

Appeal brought on 19 December 2019 by European Federation of Public Service Unions (EPSU) against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 24 October 2019 in Case T-310/18, EPSU and Goudriaan v Commission

(Case C-928/19 P)

Language of the case: English

Parties

Appellant: European Federation of Public Service Unions (EPSU) (represented by: R. Arthur, Solicitor, K. Apps, Barrister)

Other parties to the proceedings: European Commission, Jan Willem Goudriaan

Form of order sought

The appellant claims that the Court should:

allow the appeal;

set aside the contested judgment;

annul the decision of the Commission dated 6 March 2018;

order the Commission to pay the appellant's costs of this appeal and the proceedings in the General Court.

Pleas in law and main arguments

The appellant submits that this appeal should be allowed because the GC erred in law.

GROUND 1: Directives adopted through Council decision under Article 155(2) TFEU are legislative in nature

The GC erred in characterising the procedure under Articles 154 and 155 TFEU as incapable of producing legal acts of a legislative nature.

CJEU case law establishes that measures adopted through the second procedure have the same consequences as other directives.

The Treaty of Lisbon did not reduce the role of the social partners or alter the nature of measures adopted through the second procedure.

Measures adopted by directive through Council decision remain legislative in nature.

Measures adopted by directive through Council decision are legislative acts.

Alternatively, if (which is denied) directives adopted through Council decision are not legislative acts:

They are a form of *lex specialis* of an essentially legislative rather than executive nature.

They are capable of having the same legal effects as they did prior to 2007.

The GC, therefore, erred in rejecting the appellant's First Plea.

GROUND 2: interpretation of Articles 154-155 TFEU

The GC erred in its literal, contextual and teleological interpretations of Articles 154 and 155(2) TFEU.

The GC's interpretation of Article 155(2) TFEU does not follow the express wording.

The GC should have found that, where a social partners' agreement was reached by representative social partners and the agreement is not unlawful, the Commission has a duty to propose the text to the Council for a decision to be made under Article 155(2) TFEU, second subparagraph.

The GC should have found that the choice of method of implementation of SP Agreements lay with the social partners and not the Commission.

The GC should have found that the Council has the power to decide not to make a decision under Article 155(2) TFEU, second subparagraph, but the Commission has no similar power.

The GC misinterpreted the institutional balance of Articles 154 and 155 TFEU expanding the powers of the Commission beyond the express wording of the provisions, and misinterpreting the impact of Articles 13 and 17 TEU.

The GC's interpretation runs contrary to the context of Title X TFEU on social policy and Article 28 of the CRFEU.

The GC misinterpreted the GC's judgment in UEAPME case, conferring a greater political discretion on the Commission than the Commission has under the correct interpretation.

The GC erred in its assessment of Parliament's role in the process under Articles 154 and 155 TFEU.

The GC, therefore, erred in rejecting the appellant's first plea.

GROUND 3: deferential approach to the Commission's Decision

The GC erred in considering that the Commission were entitled to a broad political discretion in making the decision. In so doing the GC:

misinterpreted Articles 154 and 155 TFEU and the nature of the social partners process, and

erred in drawing parallels with the European Citizens Initiative.

The GC, therefore, erred in rejecting the appellant's second plea.

GROUND 4: approach to the Commission's reasoning in the Commission Decision

The GC erred in upholding the legality of the brief reasoning of the Commission Decision.

The reasons given by the Commission in the letter of 6 March 2018 were legally and factually misconceived.

The Commission failed to provide any explanation for departing from assurances given in earlier correspondence and its published Communications.

The reasons given in the letter were not the reasons relied on by the Commission in its defence or at the hearing. Those reasons were also legally and factually misconceived.

The Commission has not acted consistently with Article 41 of the CFREU.