

The European Citizens' Initiative and Greek debt relief: *Anagnostakis*

Case C-589/15 P, *Anagnostakis v. Commission*, Judgment of the Court of Justice (Grand Chamber) of 12 September 2017, EU:C:2017:663

1. Introduction

Since 2012, EU citizens have been using the European Citizens' Initiative (ECI) to bring to the attention of the EU Institutions proposals on issues such as the environment, employment, education, and culture.¹ The proposals brought forward are often contentious. One cannot but notice, for example, the eye-catching themes of the four ECIs that have managed to collect the necessary one million signatures: privatization of water services, financing of research that involves human embryos, animal experimentation, and pesticide use.² The controversy surrounding citizens' proposals is also evident in those Initiatives that were refused registration by the Commission and thus never made it to the signature collection phase. This list includes suggested campaigns to abolish the European Parliament, and to stop Brexit.³ The list of rejected Initiatives also includes the "One million signatures for 'a Europe of Solidarity'" Initiative (hereafter "the Solidarity Initiative"), which constituted an attempt to introduce in EU law a so-called "state of necessity" principle, according to which a Member State can refuse to repay its "abhorrent debt" when its financial and political existence is threatened.⁴ The rejection by the Commission of the Initiative in September 2012 left the Initiative's organizers with two main options besides withdrawing: to re-attempt registration after

1. Art. 11 TEU, Art. 24 TFEU, and the Regulation (EU) 211/2011 of the European Parliament and of the Council of 16 Feb. 2011 on the citizens' initiative, O.J. 2011, L 65/1 (hereafter "ECI Regulation"). For examples of various ECIs and respective Commission letters of refusal (Decisions) mentioned in this contribution, the reader is referred to the ECI website: <www.ec.europa.eu/citizens-initiative/public/welcome> (all websites last visited 22 May 2019).

2. See respectively the ECIs "Right to Water", "One of Us", "Stop Vivisection", and "Ban glyphosate".

3. See respectively the proposals "A new EU legal norm, self-abolition of the European Parliament and its structures, must be immediately adopted", and "British friends – stay with us in EU".

4. The Commission's reply, stating the reasons for refusal of registration of the Solidarity Initiative, is available at <ec.europa.eu/citizens-initiative/public/initiatives/non-registered/details/559>.

modifying their proposal, and/or to challenge before the General Court the Commission's decision to refuse the ECI. The organizers chose to take direct action against the Commission before the General Court. In November 2012, Mr Anagnostakis, who was the Initiative's designated representative, brought an Article 263 TFEU challenge for judicial review of the Commission's decision to refuse registration of the Initiative. The General Court dismissed the case in September 2015 and the applicant appealed the judgment before the ECJ. The ECJ judgment, annotated here, is its first judgment on the ECI.⁵

Two areas of law, which at first sight are unrelated, are affected by the judgment. The first is citizens' participation in the EU specifically regarding the Commission's role in deciding whether proposed Initiatives should be registered or not. The second is the Economic and Monetary Union (EMU), particularly the legal framework concerning financial assistance given to EU Member States facing financial problems. The law pertaining to EMU is at the heart of the proposal of the Solidarity Initiative, which is strongly linked to the Greek debt crisis. With regard to the approach of the EU Courts *vis-à-vis* both the ECI and EMU, this annotation argues that the judgment is not revolutionary for either area.⁶ Yet the case itself is notable as it signalled for the first time since the adoption of the ECI Regulation that the ECJ is ready to engage in a review of both the process behind registering an ECI with the Commission, and issues of substance pertaining to the legal competence of the Commission to initiate legislation at the EU level.

2. Legal and factual background

The ECI is a participatory instrument that allows EU citizens to request the Commission to consider an idea as a possible basis for a legislative proposal. The organizers of an ECI have one year to collect one million signatures supporting their idea for it to be considered by the Commission, which has discretion as to how to respond. A basic description of the process behind the registration of ECIs is necessary to understand the judgments of the EU Courts.⁷ The first step in the process is to submit an ECI proposal to the

5. Case C-336/17 P, *HB and Others v. European Commission*, EU:C:2018:74, also reached the ECJ; the appeal was dismissed as unfounded. The appeal alleged procedural irregularities in the conduct of the oral hearing of the case before the General Court. More recently, the ECJ annulled a Commission refusal to register an ECI, in Case C-420/16 P, *Balázs-Árpád Izsák and Attila Dabis*, EU:C:2019:177.

6. In this annotation, the General Court and the Court of Justice together are referred to as the EU Courts or sometimes simply the ECJ.

7. The legal framework of the ECI consists of Arts. 11(4) TEU, 24 TFEU, and the ECI Regulation, which sets out the detailed procedure for bringing an ECI. For an up-to-date

Commission for registration. If the Initiative is not registered, organizers cannot start collecting signatures. According to Article 4(2)(b) of the ECI Regulation, the Commission must refuse to register Initiatives proposing action that “falls manifestly outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties”. This legal admissibility criterion is the only ground on which the Commission has refused registration of proposed Initiatives so far and the one relevant to the present contribution.⁸

From a procedural point of view, the organizers of a proposed Initiative must submit to the Commission the information required by Annex II of the ECI Regulation (Art. 4(2)(a)). Annex II requires the title, subject matter, and objectives of the proposed Initiative, the Treaty provisions that organizers consider relevant for their proposals, personal information of the organizers, and the sources of funding at the time of the request for registration. Organizers also have the option to submit a draft legal act supporting their proposal. If the Commission refuses to register an ECI, it is obliged under Article 4(3) of the ECI Regulation to inform the organizers of the reasons for the refusal. According to the ECI Regulation, if the organizers of a rejected Initiative disagree with the Commission Decision they can challenge it before the EU Courts under an Article 263 TFEU action for judicial review.

The Solidarity Initiative was submitted to the Commission in July 2012. In line with Annex II of the ECI Regulation, the organizers stipulated Articles 119–144 TFEU as potential legal bases for the adoption of the proposal. In September 2012, the Commission informed the organizers that the Solidarity Initiative was rejected because it did not fulfil the condition of Article 4(2)(b) of the ECI Regulation, as it “fell manifestly outside the scope of the Commission’s powers to submit a proposal for the adoption of a legal act of the Union for the purpose of implementing the Treaty”.

The Commission’s letter of refusal stated that the Commission had examined the Treaty provisions mentioned in the proposed ECI, “and all other possible legal bases”, before concluding that the proposal should be refused

analysis of all the ECI legal admissibility tests and all the relevant cases, see Karatzia, “Revisiting the registration of European Citizens’ Initiatives: The evolution of the legal admissibility test”, 20 *CYELS* (2018), 14. See also Organ, “Decommissioning direct democracy? A critical analysis of Commission decision-making on the legal admissibility of European Citizens’ Initiative proposals”, 10 *EuConst* (2014), 422; Athanasiadou, “The European Citizens’ Initiative in times of Brexit”, 3 *European Papers* (2018), 1399; Inglese, “European Citizens’ Initiatives, Greek debt and Court of Justice: The final chapter”, 3 *European Papers* (2018), 375.

8. Art. 4(2)(a)-(e) of the ECI Regulation provides three additional criteria that Initiatives need to fulfil in order to be registered.

registration.⁹ Of all the potential legal bases submitted by the organizers, only Article 136(1) TFEU was specifically mentioned in the letter, where the Commission explained in one paragraph why that Article could not be used as the basis for the proposal. In October 2012, Mr Anagnostakis challenged the refusal of the Solidarity Initiative. Before the General Court, he claimed that the Commission mistakenly concluded that the proposal did not fulfil Article 4(2)(b) of the ECI Regulation: the Commission should have registered the proposed ECI based on Article 122(1), Article 122(2), Article 136(1)(b) TFEU, and rules of international law. The General Court was asked not only to annul the Decision, but also to order the Commission to register the proposed Initiative, and order “any other measures required by law”.¹⁰ It dismissed the action.

3. The judgment of the General Court and appeal to the ECJ

The admissibility of the applicant’s action to annul the Commission’s Decision was not doubted by the Commission or the General Court (hereafter: GC). The GC did consider, however, the admissibility of the second and third heads of claim, with which, as mentioned above, the applicant requested the Court to order the registration of the proposed ECI and any other measures required by law.¹¹ Referring to well-established case law,¹² the GC explained that it is not entitled to issue orders to the EU Institutions. Cases that concern the ECI are no exception, so the GC found these heads of claim inadmissible.

Before examining the substance of the remaining claim, the GC decided on its own motion to consider whether the Commission’s Decision satisfied the requirement to state reasons, given the brevity of the statement that was sent to the organizers of the Solidarity Initiative.¹³ The Court started by noting the EU Institutions’ duty under Article 296 TFEU to state the reasons for their decisions. It specified that, in the context of the ECI, this duty is given expression by Article 4(3) of the ECI Regulation, which requires the Commission to inform the organizers of the reasons for the refusal to register their proposed Initiative.

9. Commission’s reply stating the reasons for refusal of registration of the Solidarity Initiative, cited *supra* note 4.

10. Case T-450/12, *Anagnostakis v. Commission*, EU:T:2015:739, paras. 6–8. The case does not specify what those measures might be.

11. *Ibid.*, paras. 11–13.

12. Case T-204/99, *Mattila v. Council and Commission*, EU:T:2001:190; Case C-63/89, *Assurances du credit v. Council and Commission*, EU:C:1991:152, para 30.

13. Case T-450/12, *Anagnostakis*, paras. 20–34.

Reiterating that the assessment of the statement of reasons must take place in light of the wording and the context of each case, the GC then made some specific observations concerning the ECI. It is notable that the Court grounded its analysis on the notion of the ECI as a citizens' right under Article 24 TFEU. According to the Court, the refusal to register a proposed Initiative is "an action that may impinge upon the very effectiveness of the right of Union citizens to submit a citizens' initiative".¹⁴ A Commission's refusal renders citizens unable to effectively exercise their Treaty rights, hence the Commission has a duty to appraise a proposed Initiative and give clear grounds justifying its refusal to register it.

The GC found that the Commission had fulfilled its duty to state reasons. It looked both at whether the Commission explained the reasons that justified its refusal to register the Solidarity Initiative, and whether the reasons given were extensive enough. With regard to the former, the Court was satisfied by the fact that the Commission specified that it rejected the Initiative because it did not fulfil the condition of Article 4(2)(b), as there were no legal bases conferring competence on the Commission to propose an act that would enable the attainment of the proposed Initiative's objective.¹⁵ In considering the extent of the obligation to state reasons, the GC paid particular attention to the context of the Commission's decision.¹⁶ The proposed Initiative only referred in an unclear and general manner to 26 Treaty articles relating to EMU, without stipulating how the articles were connected with the content of the proposal. As such, the Commission was justified for not analysing in detail all the Treaty provisions mentioned while specifically referring only to Article 136(1) TFEU, which appeared to be "the least irrelevant" to the proposed Initiative.

After examining the procedural ground of giving reasons, the Court moved on to the substance of the case and considered whether the Commission infringed Article 4(2)(b) of the ECI Regulation. The applicant argued that the Commission infringed Articles 122(1) TFEU, 122(2) TFEU, 136(1)(b) TFEU, and rules of international law in refusing to register the Initiative.¹⁷ Before discussing each argument and the GC's response individually, it should be noted from the outset that the GC delivered its judgment on the understanding that the proposed Initiative had suggested the establishment of a principle of a state of necessity that would entitle a Member State to *unilaterally* decide not to repay all or part of its debt because of severe financing problems.¹⁸ As will

14. *Ibid.*, para 25.

15. *Ibid.*, paras. 28–29.

16. *Ibid.*, paras. 30–34.

17. *Ibid.*, paras. 35–67.

18. *Ibid.*, paras. 43, 50, 57.

be seen later, the issue of the unilateral nature of the Member State's action reappeared when the case was appealed to the ECJ.

The GC first examined whether Article 122(1) TFEU could have been an appropriate legal basis for the proposed ECI. Article 122(1) TFEU allows the Council to decide, "in a spirit of solidarity between Member States", upon measures appropriate to the economic situation of a Member State, especially if the Member State is facing severe difficulties in the supply of certain products in the area of energy. The applicant's argument was that the proposed measure "would help to rehabilitate Member States affected by an excessive debt burden and in position of economic need".¹⁹ The applicant referred in the abstract to a principle of "institutional solidarity", which was allegedly embodied in Article 122(1) TFEU and arose from "the moral and legal duty of the Member States to provide mutual support and assistance to one another".²⁰

The GC dismissed the applicant's argument. Referring to *Pringle*²¹, the Court stated that Article 122(1) TFEU is not an appropriate legal basis to establish a funding mechanism that provides financial assistance to Member States who are experiencing, or are threatened by, severe financing problems.²² Most importantly, it noted that Article 122(1) TFEU concerns measures that result from assistance between Member States. As such, the provision cannot be used as the legal basis for the adoption of legislation, such as that proposed by the applicant, which would allow a Member State unilaterally to decide not to repay its debt.²³

Subsequently, the GC also dismissed the applicant's argument that the Commission should have registered the Initiative based on Article 122(2) TFEU.²⁴ That provision allows the Council to authorize financial assistance from the EU to a Member State which is experiencing severe difficulties, or a serious threat of severe difficulties caused by natural disasters or exceptional circumstances beyond the Member State's control. The Court referred once again to *Pringle*. First, the ECJ in *Pringle* interpreted Article 122(2) TFEU as allowing the EU to grant ad hoc financial assistance to a Member State subject to strict conditionality.²⁵ A general and permanent mechanism that would allow the abandonment by a Member State of its debt, such as that suggested by the Solidarity Initiative, cannot be established based on that provision. Secondly, Article 122(2) TFEU concerns only financial assistance granted by

19. *Ibid.*, para 36.

20. *Ibid.*, para 38.

21. Case C-370/12, *Pringle*, EU:C:2012:756, paras. 115–116.

22. Case T-450/12, *Anagnostakis*, para 41.

23. *Ibid.*, paras. 42–43.

24. *Ibid.*, paras. 45–51.

25. Case C-370/12, *Pringle*, paras. 65, 104, 131.

the EU, and not that granted by the Member States.²⁶ The measure suggested in the Solidarity Initiative covered debts owed by a Member State to the EU, and debts owed by a Member State to natural or legal, public or private, persons. Hence, if one were to perceive the applicant's proposal as financial assistance, this would not be covered by Article 122(2) TFEU given that the EU cannot write off debt that is not owed to it.²⁷

The next argument of the applicant, which was also dismissed by the Court, was that the proposed Initiative should have been registered based on Article 136(1)(b) TFEU.²⁸ In the statement of reasons, the Commission had explained that Article 136(1) TFEU can only be used as a legal basis for measures that strengthen the budgetary discipline of the Member States and aim to contribute to the proper functioning of the EMU. The provision does not allow the Union to substitute the Member States in the exercise of their budgetary sovereignty or in carrying out functions related to State income and expenditure.²⁹

The applicant contested the Commission's position. He submitted that the principle of necessity can be introduced as an economic policy guideline in line with Article 136(1)(b) TFEU because "it contributes to the coordination and harmonization of the economic policies of the Member States with regard to States which find themselves in a state of need".³⁰ He also maintained that through the procedures provided in Articles 122–126 TFEU, the Council is entitled to take measures beyond those designed to reinforce budgetary discipline and hence measures impinging on a Member State's budgetary sovereignty. To say that the Council cannot take such measures would be contrary to the solidarity clause in Article 222 TFEU, which allows "for joint action on the part of the Member States in the event of a natural or a man-made catastrophe as has befallen Greece".³¹

In examining the applicant's claims, the Court noted that he had not demonstrated how the adoption of the principle of the state of necessity would help in coordinating budgetary discipline or could be considered an economic policy guideline under Article 136 TFEU.³² Referring for the last time to *Pringle*, the Court emphasized that, when it comes to economic policy, the Union can only adopt coordinating measures. Allowing the adoption of a legislative act that authorizes a Member State not to repay its debt is not only outside the meaning of Article 136(1)(b) TFEU; it would also "result in

26. Case T-450/12, *Anagnostakis*, para 49; Case C-370/12, *Pringle*, para 118.

27. Case T-450/12, *Anagnostakis*, para 50.

28. *Ibid.*, paras. 52–61.

29. Commission's reply stating the reasons for refusal of registration, cited *supra* note 4.

30. Case T-450/12, *Anagnostakis*, para 53.

31. *Ibid.*, para 54.

32. *Ibid.*, para 57.

replacing the free will of contracting parties with a legislative mechanism for the unilateral writing-off of sovereign debt, which is something that the provision clearly does not authorize”.³³ The GC then briefly stated that there is no inconsistency between the Commission’s reply and Article 222 TFEU because that Article is irrelevant to the EMU and does not cover the budgetary difficulties of the Member States.

The applicant’s last argument was based on international law.³⁴ The applicant argued that the principle of the state of necessity was a rule of international law, which was recognized in the case law of the International Court of Justice. It allowed for the unilateral writing-off of part of a sovereign debt for economic reasons. In its judgment, the GC did not consider at all the existence or the nature of such a rule of international law or whether this would allow a Member State to refuse to repay its sovereign debt in exceptional circumstances. It merely noted that, in any case, international law cannot constitute a basis for a legislative proposal by the Commission in the absence of any corresponding conferral of powers in the Treaties.³⁵

The subsequent appeal to the ECJ is rather confusing. It naturally requests the ECJ to set aside the judgment of the GC, but it also asks it to order the Commission to register the Solidarity Initiative, although the GC explicitly stated that the EU Courts are unable to oblige EU institutions to act in a specific way. The appeal was based on two main arguments. First, the appellant argued that the GC misunderstood the subject matter of the proposed Initiative: the GC overlooked that the Initiative proposal did not concern the entire debt of a Member State, but only “that part of the public debt which is considered ‘abhorrent’”. The text of the appeal, however, did not define the term “abhorrent debt”.

Secondly, the applicant argued that the GC infringed, misinterpreted, and misapplied EU law.³⁶ This ground of appeal consisted of six more detailed arguments. Some of these referred to Treaty provisions that had not been mentioned in the case before the GC. To follow the same order as our discussion of the GC’s judgment above, we can re-group the arguments of the appeal to match the three main arguments in the first instance case concerning Articles 122 and 136 TFEU and rules of international law. Regarding Article 122 TFEU, the appellant argued that the GC mistakenly ruled out the use of

33. *Ibid.*, paras. 58–60.

34. *Ibid.*, paras. 62–67.

35. *Ibid.*, para 65.

36. In the words of the appeal, the ground here was “Infringement of EU law by the General Court, misinterpretation and misapplication of the Treaties and of European legislation”. For the arguments of the appeal discussed here, see Case C-589/15: Appeal by *Alexios Anagnostakis* against the judgment delivered by the General Court in Case T-450/12, *Anagnostakis*, O.J. 2016, C 7/12.

this provision as an appropriate legal basis, because the Commission can submit a proposal to the Council under Article 352 TFEU to recommend that assistance be given under Article 122(1) or 122(2) TFEU to a Member State in serious difficulties. If nothing else, the Commission itself has the power to establish a financial assistance mechanism under Article 352 TFEU to attain stability in the euro area, something the GC ignored. The reference to Article 352 TFEU is notable because the case before the GC had not referred to this provision at all.

Concerning Article 136 TFEU, the appeal stated that this Treaty provision gives an absolute power to the Eurozone Member States to establish “a stability mechanism and of financial assistance” (sic). However, while the case before the GC had only mentioned Article 136(1) TFEU, the appeal referred to “Article 136 TFEU as amended by the European Council Decision 2011/199/EU”. The addition of this note to the text of the appeal can be seen as a reference to Article 136(3) TFEU, although Article 136(3) TFEU is not explicitly mentioned. The appellant also argued that the GC mistakenly found that the principle of the state of necessity could not strengthen the coordination of budgetary discipline or be seen as an economic policy guideline under Article 136(1) TFEU. In fact, the applicant asserted that the non-payment of the abhorrent debt, which would be allowed by the proposed principle of the state of necessity, “is designed exclusively to strengthen the budgetary discipline of the Member States”.

With reference to the use of international law for the purposes of registering the Solidarity Initiative, the appellant argued that the GC wrongly found that international law could not constitute a legal basis for the adoption of EU law. Since international law is a source of law for the EU, the argument goes, there is no need for a more specific provision in the Treaty to allow the Commission to propose legislation coming from international law. The final point of the appeal that is of interest to this annotation concerned the alleged inadequacy of the Commission’s statement of reasons.

4. Opinion of Advocate General Mengozzi

Advocate General Mengozzi re-organized the appeal in four grounds, which he classified into two groups. The first group of arguments relate to the procedure with which the Commission made its decision, and particularly the adequacy of the Commission’s reasons. The second group concerns the assessment by the GC of the substance of the contested decision and thus of the legality of the Commission’s application of Article 4(2)(b) of the ECI Regulation. This group includes the appellant’s complaints about the

misinterpretation by the GC of Articles 122 and 136 TFEU and rules of international law.

Starting with the claim regarding the reasons given by the Commission to the ECI organizers, the Advocate General emphasized that the Commission should demonstrate a very explanatory approach when replying to Initiative organizers, since these persons are not necessarily experienced in EU law.³⁷ Yet the responsibility of the Commission does not go as far as to oblige the Commission to explain “the reasons why no provision of the Treaties can form the basis for Union action”.³⁸ For the Advocate General, this limitation to the Commission’s obligation to give reasons stems *inter alia* from the lack of precision of the proposed Initiative itself. The vagueness of a proposed Initiative affects the ability of the Commission to assess a proposal; the Commission cannot be expected to specify points of law that might not have been envisaged by the authors of the Initiative. Besides, the real question here should be whether the addressee was able to understand the reasons for the rejection of his application.³⁹

For the Advocate General, it was clear in the statement of reasons that the proposed Initiative was rejected because it did not comply with Article 4(2)(b) of the ECI Regulation. It was also clear from the judgment under appeal that the General Court applied the correct test in assessing the Commission’s statement of reasons. With regard to the appellant’s argument that the complexity of the law on the EMU should be taken into consideration, the Advocate General considered this issue as something that should arise under the review of the substance of the Commission’s Decision, and not under the procedural consideration of the adequacy of the Commission’s reasons, because it relates to the interpretation of the Treaty provisions mentioned in the ECI. The argument on the complexity of the area covering the ECI in question did not reappear in the ECJ’s judgment.

After dismissing the first group of arguments (i.e. on procedural grounds), the Advocate General considered whether the reasoning of the contested decision was well founded. He emphasized that the purpose of the proposed Initiative and the references to Articles 119 to 144 TFEU were the only information available to the Commission at the time of the assessment, although further details about the proposal were submitted to the Court by the applicant in the appeal case. The Advocate General attempted to put together the additional information in order to decipher the specific objectives of the proposed ECI. Based on the text of the appeal, he described the Solidarity

37. Opinion, para 24.

38. *Ibid.*, para 25.

39. *Ibid.*, paras. 25–27.

Initiative as follows:⁴⁰ the proposed Initiative relates only to the “abhorrent” part of a sovereign debt, and not the entire amount of the sovereign debt. The recommended “principle of the state of necessity” would allow the cancellation of a State’s abhorrent debt towards other Member States and the Union, but would not be considered a financing mechanism or one that is related to stability.⁴¹ The application of the principle of the state of necessity would be triggered upon request of a Member State whose debt threatens the economic and political situation in the country, and upon agreement from the rest of the Member States and the Union. The use of the principle of the state of necessity would be open to all Member States, but its application would be subject to strict conditions and to approval by the Union, which would also be responsible for approving a Member State’s declaration of the state of necessity. Notably, the picture of the proposal as described by the Advocate General is what emerged from the explanation given by the appellant during the appeal case, but not necessarily at the time of the registration, when the Commission had much more limited information about the specifics of the Solidarity Initiative.

The Advocate General agreed with the General Court’s findings on Articles 122 and 136 TFEU. Concerning Article 122 TFEU, the Advocate General opined that, based on *Pringle*, the provision at hand could not be a legal basis for the establishment of a principle of the state of necessity, even if one assumed that the principle of the state of necessity was covered by the term “appropriate measures” stated in Article 122(1) TFEU.⁴² At the very least, the proposed mechanism would be of a general and permanent nature, while Article 122(1) TFEU only allows for *ad hoc* measures. Moreover, the proposed Initiative would not fulfil the condition of Article 122 TFEU that financial assistance must be granted by the Union and not by the Member States.⁴³ The Advocate General found some interest in the appellant’s proposition that the Commission could have partially acted on the proposal to register only the part concerning the debt owed by a Member State to the Union. Nonetheless, he did not delve into this argument because the appellant had not substantiated it as a ground of appeal.

40. The description here aims to put together the information given by the A.G. in para 31 of the Opinion.

41. Even though at one point the appellant also asserted that the principle of the state of necessity would only cover the debt of a Member State *vis-à-vis* the Union.

42. In para 116 of Case 270/12, *Pringle*, the Court ruled that Art. 122(1) TFEU: “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”.

43. Opinion, para 43.

Subsequently, the Advocate General examined the appellant's argument that the General Court misinterpreted Article 136 TFEU.⁴⁴ He sided with the Commission's view that the argument on using Article 352 in conjunction with Article 136(3) TFEU as a legal basis for the Initiative was inadmissible as it was only introduced at the appeal stage.

The Advocate General also highlighted some inconsistencies in the appellant's arguments. For instance, the appellant argued that the principle of the state of necessity would apply to all the EU Member States and would not cover financial stability, even though Article 136(1) TFEU clearly applies only to Eurozone countries and Article 136(3) TFEU is a legal basis for the establishment of a stability mechanism.⁴⁵ In addition, the Advocate General observed that the proposed Initiative was submitted to the Commission in July 2012, whilst Article 136(3) TFEU was introduced in the Treaty in May 2013. As such, he opined that the argument on that provision was inadmissible, as the appellant could not have considered Article 136(3) TFEU as a legal basis for the Solidarity Initiative nor relied on it retrospectively.⁴⁶

Finally, the Advocate General stated that there was no reason for the General Court to express a view on whether there is a principle of the state of necessity in international law.⁴⁷ This issue was irrelevant to the case at hand because the only sources that set out and delineate EU competences are the Treaties in accordance with the principle of conferral (Art. 5 TEU). The Advocate General opined that this complaint should be rejected as unfounded, and the appeal in its entirety should be dismissed.

5. Judgment of the Court of Justice

The ECJ dismissed the appeal and largely followed the Advocate General's Opinion. Like the Advocate General, the ECJ classified the complaint under four grounds of appeal; the first related to the adequacy of the reasons given by the Commission, and the others relating to the rationale behind the General Court's decision that neither Articles 122 and 136 TFEU, nor rules of international law, could be used as legal bases for the proposed Initiative.

The ECJ commenced with some preliminary observations about the ECI itself.⁴⁸ It confirmed that the Commission's obligation under Article 4(3) of

44. *Ibid.*, paras. 45–56.

45. *Ibid.*, para 50.

46. *Ibid.*, paras. 53–56.

47. *Ibid.*, paras. 57–63.

48. Judgment, paras. 24–28.

the ECI Regulation derives from, and is a specific expression of, the obligation on EU institutions to state reasons under Article 296 TFEU. Similarly to the General Court, the ECJ reiterated well-established case law on Article 296 TFEU, according to which the requirements of that Article “must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question”.⁴⁹ It also highlighted that the Commission statement rejecting an ECI must include both the applicable Article of the Regulation (e.g. Art. 4(2)(b)) and the reasons why the proposal does not comply with that Article. The ECJ confirmed the finding of the General Court that the Commission fulfilled its duty to state reasons.

With regard to the appellant’s argument on the use of Article 122 TFEU, the ECJ reiterated the GC’s finding, which had relied on *Pringle*, that Article 122(1) TFEU is not an appropriate legal basis for financial assistance from the EU to Member States threatened by financial problems.⁵⁰ This finding was clear enough not to be affected by the factual differences between the European Stability Mechanism (ESM), which was the subject of *Pringle*, and the proposed Initiative.⁵¹ The finding that a Member State cannot use Article 122(1) TFEU to decide unilaterally not to repay all or part of its debt is also unaffected by any considerations of solidarity between Member States.⁵²

Concerning the use of Article 122(2) TFEU as a potential legal basis for the proposed Initiative, the ECJ once again agreed with the findings of the GC: the general and permanent nature of the mechanism for the non-repayment of debt rendered Article 122(2) TFEU inapplicable to the proposed Initiative.⁵³ Moreover, the ECJ highlighted the fact that the state of necessity could not be considered a measure of “assistance granted by the Union” in the context of Article 122(2) TFEU, because it aimed to cover debts owed by Member States both to the EU and to other natural or legal persons.⁵⁴

The next ground of appeal related to the interpretation of Article 136(1) TFEU where once again the ECJ confirmed the GC’s finding on the unsuitability of Article 136(1) TFEU as a legal basis for the registration of the Solidarity Initiative. The proposed Initiative cannot be seen as “economic policy guidance” under Article 136(1)(b) TFEU. On the contrary, the mechanism proposed by the Solidarity Initiative would “in fact result in replacing the free will of contracting parties with a legislative mechanism for

49. *Ibid.*, para 29.

50. *Ibid.*, para 69.

51. *Ibid.*, paras. 70–71.

52. *Ibid.*, para 71.

53. *Ibid.*, para 75.

54. *Ibid.*, para 77.

the unilateral writing-off of sovereign debt”.⁵⁵ The ECJ then shortly noted that it was unable to examine the appellant’s argument on the potential use of Article 136(3) TFEU as a legal basis for the Initiative, because it was raised only in the appeal.⁵⁶

The last part of the judgment dealt with the appellant’s argument that the GC wrongly found that a principle of international law, such as that of the state of necessity, could not be a legal basis for a legislative initiative by the Commission.⁵⁷ Referring to Articles 5(1), 5(2), and 13 TEU, the ECJ emphasized that the Commission can propose a legal act only based on a competence conferred on the Union by the Treaties and not on the existence of a principle of international law, such as the alleged principle of the state of necessity.⁵⁸ As such, there was no need to examine whether such a principle exists at all under international law.⁵⁹

6. Commentary

As mentioned above, the judgments of both the GC and the ECJ are split into two main parts: a part discussing the Commission’s duty to give reasons, and a part examining the merits of the Commission’s decision to reject the proposed Initiative. These comments are roughly divided along similar lines. First, they discuss issues arising from the case which concern the procedure pertaining to the ECI. They decipher the ECJ’s approach to questions relating to the character of the ECI and illustrate the Court’s interpretation of the legal admissibility test and more specifically Article 4(2)(b) of the ECI Regulation in the context of this particular case. Secondly, the commentary examines the substantive implications of the judgment for the EMU. It argues that, despite initial commentary, the EU Courts did not use “explosive language”⁶⁰ when considering the question of a possible “haircut” of a country’s sovereign debt (i.e. debt relief).⁶¹ If anything, the ECJ was careful not to give too much away when it comes to the Treaty legal bases allowing for financial assistance to a Member State.

55. *Ibid.*, paras. 90–91.

56. *Ibid.*, para 93.

57. *Ibid.*, paras. 95–103.

58. *Ibid.*, para 100.

59. *Ibid.*, para 101.

60. Sarmiento, “The European Citizens’ Initiative and EU competence over Greek debt ‘haircuts’”, *EU Law Analysis* (8 Oct. 2015), <eulawanalysis.blogspot.com/2015/10/the-european-citizens-initiative-and-eu.html>.

61. For a discussion of the Greek debt and debt relief see Hofmann, “Greek debt relief”, 37 *Oxford Journal of Legal Studies* (2017), 1.

6.1. *Implications of the judgment for the ECI as a participatory mechanism*

To begin with, it is notable that the GC chose to examine of its own motion the Commission's duty to give reasons. In this way, the GC created the space to make declarations on the purpose and character of the ECI *vis-à-vis* Article 11 TFEU, Article 24 TFEU, and the ECI Regulation. For instance, the GC talked about the connection between the right to bring an ECI and EU citizenship.⁶² Such statements might not have been possible at the point where the GC looked at the substance of the case where, as is shown below, issues concerning the interpretation of the proposed legal bases for an Initiative mainly revolved around competence delimitation and the principle of conferral in the context of the EMU.

The standpoint from which the GC examined the Commission's duty to give reasons is worth commenting on, as it is grounded on a perception of the ECI as a "right of citizens to participate" in the EU democratic life. The GC referred to "the right of Union citizens to submit a citizens' initiative", which is enshrined in Article 24(1) TFEU and which was intended to reinforce EU citizenship and to promote the participation of citizens in the democratic life of the EU, hence enhancing the democratic functioning of the Union.⁶³ From this starting point, the GC stated that the rejection of a proposed Initiative has the potential to impede the effective exercise of the Treaty-bestowed right to submit an ECI. Consequently, the Commission should carefully appraise a proposed Initiative and give reasons if it refuses to register it. The ECJ judgment confirms this interpretation by referring to "*the right to submit an ECI as an instrument of citizen participation in the democratic life of the European Union*".⁶⁴

Two issues connected with the appraisals of the Commission's duty to give reasons are worth further comments. First, the GC's choice to review of its own motion the reasons given by the Commission for rejecting the proposed Initiative can be seen as a warning signal to the Commission. Since *Anagnostakis* was the first case on the ECI, it is likely that the GC saw it as an opportunity to pass a message to the Commission about the level of scrutiny that the latter institution should expect on its decision to reject an Initiative. If this is so, the strength of the message is rather questionable, given that the EU Courts simply repeated the traditional test for the duty of the EU institutions to

62. Case T-450/12, *Anagnostakis*, paras. 25–26.

63. *Ibid.*

64. *Ibid.*, para 49, para 24, para 30. The ECJ also referred to the ECI as a citizens' right – although less enthusiastically – in para 48.

give reasons for their decisions. There is nothing in the judgment to distinguish the duty of the Commission to give reasons in the context of the ECI from other cases, despite the novel nature of the case and the explicit acknowledgment that the ECI bestows a “right” on EU citizens. Having said that, the ECJ also confirmed that the Commission is obliged to consider all the information submitted by an organizer in accordance with the process stipulated in the ECI Regulation. For instance, in situations where the organizers of a proposed Initiative submit an annex to their proposal with detailed information on the subject, objectives, and background to the proposal, the Commission must examine that information in addition to the mandatory information submitted by the organizers.⁶⁵

This takes us to the second observation about the GC’s review of the Commission’s duty to give reasons: the judgment in *Anagnostakis* should serve as a reminder both to the Commission and to potential ECI organizers that there are safeguards in the process of registering (or refusing) an Initiative.⁶⁶ The potential for the GC to interfere and set things straight regarding the Commission’s reasons for rejecting an ECI has the capacity to change the future of a proposed ECI. Think here, for example, of the *Minority SafePack* Initiative, which was originally refused registration by the Commission. When the organizers challenged the legality of the refusal, the GC ordered the annulment of the Commission’s decision on the grounds that the Commission did not comply with its duty to give reasons.⁶⁷ As a response, the Commission (partially) registered that ECI.

In a more indirect way than overturning the fate of a proposed Initiative, the potential for interference by the GC or the ECJ may lead to more careful examination by the Commission of proposed Initiatives and to more detailed explanations when proposed ECIs are rejected. This possibility holds true regardless of the actual outcome of *Anagnostakis* or of most ECI cases, where the GC found that the Commission complied with its duty to give reasons. The Commission has recently changed the way it informs citizens of its decision to reject a proposed Initiative and it now publishes more detailed decisions both for rejected and for registered ECIs.⁶⁸ Although the Commission has not directly linked this change to ECI litigation, the change in the Commission’s practice may be seen as an indication of how the EU Courts’ judgments have influenced the Commission’s approach in practice.

65. Judgment, paras. 34–35.

66. See also Vogiatzis, “Between discretion and control: Reflections on the institutional position of the Commission within the European Citizens’ Initiative process”, 23 *ELJ* (2017), 250.

67. Case T-646/13, *Minority SafePack v. Commission*, EU:T:2017:59.

68. See Karatzia, *op. cit. supra* note 7.

Taken together, the Commission's duty to give reasons, the possible external scrutiny by the EU Courts of the Commission's admissibility decisions, and the Commission's response to the judgments, all mandate a careful approach towards recent suggestions to place the ECI legal admissibility decisions in the hands of an independent third party.⁶⁹ During a recent hearing at the European Parliament on the reform of the ECI Regulation, it was argued that an independent third party with the appropriate expertise in EU law should be given responsibility for deciding on the admissibility of ECIs. The merit of this suggestion was that this independent party would eliminate the dual role of the Commission as a decision-maker both at the admissibility stage and the final stage of an ECI's life. If it were to materialize, this reform might lead to more problems than the ones it tries to solve. Leaving aside the questions of who would bear this responsibility and how their qualifications would be checked, this reform would lead to the loss of a valuable platform to scrutinize not only the final decisions but also the decision-making process pertaining to the ECI's legal admissibility stage. Currently, that platform is available to ECI organizers through the process of judicial review under Article 263 TFEU. Moving the responsibility for the ECI admissibility test from the Commission to another body or individual in the future would mean that the EU Courts would no longer have the power to scrutinize the application of Article 4(2)(b) of the ECI Regulation in case of disagreement between the organizers and the decision-maker.

On a different note – and moving away from the particulars of the duty to give reasons – *Anagnostakis* has also squarely contextualized the ECI as an instrument linked to EU citizenship. A close look at Article 24(1) TFEU shows that the language of that provision differs from the rest of Article 24 TFEU. While Article 24(2), (3), and (4) explicitly mention that “every citizen of the Union” should be able to take advantage of ways to interact with EU institutions,⁷⁰ Article 24(1) TFEU is a legal basis for the adoption of secondary legislation setting out the detailed legal framework for the ECI. It is the Preamble to the ECI Regulation that explicitly makes the link between the ECI and EU citizenship which is now recognized by the EU Courts in *Anagnostakis*.

The ECJ's approach to the case through the lens of “citizenship rights” raises the question of what the implications are of this approach for the ECI's justiciability. What are the implications of proclaiming that citizens have a

69. The suggestion was made during the hearing organized by AFCE and PETI Committee at the European Parliament on the Revision of the ECI Regulation, 21 Feb. 2018.

70. Art. 24 provides for the right to petition the European Parliament, the possibility to apply to the Ombudsman, and the option to write to the EU institutions and receive a reply in your language of choice.

“right to undertake an ECI” which allows them “to apply directly to the Commission in order to submit to it a request inviting it to submit a proposal for a legal act of the Union, for the purposes of the application of the Treaties”?⁷¹ *Anagnostakis* hints at the fact that the “right” to undertake an ECI is confined to the *right to submit* an ECI, and not necessarily a right to have your ECI acted upon by the Commission, or acted upon by the EU institutions. The issue of “what type of right” the ECI bestows on EU citizens is in turn linked to a question regarding the justiciability of the ECI: would the ECJ be equally willing to interfere with the Commission’s decisions at the follow-up stage as with its decisions at the admissibility stage? *Anagnostakis* was the first to confirm the admissibility of cases contesting the Commission’s interpretation and application of Article 4(2)(b) of the ECI Regulation. The Commission enjoys considerably more discretion when it comes to its final decision on a successfully submitted ECI than with regard to admissibility. The recent GC judgment in *One of Us* illustrates that the EU Courts are also ready to step in when it comes to cases challenging the Commission’s final decisions on successfully submitted ECIs, though to a lesser extent.⁷² In *One of Us*, for instance, the GC examined whether the Commission had fulfilled its procedural duty to give reasons, but only conducted a limited review of the applicants’ argument that the Commission’s assessment of the ECI was mistaken.

A final, brief comment on the part of the judgment dealing with the procedural aspect of the ECI concerns a point that was only dealt with in passing by Advocate General Mengozzi and the ECJ: the possibility for partial registration of an ECI.⁷³ The phrase “partial registration” refers to the possibility for the Commission to register only some parts of a proposed Initiative, which would fulfil the ECI admissibility test. As we have seen above, both Advocate General Mengozzi and the ECJ dismissed the argument on partial registration of the Solidarity Initiative because it was only presented in the appeal case. The recently voted New ECI Regulation will formally recognize the ability of the Commission to partially register an Initiative “if part of the initiative, including its main objectives, 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”.⁷⁴

71. Judgment, para 24.

72. Case T-561/14, *One of Us and Others v. Commission*, EU:T:2018:210.

73. Opinion, para 44; judgment, para 79.

74. Art. 6(3)(c) European Parliament and European Council Brussels, Regulation of the European Parliament and of the Council on the European Citizens’ Initiative, 2017/0220 (COD) PE-CONS 92/18, 27 March 2019.

6.2. *Anagnostakis in the context of the EMU*

Despite its outcome, *Anagnostakis* revives a debate that was at the forefront of discussions during the peak of the euro-crisis, namely the relationship between the notion of “solidarity” and the financial assistance given to Member States facing financial problems. We recall here the landmark cases of *Pringle* and *Gauweiler*,⁷⁵ which contested the legality of crisis management measures taken by the EU Member States and by the European Central Bank respectively. It was acknowledged at the time that solidarity worked at the background of the legal developments: some sort of “de facto” solidarity was apparent in the behaviour of the relevant actors.⁷⁶ Solidarity, therefore, was discussed as a concept linked to financial obligations and has been identified as a principle, a value, or an objective of EU law which is linked to sharing financial obligations and which needs to be balanced carefully with the risk of moral hazard.⁷⁷

Yet the legal meaning and implications of the notion of solidarity in the context of the EMU were not analysed by the EU Courts in the two cases mentioned above or in subsequent litigation. The most explicit reference to solidarity was made by Advocate General Kokott in her Opinion in *Pringle*, regarding the interpretation of Article 125 TFEU (i.e. the no bail-out clause).⁷⁸ The Advocate General opined that “a broad interpretation of Article 125 TFEU would be incompatible with the concept of solidarity” but the concept of solidarity does not create a duty to provide financial assistance to a Member State.⁷⁹ Beyond the Advocate General’s statement, the concept of solidarity hardly featured in the EMU-related case law.

It is in this context that the relevance of *Anagnostakis* to EMU law should be placed, insofar as it seems that the applicant was trying to rely on a notion of “solidarity” – generally speaking – to propose a “haircut” of the Greek sovereign debt. The applicant refers to the notion of “the principle of necessity” which he presents as a specific expression of solidarity in his

75. Case C-62/14, *Peter Gauweiler and Others v. Deutscher Bundestag*, EU:C:2015:400. For commentary see De Witte and Beukers, “The Court of Justice approves the creation of the European Stability Mechanism outside the EU legal order: *Pringle*”, 50 CML Rev. (2013), 805; Craig and Markakis, “*Gauweiler* and the legality of outright monetary transactions”, 41 EL Rev. (2016), 1.

76. Borger, “How the debt crisis exposes the development of solidarity in the euro area”, 9 EUConst (2013), 7; McDonnell, “Solidarity, flexibility, and the euro-crisis: Where do principles fit in?”, in Rossi and Casolari (Eds.), *The EU after Lisbon: Amending or Coping with the Existing Treaties?* (Springer, 2014).

77. McDonnell, op. cit. *supra* note 76.

78. Opinion of A.G. Kokott on Case C-370/12, *Pringle*, EU:C:2012:675.

79. *Ibid.*, paras. 142–143.

proposed Initiative.⁸⁰ The EU Courts were thus called to rule on the existence of a legal basis for a proposed Initiative that relied, broadly speaking, on the notion of solidarity and attempted to influence EMU law through that notion. In principle, therefore, the case could be seen as an opportunity for the ECJ to give its own understanding of the notion of solidarity in the context of financial assistance to Eurozone Member States, and perhaps to clarify what was left unsaid in *Pringle* and *Gauweiler*. Yet, as can be seen from this commentary and as further discussed below, the ECJ did not add anything substantial to the discussion on the relevance of solidarity in this context, but mostly reiterated its judgment in *Pringle vis-à-vis* the specific content of the case at hand.

It can be said that the analysis of a case that challenges a Commission decision under the ECI Regulation is perhaps not the most appropriate platform to draw conclusions regarding the legal bases that allow or prohibit financial assistance to Eurozone Member States. The *Anagnostakis* case itself does not directly relate to the functioning of a specific mechanism of financial assistance, which was, for instance, the focus of the cases on the Cyprus haircut of deposits, and neither is it a preliminary request from a Member State court questioning assistance mechanisms, like older Portuguese cases.⁸¹ There is something peculiar in considering an ECI case *vis-à-vis* the EMU, which is a rather technical area that remained for several years outside the concern of the EU Courts.

However, a significant factor links the case with the EMU, allowing us to comment on it from the perspective of the EMU: Article 4(2)(b) of the ECI Regulation goes to the core of EU competence delimitation, as it pertains to the Commission's competence to propose legislation. In this sense, a judgment on whether the Commission correctly refused an ECI on substantive grounds can potentially have far-reaching implications that go beyond the semantics of admissibility of a specific ECI. This possibility holds true even though in *Anagnostakis*, the judgment was rather predictable and offered little more than we already knew about the operation of financial assistance mechanisms and the link with the concept of solidarity.

Two factors might explain the ECJ's cautious approach to the case. The first is the peculiarity noted here, *viz.* the EU Courts being asked to deliver an EMU-related judgment in a case that was not directly relevant to the

80. For an analysis of necessity as acknowledging in EU law the right of Member States to act in contravention of the EU rules, see Koutrakos, "The notion of necessity in the Law of the European Union", 41 *Netherlands Yearbook of International Law* (2010), 193.

81. See respectively Case C-105/15 P, *Mallis v. European Commission*, EU:C:2016:702; Case C-8/15 P, *Ledra Advertising Ltd v. European Commission*, EU:C:2016:701; and Case C-128/12, *Sindicato dos Bancários do Norte v. BPN*, EU:C:2013:149; Case C-64/16, *Associação Sindical dos Juizes Portugueses*, EU:C:2018:117.

euro-crisis. It might be that the EU judges thought it was inappropriate to deliver far-reaching declarations on such an important and politically charged topic. The second concerns the structure of the case and the arguments brought forward to support the grounds for review in the case. A number of arguments that might have obliged the ECJ to take a stance on the definition and legal importance of solidarity in the EMU were only made at the appeal stage, so they were dismissed by the ECJ based on the rule that no new arguments can be brought before the Court in appeal proceedings.⁸² These include, for example, the argument that a “haircut” of a Member State’s debt could be subject to conditions set by the Commission or could be based on Article 136(3) TFEU in conjunction with Article 352 TFEU, and that the Solidarity Initiative could be partially registered by the Commission. These had to do not only with the grounds that the appellant put forward for review, but also with the actual objectives of the proposed Initiative – had the applicant been consistent all along with their argumentation, the case might have given us more detailed statements by the ECJ about EMU law and thus a lot more points to consider.

The inadmissibility of these arguments also meant that the ECJ adopted a certain understanding of the Solidarity Initiative and worked backwards from that when assessing the GC’s judgment on the suitability mainly of Articles 122 and 136 TFEU as legal bases for the proposed Initiative. We already discussed Advocate General Mengozzi’s interpretation of the Initiative’s purpose, which derived from putting together the organizer’s initial proposal, the arguments in the case before the GC, and the arguments for review of the case by the ECJ. By way of contrast, the ECJ interpreted the purpose of the Initiative based only on the organizer’s initial proposal and the first instance case, leaving behind the subsequent arguments raised at the appeal. As such, when reviewing the GC’s judgment, the ECJ understood the proposed Initiative as suggesting a general and permanent mechanism under the name of “the principle of necessity” that would allow Greece (or any Member State) to decide unilaterally not to repay all or part of its debts owed both to the EU and to other legal or natural public or private persons (including individual Member States). For example, the ECJ did not consider whether an alternative interpretation of the proposed Initiative, whereby the haircut of debt would be subject to conditions set out by the Commission, could have been established based on Article 122 TFEU.⁸³ This is because the argument on the potential conditionality for triggering the so-called principle of necessity was only invoked on appeal.⁸⁴

82. Judgment, paras. 52–55.

83. *Ibid.*, para 72.

84. *Ibid.*, para 53.

The word “unilateral” in the Court’s understanding of the proposed mechanism under the Solidarity Initiative explains why the rejection of the appeal is not surprising. Financial assistance given to Member States during the euro-crisis has traditionally been bilateral or multilateral, based on a host of different mechanisms established after the agreement of EU Member States.⁸⁵ Most importantly, it has been conditional on the Member State fulfilling certain obligations. In the context of the EMU, solidarity has been considered to operate hand-in-hand with the ideas of reciprocity and conditionality and not solely as “altruistic solidarity”.⁸⁶ Financial assistance was provided to an EU Member State only if the recipient country remained responsible for its commitments to its creditors, if the assistance was indispensable to safeguard the financial stability of the euro area as a whole, and if the recipient Member State adhered to strict conditionality attached to the financial aid.⁸⁷ Based on this rationale, the ECJ would have contradicted itself if it had ruled in *Anagnostakis* that a Member State can unilaterally decide to write off part of its debt to the EU. All the more so, given the ambiguity in the case as to which creditors would be involved in the provision of solidarity to Greece.

The word “unilateral” is also key when we consider the broader implications of the judgment *vis-à-vis* the government debt haircut in the Eurozone. Past commentary on the GC’s judgment in *Anagnostakis* had characterized the GC’s finding as “politically explosive”.⁸⁸ This referred to the statement by the GC that “the adoption of a legislative act authorizing a Member State not to repay its debt, however, far from constituting economic policy guidance within the meaning of Article 136(1)(b) TFEU, which is the provision on which the present complaint is based, would in fact result in replacing the free will of contracting parties with a legislative mechanism for the unilateral writing-off of sovereign debt, which is something that the provision clearly does not authorize”.⁸⁹ Based on this quote, Sarmiento asks whether the General Court “openly precluded any kind of haircut of government debt by any means” which would mean that “haircuts will be mission impossible in the future despite the circumstances, the consensus among Member States, and the terms and scope of the haircut”.⁹⁰

85. Examples include the European Financial Stability Mechanism, the European Financial Stability Facility, and the European Stability Mechanism.

86. Hilpold, “Understanding solidarity within EU law: An analysis of the ‘islands of solidarity’ with particular regard to monetary union”, 34 *YEL* (2015), 257 at 265.

87. Case C-370/12, *Pringle*, paras. 138, 142–147.

88. Sarmiento, *op. cit. supra* note 60.

89. Case T-450/12, *Anagnostakis*, para 58.

90. Sarmiento, *op. cit. supra* note 60.

Offering a reflection on this question, it is argued here that we should be careful when drawing conclusions from *Anagnostakis* regarding debt relief in the EU. The ECJ's judgment should be seen in light of the ECJ's specific understanding of the proposed Initiative, as described above, and particularly in light of allowing or preventing a Member State *unilaterally* to erase part of its debt. This argument is further supported by the ECJ's judgment, which clarifies that it is "the adoption of a measure *such as that envisaged by the proposed ECI at issue*" and hence "the proposal to enshrine the principle of the state of necessity, *as conceived by the applicant*" that are not authorized under Article 136(1)(b) TFEU.⁹¹

7. Concluding Remarks

Anagnostakis was the first ECI case to be decided by the GC and on appeal by the ECJ. It illustrated for the first time the clear admissibility of challenges to the Commission's Decisions before the EU Courts; ECI organizers can challenge the legality of those decisions under Article 263 TFEU, both on procedural and on substantive grounds. It was the first in a series of subsequent challenges brought by dispirited Initiative organizers who disagreed with the Commission's assessment of their proposals.⁹² The recent judgment in *Izsák and Dabis*⁹³ concludes, for the time being, the litigation on the admissibility of ECIs.

Whether we will see more ECI cases before the EU Courts in the future largely depends on the format of the admissibility test included in the New ECI Regulation and on whether this revised legal framework changes the current rules of the game. As mentioned above, one of the main changes to the legal admissibility test is the formal recognition that an ECI can be registered even when only a part of the Initiative, including its main objectives, does not manifestly fall outside the Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties. Besides the possibility for partial registration, the essence of the current admissibility test under Article 4(2)(b), and thus its interpretation by the EU Courts, remains the same.

91. Judgment, paras. 91–92.

92. In addition to *Anagnostakis*, overall the following ECI cases reached the EU Courts: Case T-754/14, *Efler and Others v. Commission*, EU:T:2017:323; Case T-44/14, *Costantini and Others v. Commission*, EU:T:2016:223; Case T-646/13, *Minority SafePack v. Commission*, EU:T:2017:59; Case T-361/14, *AHB and Others v. Commission*, EU:T:2017:252 (appealed in C-336/17 P, *HB and Others v. Commission*, EU:C:2018:74); Case C-420/16 P, *Izsák and Dabis*. For a discussion see Karatzia, *op. cit. supra* note 7.

93. Case C-420/16 P, *Izsák and Dabis*.

In terms of substance, it was shown that in *Anagnostakis* the ECJ took a rather minimalist approach, disregarding the alternative explanations of the proposed Initiative put forward by the appellant, and eventually dismissed the case. By way of contrast, the more recent case of *Izsák and Dabis*, illustrates that the ECJ (on appeal) has the possibility to give final judgment in such ECI cases. Following a different line of argumentation from *Anagnostakis*, *Izsák and Dabis* had challenged the Commission's interpretation of Article 4(2)(b) and Article 11(4) TFEU as to the Commission's power to refuse registration of a proposed Initiative on the grounds of lack of competence: the ECJ ruled that the Commission had infringed Article 4(2)(b) of the ECI Regulation by refusing to register a proposed Initiative.

A final thought about *Anagnostakis* is triggered by recent events concerning the Greek debt, which make one wonder whether the ECJ's approach would have been different had the Solidarity Initiative been presented as a suggestion for debt relief that was coupled with conditionality and not coming unilaterally from a troubled Member State. In 2018, Greece exited its bailout programme. The exit came after an agreement during a Eurogroup meeting to provide Greece with debt relief measures subject to compliance with policy commitments and monitoring. In this sense, debt relief includes a deferral of the European Financial Stability Framework (EFSF) interest and amortization by 10 years and an extension of the maximum weighted average maturity by 10 years, both of which stretch the EFSF grace period to 2032. The Eurogroup expressed its willingness to revise this grace period with a view to agreeing on additional debt measures, on condition that the EU fiscal framework is respected.⁹⁴ It seems, therefore, that some sort of debt relief was eventually agreed for Greece although, contrary to the proposals of the Solidarity Initiative, it is certainly not unilateral and not unconditional.

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94. Eurogroup statement on Greece of 22 June 2018, <www.consilium.europa.eu/en/press/press-releases/2018/06/22/eurogroup-statement-on-greece-22-june-2018/>.

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