in so far as the refusal to register the ECI proposal is based on the fact that the Council decisions seeking to authorise the opening of negotiations with a view to concluding an international agreement are preparatory measures, they do not contest that those decisions are of such a nature. However, the situation is no different with respect to the Council decisions authorising the signing of an international agreement. Moreover, Regulation No 211/2011 covers, in general, all legal acts, without being restricted to measures producing definitive effects, and neither the history of the provisions at issue nor their legal context indicates that the concept of 'legal act' must be given a narrow interpretation. Finally, a decision to withdraw a negotiating mandate in favour of the Commission would lead to the end of the negotiations, would be legally binding and would therefore be final.

13 The applicants note in the second place that, in so far as the refusal to register the ECI proposal is based on the fact that the Council decisions authorising the opening of negotiations with a view to concluding an international agreement produce only effects between the institutions at issue, the broad concept of legal acts included in Articles 288 to 292 TFEU prohibits that classification from being denied to Commission decisions taken outside the ordinary legislative procedure and prohibits

the latter from being excluded from the scope of application of the provisions relating to the ECI, as long as those decisions are legally binding. It does not follow from the wording of the Treaties, from the background thereof, or from the objectives pursued by those Treaties that the principle of democracy, upon which the Union is based, should apply only to persons affected or concerned by the legal act at issue. The Commission contradicts itself also in so far as it accepts, moreover, as admissible an ECI acclamation and confirmation seeking to sign and conclude an agreement whose subject and contents are already fixed.

14 The applicants note in the third place that, in so far as the contested decision is based on the 'destructive' character of the proposals for acts seeking to withdraw from the Commission the negotiating mandate for the conclusion of the TTIP and to submit to the Council a proposal not to authorise the signing of the TTIP and the CETA or not to conclude those agreements, such proposals could not be blocked by the fact that, in accordance with Article 11(4) TEU and Article 2(1) of Regulation No 211/2011, the proposed legal act should contribute to 'implementing the Treaties', since the proposed acts would lead, in one form or another, to making operational the foundations of powers derived from primary law. According to the applicants, the general right of citizens to participate in the democratic life of the European Union includes the power to take action with a view to amending secondary legislation in force, to reform it or annul it in whole or in part. The registration of the ECI proposal would lead to more public debate, which is the primary objective of all ECIs.

15 Moreover, if, as the Commission submits for the first time in the statement of defence, all types of international treaty, whether they seek to repeal an existing treaty or to establish a completely new treaty, could be proposed by an ECI, it would be contradictory for the latter not to be able to aim to prevent the conclusion of a treaty in the process of being negotiated.

16 The applicants add that a Council proposal not to approve the CETA does not exclude that amended draft transatlantic free trade agreements could be subsequently developed.

17 Finally, the ECI proposal does not, in any event, 'manifestly' fall outside the framework of the Commission's powers, as required by Article 4(2)(b) of Regulation No 211/2011.

18 The Commission notes at the outset that the plea in law alleging an infringement of Article 11(4) TEU is ineffective, since Regulation No 211/2011, adopted on the basis of the first subparagraph of Article 24 TFEU, constitutes the reference for the review of the lawfulness of Commission decisions relating to the registration of ECI proposals.

19 The Commission contends next that a Council decision authorising it to open negotiations with a view to concluding an international agreement, as opposed to a Council decision to sign such an agreement, is purely preparatory, in so far as it produces legal effects only in the relations between the institutions. A systematic and teleological interpretation of Article 2(1) and Article 4(2)(b) of Regulation No 211/2011 leads to the conclusion that a purely preparatory legal act is not a legal act for the purposes of those provisions.

20 Furthermore, according to the Commission, only legal acts whose effects go beyond the relations between the institutions of the European Union can be covered by an ECI, because the purpose of the democratic participation that that ECI seeks to promote is to involve citizens in decisions relating to matters which concern, at least potentially, their own legal sphere. The Council and the Commission enjoy sufficient indirect democratic legitimacy to adopt acts whose legal effects are limited to the institutions.

21 Moreover, according to the Commission, the ECI proposal circumvents the rule that an ECI cannot request the Commission not to propose a particular legal act or to propose a decision not to adopt a particular legal act. The wording of Article 10(1)(c) of Regulation No 211/2011, in so far as it makes

reference to 'the action it intends to take', assumes that only ECIs which seek the adoption of a legal act with a precise content or which seek the annulment of an existing legal act are authorised. If the Commission stated, in its communication pursuant to Article 10(1)(c) of Regulation No 211/2011, that it did not intend to propose a corresponding legal act, that would result in an unacceptable political restriction of its right of initiative. In addition, the ECI's function, consisting in prompting the Commission to publicly address the topic of the ECI and to thus stimulate a political debate, could be fully realised only by an ECI proposal seeking the adoption of a legal act with a precise content or the annulment of an existing legal act. An ECI which requests that a Council decision not be adopted is no longer capable of carrying out the function consisting in launching such a political debate for the first time and amounts to an inadmissible interference in an ongoing legislative procedure.

22 Finally, a Council decision to reject the TTIP or the CETA, such as suggested by the ECI proposal, is not independent in scope from the mere failure to adopt a Council decision approving the conclusion of the agreement, so that such a decision is legally superfluous. An ECI with such an aim is functionally equivalent to an ECI requesting that no proposal for a legal act be made and is, on that basis, inadmissible.

23 The Court notes that Article 11(4) TEU states that not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

24 As is stated in recital 1 of Regulation No 211/2011, by which the European Parliament and the Council adopted, in accordance with the first subparagraph of Article 24 TFEU, the provisions relating to the procedures and conditions required for the presentation of an ECI for the purposes of Article 11 TEU, the EU Treaty reinforces citizenship of the Union and enhances further the democratic functioning of the Union by providing, inter alia, that every citizen is to have the right to participate in the democratic life of the Union by way of an ECI (judgments of 30 September 2015, *Anagnostakis* v *Commission*, T-450/12, currently under appeal, EU:T:2015:739, paragraph 26, and of 19 April 2016, *Costantini and Others* v *Commission*, T-44/14, EU:T:2016:223, paragraphs 53 and 73). According to that recital, that mechanism allows citizens, following the example of the Parliament under Article 225 TFEU and of the Council under Article 241 TFEU, to directly approach the Commission asking it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.

25 To that end, Article 2(1) of Regulation No 211/2011 defines the ECI as an initiative submitted to the Commission in accordance with that regulation, inviting the Commission, within the framework of its powers, to submit any 'appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties', which has received the support of at least one million eligible signatories coming from at least one quarter of all Member States.

26 In accordance with Article 4(2)(b) and 4(3) of Regulation No 211/2011, the Commission is to refuse to register an ECI proposal if it manifestly falls outside the framework of its powers to submit a 'proposal for a legal act of the Union for the purpose of implementing the Treaties'.

27 Article 10(1)(c) of that regulation provides that, when the Commission receives an ECI in accordance with Article 9 of that regulation, it is to set out, within three months, 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'.

28 As regards the scope of the ECI proposal, the applicants stated, in answer to a question posed at the hearing, that its aim was not to request the Commission not to submit to the Council a proposal for an act with a view to authorising the signing of the TTIP and of the CETA and to concluding those

agreements, but that it sought to request the Commission to submit to the Council, first, a proposal for a Council act to withdraw the negotiating mandate for the conclusion of the TTIP, secondly, a proposal for a Council act not to authorise the Commission to sign the TTIP and the CETA and not to conclude those agreements.

29 Furthermore, the present action does not relate to the competence of the European Union to negotiate the TTIP and CETA agreements, but the applicants contest the grounds invoked in the contested decision for refusing to register the ECI proposal in so far as it seeks to terminate the negotiating mandate for the conclusion of the TTIP and to prevent the signing and conclusion of the CETA and the TTIP.

30 In that regard, it is apparent from the contested decision that, according to the Commission, the fact that a Council decision authorising it to open negotiations on the conclusion of an international agreement is preparatory and produces legal effects only between the institutions prevents that decision from being classified as a legal act for the purposes of the regulation at issue and opposes the registration of the ECI proposal in so far as it seeks the withdrawal of such a decision. The same applies to the ECI proposal in so far as it requests the Commission to submit to the Council a proposal for a decision not to authorise the signing of the agreements at issue or not to conclude them, because such a decision does not produce independent legal effects although, according to Article 2(1) of Regulation No 211/2011, ECIs are to seek the adoption of legal acts necessary 'for the purpose of implementing the Treaties', which is not so in the present case.

31 As was previously stated, the Commission refuses to register ECI proposals which are manifestly outside the framework of powers under which it can submit a 'proposal for a legal act of the Union for the purpose of implementing the Treaties'.

32 It is not disputed that the Commission may, on its own initiative, present a proposal to the Council for an act to withdraw from it the mandate by which it was authorised to open negotiations with a view to concluding an international agreement. The Commission may also not be prevented from presenting to the Council a proposal for a decision not to authorise, ultimately, the signing of a negotiated agreement or not to conclude that agreement.

33 The Commission however contends that an ECI proposal cannot relate to such acts and it invokes, first, the fact that the act for the opening of negotiations with a view to concluding an international agreement is preparatory and the absence of its legal effects outside the institutions and, secondly, the fact that the legal acts whose adoption is proposed are not necessary 'for the purpose of implementing the Treaties'.

34 It should be noted at the outset that the parties are in agreement that a Council decision authorising the Commission, in accordance with Articles 207 and 218 TFEU, to open negotiations on the conclusion of an international agreement should be considered to constitute a preparatory act in relation to the subsequent decision to sign and conclude such an agreement and that it produces legal effects between the European Union and its Member States as well as between the institutions of the European Union (see, to that effect, judgments of 4 September 2014, *Commission* v *Council*, C-114/12, EU:C:2014:2151, paragraph 40, and of 16 July 2015, *Commission* v *Council*, C-425/13, EU:C:2015:483, paragraph 28).

35 As the applicants correctly claimed, the concept of a legal act, for the purposes of Article 11(4) TEU, Article 2(1) and Article 4(2)(b) of Regulation No 211/2011, cannot, in the absence of any indication to the contrary, be understood, as the Commission interprets it, as being limited only to definitive European Union legal acts which produce legal effects vis-à-vis third parties.

36 Neither the wording of the provisions at issue nor the objectives pursued by them justify in particular that a decision authorising the opening of negotiations with a view to concluding an international agreement, such as in this case the TTIP and the CETA, taken under Article 207(3) and (4) TFEU and Article 218 TFEU and which clearly constitute a decision for the purposes of the fourth subparagraph of Article 288 TFEU (see, to that effect, judgments of 4 September 2014, *Commission* v *Council*, C-114/12, EU:C:2014:2151, paragraph 40, and of 16 July 2015, *Commission* v *Council*, C-425/13, EU:C:2015:483, paragraph 28) be excluded from the concept of a legal act for the purpose of an ECI.

37 On the contrary, the principle of democracy, which, as it is stated in particular in the preamble to the EU Treaty, in Article 2 TEU and in the preamble to the Charter of Fundamental Rights of the European Union, is one of the fundamental values of the European Union, as is the objective specifically pursued by the ECI mechanism, which consists in improving the democratic functioning of the European Union by granting every citizen a general right to participate in democratic life (see paragraph 24 above), requires an interpretation of the concept of legal act which covers legal acts such as a decision to open negotiations with a view to concluding an international agreement, which manifestly seeks to modify the legal order of the European Union.

38 The Commission's position, according to which it and the Council have sufficient indirect democratic legitimacy in order to adopt the other legal acts which do not produce legal effects vis-à-vis third parties, has the consequence of limiting considerably recourse to the ECI mechanism as an instrument of European Union citizen participation in the European Union's normative activity as carried out by means of the conclusion of international agreements. In so far as the reasoning set out in the contested decision can therefore, where appropriate, be interpreted as definitively preventing European Union citizens from proposing any opening of negotiations relating to a new treaty to be negotiated by means of an ECI, that reasoning manifestly runs counter to the objectives pursued by the Treaties and by Regulation No 211/2011 and cannot, therefore, be admitted.

39 Accordingly, the Commission's position in the contested decision, according to which the decision to withdraw authorisation to open negotiations with a view to concluding the TTIP is excluded from the concept of legal act for the purposes of an ECI proposal on the ground that that authorisation does not itself come within that concept due to the fact that it is preparatory and due to the absence of effects vis-à-vis third parties, must also be rejected. That is all the more true since, as the applicants correctly stated, a decision to withdraw authorisation to open negotiations with a view to concluding an international agreement, in so far as it brings those negotiations to a close, cannot be classified as a preparatory act, but is, instead, definitive.

40 Moreover, in order to oppose the registration of an ECI, the Commission contends in addition that the Council acts which that proposal seeks to have adopted, in particular Council decisions not to sign or conclude the TTIP and the CETA, amount to 'destructive' acts which do not take effect for the purpose of 'implementing the Treaties', and, therefore, cannot be covered by an ECI.

41 In response to that, it should be noted that the regulation on the ECI contains no information, according to which citizen participation could not be undertaken in order to prevent the adoption of a legal act. Indeed, although, according to Article 11(4) TEU and Article 2(1) of Regulation No 211/2011, the proposed legal act must contribute to the implementation of the Treaties, that is the case with acts whose object is to prevent the conclusion of the TTIP and the CETA, which seek to modify the legal order of the European Union.

42 As the applicants correctly stated, the objective of participation in the democratic life of the European Union pursued by the ECI mechanism manifestly includes the power to request an amendment of legal acts in force or their annulment, in whole or in part.

43 Therefore, nothing justifies excluding from democratic debate legal acts seeking the withdrawal of a decision authorising the opening of negotiations with a view to concluding an international agreement, as well as acts whose object is to prevent the signing and conclusion of such an agreement, which, contrary to the Commission's contention, clearly produce independent legal effects by preventing, as the case may be, an announced modification of European Union law.

44 The Commission's position, as it seems to follow from the contested decision, would ultimately mean that an ECI could relate only to the Council decision to conclude or to authorise the signing of international agreements with respect to which the institutions of the European Union have taken the initiative and which those institutions previously negotiated, while preventing European Union citizens from having recourse to the ECI mechanism in order to propose modifications or the withdrawal of such agreements. Indeed, before the Court, the Commission maintained that an ECI could, where appropriate, also include a proposal to open negotiations with a view to concluding an international agreement. However, nothing justifies, in the latter case, the authors of an ECI proposal being obliged to await the conclusion of an agreement so as to be able to subsequently contest only the appropriateness thereof.

45 The Commission's argument, according to which the acts which an ECI proposal requests it to submit to the Council would lead to an inadmissible interference in an ongoing legislative procedure, also cannot succeed. The aim pursued by the ECI is to allow European Union citizens to participate more in the democratic life of the European Union, in particular, by presenting in detail to the Commission the questions raised by the ECI, by requesting that institution to submit a proposal for a European Union legal act after having, as the case may be, presented the ECI at a public hearing organised at the Parliament, in accordance with Article 11 of Regulation No 211/2011, therefore, by stimulating a democratic debate without having to await the adoption of the legal act whose modification or withdrawal is ultimately sought.

46 To admit such a possibility therefore also does not infringe the principle of institutional balance, characteristic of the institutional structure of the European Union (see, to that effect, judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU :C:2015:217, paragraph 64), in so far as it is for the Commission to decide whether or not it will accept the ECI by presenting, in accordance with Article 10(1)(c) of Regulation No 211/2011, by means of 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.

47 Consequently, far from amounting to an interference in an ongoing legislative procedure, ECI proposals constitute an expression of the effective participation of citizens of the European Union in the democratic life thereof, without undermining the institutional balance intended by the Treaties.

48 Finally, nothing precludes that the action that the Commission 'intends to take, if any', for the purposes of Article 10(1) of Regulation No 211/2011, may consist in proposing that the Council adopt the acts sought by the ECI proposal. Contrary to the Commission's contentions, nothing prevents, as the case may be, the institutions of the European Union from negotiating and concluding new draft transatlantic free-trade agreements following the adoption by the Council of acts which are the object of the ECI proposal.

49 In view of all the above considerations, it must be concluded that the Commission infringed Article 11(4) TEU and Article 4(2)(b), in conjunction with Article 2(1), of Regulation No 211/2011, by refusing to register the ECI proposal.

50 Consequently, the first plea in law must be upheld and, therefore, the action in its entirety, without it being necessary to rule on the second plea in law.

Costs

51 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs of the present proceedings and those relating to the interim proceedings, in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Annuls Commission Decision C(2014) 6501 final of 10 September 2014 rejecting the request for registration of the proposed European citizens' initiative entitled 'Stop TTIP';**

2. **Orders the European Commission to pay its own costs and those incurred by Mr Michael Efler and the other applicants whose names are listed in the annex, including the costs relating to the interim proceedings.**

Kanninen Buttigieg Calvo-Sotelo Ibáñez-Martín

Delivered in open court in Luxembourg on 10 May 2017.

[Signatures]