OPINION OF ADVOCATE GENERAL
PIKAMÄE
delivered on 20 January 2021 (1)

Case C-928/19 P

European Federation of Public Service Unions (EPSU)
v
European Commission

(Appeal – Law governing the institutions – Social policy – Articles 154 and 155 TFEU – Social dialogue between the social partners at EU level – Information and consultation of the social partners – Agreement concluded by the social partners – Information and consultation of civil servants and employees of central government administrations of Member States – Refusal by the Commission to submit a proposal for a decision to implement the agreement to the Council – Classification of measures arising from the implementation procedure – Commission's discretion – Extent of judicial review – Obligation to state reasons for the refusal)

1. By its appeal, the European Federation of Public Service Unions ('EPSU') asks the Court to set aside the judgment of the General Court of the European Union of 24 October 2019, *EPSU and Goudriaan* v *Commission* (2) ('the judgment under appeal'), by which the General Court dismissed the action for annulment brought by the applicants at first instance (EPSU and Mr Jan Goudriaan) against the decision adopted by the European Commission in its letter of 5 March 2018 ('the contested decision') refusing to submit a proposal for a decision implementing an agreement between management and labour – the social partners – to the Council of the European Union (3) ('the agreement at issue'). (4)

2. In the present case, the Court is called upon to interpret Article 155(2) TFEU. Although this is not the first time that the Commission has opposed an agreement negotiated by management and labour, (5) it is the first time that such opposition has been brought before the Court and that the Court has had the opportunity to consider the powers and obligations of the Commission in the procedure for implementing agreements concluded by management and labour under that provision. (6)

3. The Court must therefore determine whether the Commission may, in addition to reviewing the legality of the agreement negotiated by the social partners and the social partners' representativeness, conduct a review as to whether it is appropriate to implement that agreement.

I. Legal context

4. The first paragraph of Article 152 TFEU states:

‘The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.’

5. Article 153(1) TFEU provides that, with a view to achieving the objectives of Article 151, the Union is to support and complement the activities of the Member States in fields including ‘(e) the information and consultation of workers’.

6. Article 154 TFEU provides:

‘1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.

3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.’

7. Under Article 155 TFEU:

‘1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.

The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2).’

II. Background to the dispute

8. The background to the dispute was set out by the General Court in paragraphs 1 to 6 of the judgment under appeal and, for the purposes of these proceedings, may be summarised as follows.

9. By a consultation document of 10 April 2015, (7) the Commission invited management and labour, in accordance with Article 154(2) TFEU, to express their views on the possible direction of European Union action concerning a consolidation of the EU directives on information and consultation of workers. That consultation concerned inter alia the possible extension of the scope of application of those directives to cover civil servants and employees in public administrations in the Member States.

10. On 2 June 2015, the social partners sitting on the Social Dialogue Committee for Central Government Administrations – namely the TUNED, on the one hand, and the EUPAE, on the other hand – informed the Commission on the basis of Article 154(4) TFEU of their desire to negotiate and to conclude an agreement on the basis of Article 155(1) TFEU.

11. On 21 December 2015, TUNED and EUPAE signed an agreement entitled ‘General framework for informing and consulting civil servants and employees of central government administrations’.

12. By letter of 1 February 2016, TUNED and EUPAE jointly requested the Commission to submit a proposal for the implementation of the agreement at issue at EU level by a decision of the Council adopted on the basis of Article 155(2) TFEU.

13. On 5 March 2018, the Commission informed TUNED and EUPAE that it had decided not to submit to the Council a proposal for a decision implementing the agreement at issue at EU level.

14. In the contested decision, the Commission stated, in essence, first, that central government administrations were under the authority of the Member States’ governments, that they exercised the powers of a public authority and that their structure, organisation and functioning were entirely the responsibility of the Member States. Next, the Commission observed that provisions ensuring a certain degree of information and consultation of civil servants and employees of those administrations already existed in many Member States. Last, the Commission found that the significance of those administrations depended on the degree of centralisation or decentralisation of the Member States, so that, in the event of the implementation of the agreement at issue by a Council decision, the level of protection of civil servants and employees of public administrations would vary considerably across Member States.

III. Procedure before the General Court and the judgment under appeal

15. By application lodged at the Registry of the General Court on 15 May 2018, the applicants at first instance brought an action for annulment of the contested decision.

16. In support of their action, the applicants at first instance relied, in essence, on two pleas in law alleging, first, an error of law as to the scope of the Commission’s powers and, second, that the reasons for the contested decision were insufficient and manifestly incorrect.

17. The Commission contended that the action should be dismissed.

18. By the judgment under appeal, the General Court dismissed the action in its entirety and ordered the applicants at first instance to pay the costs.

19. After examining, in paragraphs 19 to 36 of the judgment under appeal, whether the contested decision was open to challenge for the purposes of Article 263 TFEU and finding that the action against that decision was admissible in that respect, the General Court held, in paragraphs 37 to 40 of its judgment, that one of the applicants had standing to bring proceedings, with the result that there was no need to examine whether the other applicant had standing.

20. As for the consideration of the substance of that action, the General Court rejected the applicants’ first plea. To that end, it applied inter alia, in paragraphs 49 to 90 of the judgment under appeal, a literal, contextual and teleological interpretation to Article 155(2) TFEU and examined, in paragraphs 91 to 102 of that judgment, the rules, principles and objectives of the European Union relied on by the applicants in support of their interpretation of that provision. It held, in paragraph 104 of its judgment, that by refusing to submit to the Council a proposal for a decision implementing the agreement at issue, the Commission had not erred in law as to the scope of its powers.

21. Regarding the second plea, the General Court examined, in paragraphs 108 to 140 of the judgment under appeal, whether the Commission had complied with the obligation to state reasons for the contested decision laid down in Article 296 TFEU and whether the reasons given in that decision were well founded. After finding that the contested decision was to be subject to a limited review, the General Court held that that decision satisfied the obligation to state reasons laid down in Article 296 TFEU, both as regards the adequacy of the reasons given and their merits.

22. The General Court therefore dismissed the action in its entirety.

IV. Forms of order sought and procedure before the Court of Justice

23. By document of 2 March 2020, Mr Goudriaan informed the Court that he was not a party to the appeal before the Court.

24. By its appeal, EPSU claims that the Court should:

– set aside the judgment under appeal;

– annul the contested decision;

– order the Commission to pay the costs.

25. The Commission contends that the Court should:

– dismiss the appeal;

– order EPSU to pay the costs.

26. EPSU and the Commission presented oral argument at the hearing on 26 October 2020.

V. Legal analysis

27. The appeal now before the Court comprises four separate grounds.

28. By its first ground, EPSU argues that directives adopted by Council decision under Article 155(2) TFEU are legislative in nature. (8) By its second ground, EPSU claims that the General Court erred in law in its interpretation of Articles 154 and 155 TFEU. (9) The third ground alleges error of law in the assessment of the extent of the judicial review carried out by the General Court. (10) By its fourth ground, EPSU submits that the General Court erred in upholding the legality of the statement of reasons set out in the contested decision. (11)

29. I propose, as a first step, to examine the first and second grounds of appeal together; they are intrinsically linked and concern, in essence, the alleged misinterpretation of Articles 154 and 155 TFEU. I will then examine the third and fourth grounds in the order in which they were submitted.

A. First and second grounds of appeal: misinterpretation of Articles 154 and 155 TFEU

1. Arguments of the parties

30. In the first place, EPSU takes issue with the General Court for improperly rejecting its first plea in law, in so far as the General Court wrongly held that directives adopted by Council decision under Article 155(2) TFEU are not of a legislative nature. (12)

31. First of all, EPSU submits that the consequences of directives adopted by Council decision under Article 155(2) TFEU are no different from the consequences of directives adopted under Article 153 TFEU. Next, it argues that the General Court erred in relying on procedural aspects and on the classification of the measure adopted under Article 155(2) TFEU, instead of focusing on its substantive effects. (13) Last, EPSU claims that the procedure laid down in that provision is a special legislative procedure within the meaning of Article 289(2) TFEU. For that reason, the reference to the judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, (14) is not relevant and does not deprive measures adopted pursuant to Article 155(2) TFEU of their essentially legislative nature.

32. In the second place, EPSU argues that the General Court's interpretation of Articles 154 and 155 TFEU is wrong in law as regards, in particular, the powers conferred on the Commission in the procedure for implementing agreements concluded between management and labour at EU level pursuant to Article 155(2) TFEU.

33. Concerning the literal interpretation, EPSU maintains that the words 'intervient' and 'shall be implemented', used in the French-language and English-language versions of Article 155(2) TFEU respectively, are imperative and leave the Commission no discretion as to whether or not to propose the agreement referred to in that provision to the Council. It follows that the General Court erred in its interpretation of the nature of the Commission's powers. (15) According to EPSU, the onus is on the Commission, after reviewing the legality of the agreement and the representativeness of the social partners who negotiated it, to propose that agreement to the Council.

34. Furthermore, concerning the contextual and teleological interpretation of Articles 154 and 155 TFEU, (16) EPSU argues that where the Commission receives a joint request to implement an agreement under Article 155(2) TFEU, the task of the Commission is to submit a proposal to the Council and the task of the Council is to decide whether to adopt the agreement in question. In the judgment under appeal, the General Court accorded the Commission a broader role at the expense of the social partners and the Council. In so doing, it misapplied the judgment of 14 April 2015, *Council* v *Commission*, (17) according to which there are situations when the Commission is required, under EU law, to submit a proposal for a legislative act.

35. EPSU maintains that the General Court also erred in law in taking account of Article 17(1) and (2) TEU. (18) That provision cannot extend the Commission's powers where the TEU or TFEU has specifically limited them, as is the case in particular of Articles 154 and 155 TFEU. In the alternative, EPSU submits that even if acts adopted under Article 155(2) TFEU are not legislative acts, Article 17(2) TEU is not applicable, with the result that the General Court erred (19) in finding that the second sentence of that provision extended the Commission's powers.

36. The General Court also provided an inaccurate description of how the procedures referred to in Articles 154 and 155 TFEU work. (20) In that regard, EPSU observes, first of all, that the consultation procedure is initiated by the Commission in the exercise of its right of initiative. Next, contrary to what is stated in the judgment under appeal, that institution does not resume control of the procedure in order to verify the substance of the agreement negotiated by the social partners. Last, the General Court failed to make clear that the duration of the process is limited to nine months.

37. In addition, EPSU takes issue with the General Court for misapplying the judgment of 17 June 1998, *UEAPME* v *Council*, (21) from which it is apparent that the Commission's powers are restricted to a review of representativeness or legality; no mention is made in that judgment of a review of appropriateness. It follows that the Commission has no 'political' discretion. (22) The General Court distorted EPSU's arguments in paragraph 76 of the judgment under appeal. Last, it is clear from that judgment that the role and powers of the Parliament differ from and complement those of the social partners. (23)

38. The Commission contends that the first ground of appeal is ineffective and, in any event, like the second ground of appeal, unfounded.

2. Assessment

39. The first and second grounds allege, in essence, that the General Court erred in law in its interpretation of Articles 154 and 155 TFEU, in particular as regards the Commission's role in the procedure laid down in Article 155(2) TFEU.

(a) Alleged ineffectiveness of the first ground of appeal

40. The Commission contends that EPSU fails to explain how the alleged misclassification of legal acts adopted under Article 155(2) TFEU played a decisive role in the rejection of the first plea in law submitted in the action before the General Court and, in consequence, how it had a bearing on the dismissal of that action.

41. The present case revolves around whether the General Court was right to uphold the Commission's decision refusing to propose the implementation of the agreement concluded between the social partners to the Council. Since the decision at issue was a refusal decision and no proposal to that effect was submitted to the Council, the Commission's doubts as to whether it is necessary to ascertain which type of act should have resulted from the procedure under Article 155(2) TFEU appear, at first sight, to be well founded, since that question is hypothetical in the light of the circumstances of this case.

42. However, it must be admitted that, in the judgment under appeal, the General Court examined the characteristics of the procedure laid down in Article 155(2) TFEU and the nature of the measures adopted by the Council. The General Court conducted that examination in the section of the judgment under appeal concerning the contextual interpretation of that provision. (24) According to settled case-law, complaints directed against a ground included in a decision of the General Court purely for the sake of completeness cannot provide any basis for annulment of that decision and are therefore ineffective. (25) In the present case, the General Court relied on that section in reaching its conclusion on the Commission's role under that provision.

43. For those reasons, and in accordance with the principle *in dubio pro actione*, (26) I consider it necessary to examine the substance of EPSU's first ground of appeal, which must be considered together with the second ground of appeal to which it is closely linked.

(b) Substance

44. Where management and labour are consulted by the Commission, they may inform the Commission of their intention to conclude an agreement between them at EU level, in accordance with the procedure laid down in Article 155 TFEU, in one or more of the areas referred to in Article 153 TFEU. That agreement at EU level is to be implemented, in accordance with the first subparagraph of Article 155(2) TFEU, at the joint request of the parties, on a proposal from the Commission and by a Council decision. In the present case, it is common ground that the agreement at issue falls within the scope of Article 153(1)(e) TFEU and that it may, in principle, be implemented at EU level. The dispute concerns whether the proposal made by the Commission to the Council pursuant to that provision is a discretionary act and, if it is, the extent of that discretion. EPSU takes the view that, when the Commission is called upon to decide whether or not to submit a proposal to the Council, it is entitled to review only the legality of the agreement concluded by the social partners and the social partners' representativeness. The Commission, on the other hand, considers that it has the power, in addition to the two abovementioned reviews, to decide whether it is appropriate to implement the agreement at EU level.

45. Thus, the main issue in the present case is whether, in the absence of factors calling into question the legality of the agreement concluded between the social partners and the representativeness of the signatories to that agreement, the Commission is bound by their joint request and, therefore, under an obligation to propose the implementation of that agreement at EU level to the Council. In order to answer that question, it is necessary, according to the Court's settled case-law, as recalled by the General Court in the judgment under appeal, (27) to consider not only the wording of Article 155(2) TFEU, but also its context and the objectives pursued by it. (28) That said, and as noted in point 41 of this Opinion, by applying a literal, contextual and teleological interpretation to that provision in order to determine the scope of the Commission's powers and the nature of the act adopted under that provision, it will be for the Court of Justice to decide whether the General Court's interpretation is vitiated by error.

(1) Literal interpretation

46. EPSU considers, in essence, that the use of the expression ‘shall be implemented’ in the English language in Article 155(2) TFEU is tantamount to imposing an obligation on the Commission by leaving it no discretion to decide whether or not it would be appropriate to propose a text approved by management and labour to the Council.

47. To my mind, that line of argument cannot succeed from a literal standpoint for the reasons set out below.

48. It is important to bear in mind that, according to widely accepted legislative drafting practice, legal provisions are generally drafted in the indicative, unless the objective pursued by the rule in question requires the use of another verbal mode. Since the use of the indicative in legal provisions is the rule, it cannot be inferred from the mere use of that mode that the verb in question expresses an obligation or a requirement (29) with regard to the persons to whom the rule concerned is addressed. (30) It seems to me that that is the case as regards the wording of Article 155(2) TFEU. For those reasons, the expression to be interpreted must be examined in the light of the provision of which it forms part.

49. It is apparent from the wording of Article 155(2) TFEU that agreements concluded at Union level are to be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153 TFEU, (31) at the joint request of the signatories, by a Council decision on a proposal from the Commission. The words ‘intervient’ in the French-language version and ‘shall be implemented’ in the English-language version, contained in Article 155(2) TFEU, refer to the two situations envisaged in paragraph 2 and constitute, as the General Court pointed out in paragraphs 58 and 59 of the judgment under appeal, a formulation intended to express the exclusivity of those two procedures for implementing the agreement, namely either at national level or at EU level. It seems to me that the other language versions (32) are even clearer regarding the fact that Article 155(2) TFEU exhaustively lists the two options available for implementing agreements concluded between management and labour. It follows that EU law does not recognise any other method of implementing agreements concluded by management and labour besides the two options mentioned above.

50. Furthermore, I consider that the General Court was right to find, in paragraph 62 of the judgment under appeal, that the words ‘intervient’, in the French-language version, and ‘shall be implemented’, in the English-language version, refer to both the ‘Council decision’ and the ‘proposal from the Commission’. It follows from the grammatical structure of the first sentence of Article 155(2) TFEU that it is not possible to interpret that provision as laying down an obligation for the Commission to propose the implementation of the agreement concluded between management and labour at the same time as conferring discretion on the Council to decide whether or not to adopt a decision implementing that agreement. The opposite interpretation, namely that the Council is obliged to implement an agreement between management and labour and to adopt the decision at issue, would, to my mind, render meaningless the second subparagraph of Article 155(2) governing voting within the Council. (33)

51. It is therefore impossible to interpret the wording of Article 155(2) TFEU as requiring the Commission to propose the agreement negotiated by management and labour to the Council. It should also be noted that the expression ‘on a proposal from the Commission’ in Article 155(2) TFEU makes it clear that the Commission is to propose the agreement in question to the Council, that proposal being, in my view, a discretionary act initiating the relevant procedure without which the Council cannot act pursuant to that provision. (34) EPSU does not, in essence, deny that it is open to the Commission not to propose the implementation of the agreement between management and labour to the Council. Indeed, it admitted in its appeal and at the hearing that the Commission has the power to review the legality of the agreement concluded by the social partners and the social partners’ representativeness, and that those two reviews might result in the Commission refusing to submit a proposal to the Council with a view to having the Council adopt a decision. Furthermore, EPSU states that such a possibility is subject to conditions which are not explicitly laid down in that provision. I therefore consider that EPSU’s interpretation of Article 155(2) TFEU, which appears to be based on a misreading of the judgment of the Court of First Instance of 17 June 1998, *UEAPME* v *Council*, T-135/96, (35) for the reasons set out in points 59 to 72 of this Opinion, is manifestly inconsistent and contrary to the wording of that provision. For the foregoing

reasons, I take the view that the possibility for the Commission, laid down in Article 155(2) TFEU, to choose whether or not to propose the implementation of an agreement concluded between management and labour to the Council may only take the form of a discretionary act involving a prospective assessment of the appropriateness of all aspects related to that agreement.

52. For the sake of completeness, I note that Article 155(2) TFEU uses the word 'decision' without providing any further details as to the classification of the act adopted by the Council. (36) Although that word may theoretically be construed *stricto sensu* or *lato sensu* – the former referring to the definition set out in Article 288 TFEU, (37) according to which 'a decision shall be binding in its entirety' and 'a decision which specifies those to whom it is addressed shall be binding only on them', while the latter encompasses all acts producing legal effects (38) – the prevailing view in legal literature is that it refers, in the present case, to decisions *sui generis* that are binding *erga omnes* (39) and oblige the Member States as to the results to be achieved. (40) In institutional practice, agreements concluded by management and labour and adopted by the Council at EU level have taken the form of directives implementing the agreement concluded by management and labour. (41)

53. Consequently, it follows from a literal interpretation of Article 155(2) TFEU that the approach advocated by EPSU goes beyond the grammatical limits established by that provision.

(2) Origin of the procedure laid down in Article 155(2) TFEU

54. The approach advocated by EPSU is, in my view, incompatible with the origin of social dialogue at EU level, as from the outset that dialogue was developed, on the one hand, independently of the legal orders of the Member States (42) and, on the other, under the aegis of the Commission. (43)

55. First of all, the Single European Act, (44) which inserted Article 118b into the EEC Treaty, provided that 'the Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement'. In so doing, the Single European Act conferred in particular on the Commission the task of developing and promoting social dialogue at Community level. In practice, at that time, the Commission's role went far beyond that of a mere arbitrator or mediator, (45) since management and labour acted under its initiative.

56. Next, Articles 154 and 155 TFEU originate from Articles 3 and 4 of the Agreement on social policy, (46) which was incorporated into Community law by Protocol No 14 on social policy of the Maastricht Treaty ('Agreement on social policy'). (47) In turn, the origins of the Agreement on social policy lie in the Agreement on social policy concluded between the social partners. (48) At the Maastricht Intergovernmental Conference in December 1991, the Heads of State and Government – when adopting the Agreement on social policy – removed the part stating that the agreements between the social partners had to be implemented 'as they have been concluded'. (49) In my view, the removal of that part suggests that, from the outset, the Heads of State and Government intended that the institutions should be able to review the content of agreements negotiated by the social partners and implemented at EU level.

57. Last, the Commission's role as initiator in the field of social dialogue is implicit in the communications it has published, relating, inter alia, to the application of the abovementioned provisions. (50) Social dialogue has always been more than just collective bargaining; since the beginning, it has been intrinsically linked to the Commission's initiative. (51)

58. In short, both the origin of Articles 154 and 155 TFEU and the communications published by the Commission show that its role in the implementation of agreements concluded between management and labour cannot be reduced to one of mere go-between responsible for submitting agreements to the Council for adoption, without any power to assess whether their implementation at EU level is appropriate.

(3) Systematic interpretation

(i) Interpretation of Article 155(2) TFEU in conjunction with the provisions of Articles 154 and 155 TFEU

59. Articles 154 and 155 TFEU, taken as a whole, are specific legal bases for initiating and adopting EU action in the area of social policy. Unlike the other areas covered by the Treaties, the implementation of that area at EU level calls for and promotes permanent dialogue between, on the one hand, the Commission and, on the other, management and labour. To that end, Article 154 TFEU establishes, inter alia, a mechanism for consulting management and labour, the corollary of which is, in particular, the acknowledgement of their role and independence as regards the adoption of the appropriate measure.

60. In respect of consultation, Article 154(2) TFEU provides that before submitting proposals in the social policy field, the Commission is to consult management and labour on the possible direction of Union action. Next, Article 154(3) TFEU provides that if, after that first round of consultation, the Commission considers Union action advisable, it is to consult management and labour again on the content of the envisaged proposal. (52)

61. It should be noted that the first round of consultation provided for in Article 154(2) TFEU is of a general nature and does not prejudge the Commission's subsequent decision whether or not to submit a specific proposal in the social policy field. Thus, that consultation of management and labour does not affect the Commission's discretion when it comes to submitting proposals to the Council for the adoption of legal acts. Under Article 154(3) TFEU, the Commission is required to consult management and labour a second time only if it 'considers Union action advisable'.

62. If, however, the Commission's deliberation process leads to the conclusion that Union action is not advisable, it follows from both paragraphs 2 and 3 of Article 154 TFEU that the consultation of management and labour up to that point is irrelevant for the purposes of any such action.

63. Those two types of consultation may result, under Article 154(4) TFEU, in the task of drawing up the substantive content of the measures concerned being transferred to management and labour. (53) That drafting process, which is the subject of negotiations between management and labour, who are key interlocutors in social dialogue, is conducted independently of the EU institutions. Article 154(4) TFEU provides that management and labour may inform the Commission of their wish to enter into negotiations, which might lead to the conclusion of an agreement between them, though not necessarily. During those negotiations, management and labour move from a consultative role to an active role in the adoption of social policy measures, while the Commission temporarily cedes that role to management and labour. In order to prevent the initiative taken by the latter from leading to general paralysis in the field under negotiation, for example because of the protracted nature of negotiations or because management and labour fail to reach an agreement within a reasonable period of time, when action is necessary in order to advance in the area in question, Article 154(4) TFEU provides that the negotiating process may not, in principle, exceed nine months. (54) Although that provision does not say so explicitly, it follows from it that, upon expiry of that period, the Commission resumes its power of control over the entire process, including the power to draw up itself relevant proposals in the field of social policy concerned.

64. Articles 154 and 155 TFEU thus govern different aspects of the same decision-making process designed to develop social policy measures, as evidenced by the reference to the latter provision in the former. Although, from a technical perspective, those two provisions constitute two separate legal bases, I take the view that they should be examined together in so far as they may lead to the adoption of the same measure. It follows from the combination of those provisions that, despite the specific features mentioned above, they do not have the effect of depriving the Commission of its 'traditional' role in social policy, which is reflected, in particular, by the exercise of its power of initiative by means of proposals submitted to promote the general interest of the European Union, within the meaning of Article 17(1) TEU.

65. It is apparent from a combined reading of Articles 154 and 155 TFEU that the procedures laid down in those provisions are conducted under the aegis of the Commission, with the exception of the negotiation stage, during which the Commission's involvement is put on hold. As the General Court rightly

stated, (55) the fact that, under Article 155(2) TFEU, the Council acts 'on a proposal' by the Commission implies that, while the negotiation and conclusion of the agreement are exclusively for the management and labour concerned to have charge of, the Commission resumes control of the procedure when management and labour jointly request the implementation of the agreement at EU level, and it is for the Commission to examine whether or not it is appropriate to submit a proposal to the Council. (56) Contrary to what EPSU seems to claim in its appeal, the Commission's power to initiate consultation with management and labour for the purposes of Article 154 TFEU cannot be equated to its power to adopt proposals to ensure the implementation of an agreement concluded between management and labour under Article 155(2) TFEU.

66. I consider that EPSU's approach – according to which the Commission, when it is called upon to determine, under Article 155(2) TFEU, whether it is appropriate to propose to implement at EU level an agreement concluded between management and labour, is able to carry out only a review of the legality of that agreement and the representativeness of management and labour – is based, as I have already stated in this Opinion, (57) on a misreading of the judgment of 17 June 1998, *UEAPME* v *Council*. (58) First of all, it should be noted that the facts of that case were materially different from the facts presented to the Court here. It is apparent from that judgment that, unlike the present case, the Commission had proposed to the Council that the framework agreement on parental leave concluded between general cross-industry organisations (59) should be implemented at EU level. Moreover, it was on the basis of that proposal that the Council adopted Directive 96/34/EC (60) which was the subject of an action for annulment culminating in that judgment. (61) The applicant, the Union européenne de l'artisanat et des petites et moyennes entreprises, claimed that it possessed special rights in the context of the procedural mechanisms established by the Agreement on social policy, including, in particular, a general right to take part in the negotiation stage of the second procedure and an individual right to participate in negotiation of the framework agreement, rights which it considered had been infringed in the procedure for concluding the framework agreement preceding the adoption of that directive. It was against that background and, specifically, in connection with the assessment of the admissibility of the action that the Court of First Instance held that a finding of infringement of the rights of the applicant as a person who had not taken part in the conclusion of the disputed framework agreement and, therefore, of its right to seek annulment of a directive bearing the hallmarks of a measure of general application could be made only if the Commission and the Council had failed in their duty to review the procedure for the adoption of an act of secondary legislation by the management and labour concerned. (62)

67. In its judgment of 17 June 1998, *UEAPME* v *Council*, (63) the Court of First Instance held the action to be inadmissible, finding that the Commission and the Council had properly taken the view that the collective representativeness of the signatories to the framework agreement was sufficient in relation to that agreement's content for its implementation at Community level by means of a Council measure, and that the applicant had not succeeded in showing that it was entitled to require the Council to prevent that implementation. (64) Nothing in the case which gave rise to that judgment suggests that the Commission's power to propose the implementation of an agreement concluded between the social partners to the Council is limited solely to reviewing the legality of the agreement and the representativeness of management and labour. On the contrary, an examination of the Court of First Instance's analysis of the provisions that are now Articles 154 and 155 TFEU (65) shows that the onus is on the Commission, when it receives a joint request from management and labour to implement at EU level an agreement which they have concluded, to conduct an overall assessment of the democratic representativeness of that agreement, since the Commission must act in conformity with the principles governing its action in the field of social policy. (66) It follows from that judgment that, contrary to what EPSU claims, the legality of the agreement and the representativeness of the social partners are only part of the picture to be considered by the Commission when determining whether it is appropriate to propose to the Council that an agreement concluded between the social partners be implemented at EU level. However, it cannot be inferred from the need for those two reviews that the Commission is deprived of the possibility of examining other issues relating to the appropriateness of implementing that agreement. Since the Agreement on social policy, (67) which was interpreted in the case giving rise to that judgment, is reproduced almost verbatim

by the current Articles 154 and 155 TFEU, the Court of First Instance's systematic interpretation in that judgment is still relevant and supports the systematic interpretation proposed in this Opinion.

(ii) Interpretation of Article 155(2) TFEU read in conjunction with Article 17 TEU

68. It follows from the systematic interpretation of Article 155(2) TFEU, read in conjunction with other provisions of the Treaties relating to the institutional architecture of the European Union, that a request by management and labour seeking to implement, at EU level, an agreement which they have concluded cannot compel the Commission to propose that agreement to the Council.

69. Under Article 17(1) TEU, the Commission is to promote the general interest of the European Union and take appropriate initiatives to that end. In order to give effect to the general interest of the European Union and ensure that Union action is not subordinated to third-party interests, the third subparagraph of Article 17(3) TEU provides that the Commission is to be completely independent in carrying out its responsibilities and that its members are not to take instructions from any government or institution. Thus, it is for the Commission to decide, wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, what proposals are in the general interest of the European Union. (68)

70. In order to attain the objectives of the European Union as defined by the Treaties, the first and second sentences of Article 17(2) TEU provide that Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Treaties provide otherwise, and that other acts are to be adopted on the basis of a Commission proposal where the Treaties so provide.

71. It is apparent from the provisions of Article 17 TEU that the Treaties confer on the Commission a specific power of initiative, which is at the root of the procedures for the adoption of both legislative acts and other acts, acts the adoption of which only the Commission may propose. Accordingly, as the Court has already held in connection with the power of legislative initiative conferred by Article 17(2) TEU and Article 289 TFEU, that power means that it is, as a rule, for the Commission to decide whether or not to submit a proposal for a legislative act and, as the case may be, to determine its subject matter, objective and content. (69) The broad discretion conferred on the Commission in the exercise of its power to adopt proposals is borne out by the Court's case-law on institutional balance, according to which, since the Treaties grant the Commission a constitutional prerogative conferring on it the power to assess, entirely independently, the appropriateness of a legislative proposal or of an amendment to such a proposal, no other institution may require the Commission to adopt an initiative where it sees in that initiative no interest of the European Union. (70)

72. It follows that the power conferred on the Commission to submit proposals, namely its power of initiative, is directly and intrinsically linked to the obligation imposed on that institution by means of Article 17(2) TEU to promote the general interest of the European Union. Inasmuch as Article 155(2) TFEU – around which this case revolves – expressly provides that the Council's decision is to be taken 'on a proposal from the Commission', it constitutes a specific expression, in the social policy field, of the general rule laid down in Article 17(2) TEU. In this case, in respect of the implementation of an agreement concluded between management and labour as provided for in Article 155(2) TFEU, it is difficult to come up with a good reason for maintaining that the Commission's power of initiative should be more limited in scope than is usually the case under the general institutional regime. There is even less reason for the restrictive interpretation of the Commission's powers as advocated by EPSU when regard is had to the fact that the general interest of the European Union is much broader than the interest promoted by the agreement negotiated by management and labour, which goes no further than a meeting of minds and only has effect *inter partes*. (71) If the agreements concluded by the social partners and adopted by the Council at EU level were to take the form of directives implementing the agreement concluded by the social partners, (72) the resulting EU act would necessarily have effects that were no longer *inter partes*, but *erga omnes*, extending its personal scope, (73) which is why the onus is on the Commission to ensure that the commitments entered into by the social partners correspond to the general interest of the European Union. That interpretation is not invalidated by EPSU's claims that the General Court erred in its contextual

interpretation in the judgment under appeal regarding the scope of the Commission's powers, on the ground that it found that the directives adopted by the Council under Article 155(2) TFEU are not legislative in nature. The object of this case is a Commission decision refusing to propose the implementation of an agreement concluded between the social partners to the Council, with the result that the grounds of the judgment under appeal relating to some features of the procedure laid down in that provision are rather general considerations intended to support the contextual interpretation applied by the General Court. However, no error of law can be attributed to the General Court as regards those considerations. As the Commission rightly submits, Article 155 TFEU makes no express reference to the legislative procedure, whether ordinary or special, which means, according to the Court of Justice's case-law, (74) that the measures adopted at the end of the procedure provided for in Article 155(2) TFEU are not legislative acts within the meaning of Article 289(3) TFEU. Such classification does not alter the Commission's power of initiative when implementing agreements negotiated between the social partners, given that the scope of that power does not vary according to whether or not the act to be adopted is legislative in nature.

(4) Teleological interpretation

73. Social dialogue is recognised in Article 151 TFEU as one of the objectives of the European Union. (75) It 'holds a crucial, unique position in the democratic governance of Europe'. (76) Against that background, the first paragraph of Article 152 TFEU lays down the principle of the autonomy of the social partners, providing that the European Union 'recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems' and that it is to 'facilitate dialogue between the social partners, respecting their autonomy'. (77) Article 154(1) TFEU provides that the Commission 'shall have the task of promoting the consultation of management and labour at Union level' and 'shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties'. It follows that one of the aims of Title X of the TFEU is to promote the role of the social partners and to facilitate dialogue between them, respecting their autonomy.

74. Specifically, that autonomy means that during the stage of negotiating and concluding an agreement, which is exclusively a matter for the social partners, the social partners are able to engage in dialogue and act freely without taking orders or instructions from anyone, in particular the Member States or the institutions. In that regard, it could be argued that the principle of autonomy refers to the respect, on the part of the EU institutions, of the social partners' capacity to negotiate and conclude collective agreements as they see fit, as is moreover apparent from Article 28 of the Charter of Fundamental Rights of the European Union. In that sense, the negotiating procedure conducted by the social partners in the context of the European social dialogue may be regarded as a specific expression of that principle of autonomy.

75. However, the autonomy enjoyed by the social partners in negotiating an agreement must not be confused with the procedure for implementing agreements negotiated by the social partners at EU level, where the Council acts on a proposal from the Commission. Once the social partners have freely negotiated and concluded an agreement and the signatories have jointly requested the implementation of that agreement at EU level, the Commission once again has a right to act and resumes control of the procedure. (78) As the General Court pointed out in paragraph 89 of the judgment under appeal, Article 155 TFEU merely involves the social partners in the process of adopting certain non-legislative acts, without according them any power to adopt themselves acts that produce binding legal effects as regards third parties, or even the power to submit a proposal for a decision implementing an agreement directly to the Council. It follows, in my view, that that provision is intended to promote the role of the social partners and the dialogue between them, without giving them such powers.

76. As the General Court found in paragraphs 82 and 94 to 98 of the judgment under appeal, that approach is moreover supported by the principle of democracy which, under Article 10(1) and (2) TEU, is embodied by the representation of citizens in the Parliament and by the fact that the members of the European Council form part of governments which are politically accountable to their respective national parliaments. If management and labour had the power to require the Commission to submit a proposal

with a view to having their agreements implemented at EU level, they would be able to exercise much greater influence over the content of legal acts adopted in the social policy field than the Parliament, which is merely informed of the implementation of agreements on the basis of Article 155(2) TFEU. (79) In rejecting EPSU's argument, the General Court therefore correctly applied the principle of democracy as interpreted in paragraph 88 of the judgment of 17 June 1998, *UEAPME* v *Council*. (80)

(c) Conclusion on the first and second grounds of appeal

77. As previously explained, all the methods of interpretation lead to the same result, namely that a request by management and labour under Article 155(2) TFEU seeking to have agreements they have concluded at EU level implemented in EU law is not binding on the Commission.

78. Therefore, contrary to EPSU's assertions, the General Court did not err in law in finding that the Commission was not required to submit the agreement at issue to the Council in order to have the latter implement it by a decision, which would moreover be of a non-legislative nature.

79. I therefore propose that the Court dismiss EPSU's first and second grounds of appeal in their entirety.

B. Third ground of appeal

1. Arguments of the parties

80. By its third ground of appeal, EPSU complains, in essence, that the General Court erred in law as regards the intensity of its judicial review of the contested decision. (81)

81. In that regard, EPSU states that the decision to propose an agreement negotiated by the social partners to the Council is essentially a legal one, not a political one. Thus, the General Court's interpretation that the Commission enjoys a broad political discretion is based on a misconstruction of the Treaty provisions and the judgment of 17 June 1998, *UEAPME* v *Council,* referred to above. (82)

82. EPSU also claims that the General Court erred (83) in drawing parallels with the European citizens' initiative. According to EPSU, the procedure laid down in Articles 154 and 155 TFEU is not akin to the citizens' initiative because, first, the citizens' initiative does not involve a collective bargaining process or the exercise of a fundamental right protected by Article 28 of the Charter of Fundamental Rights and because, second, the parties which initiate that procedure do not participate in the drafting of the legislative proposal.

83. The Commission disputes EPSU's arguments.

2. Assessment

84. In essence, EPSU takes issue with the General Court for failing to apply an appropriate standard of judicial review to the Commission's decision. It submits that the General Court erred in law by taking refuge behind the limited judicial review it applied to the Commission's decision.

85. In that regard, in paragraph 79 of the judgment under appeal, the General Court held that when the Commission receives a request to implement at EU level an agreement concluded between management and labour, it must assess in particular whether implementation of the agreement at EU level is appropriate, including by having regard to political, economic and social considerations. It found, in paragraphs 109 to 112 of that judgment, that it followed from this that since the Commission had a broad discretion, its decision had to be subject to a limited judicial review.

86. This ground of appeal therefore raises the question of the standard of review which the EU Courts must apply to a Commission decision refusing to submit a proposal for the implementation at EU level of an agreement concluded by the social partners. That question is necessarily related to the questions raised

in the first and second grounds of appeal, the examination of which has confirmed that the Commission is under no obligation to adopt such a proposal and enjoys a broad discretion in deciding whether it would be appropriate to submit such a proposal to the Council. The existence of that discretion means that EPSU bases its arguments on a false premiss, since, unlike the General Court, it incorrectly defined the conditions under which the Commission may refuse to submit a proposal to the Council. In my view, the arguments put forward by EPSU have not revealed any error of law in the sections of the judgment under appeal to which I have just referred.

87. According to settled case-law, where EU institutions adopt measures in areas in which they enjoy a broad discretion and which entail choices, in particular of a political nature, and complex assessments, judicial review is limited to verifying the absence of manifest errors of assessment. (84) (85) The Court has also made clear that the intensity of the judicial review, in a situation where the EU legislature has been required to conduct complex economic assessments, must be even more limited when 'the act concerned is of general application'. (86) The limited nature of judicial review is therefore an expression of the principle of the separation of powers, as judicial authorities cannot take the place of the legislature in decisions falling outside their purview.

88. Although the case-law cited in the preceding paragraph relates in particular to the Court's review of legislative acts, the principles set out therein are equally valid here, given that EPSU takes issue with the Commission for having refused to submit a proposal with a view to the adoption by the Council, at EU level, of a measure of general application, as is apparent from point 72 of this Opinion. Although the interests expressed in an agreement concluded by the social partners are undoubtedly legitimate interests, it must be borne in mind that the considerations which the Commission is required to take into account in order to promote the interests of the European Union, within the meaning of Article 17(1) TEU, are much broader. I can only share the General Court's view that the implementation of such an agreement through the adoption of a measure of general application places the Commission under an obligation to assess the political, economic and social factors as a whole. When the Commission decides whether or not to adopt a proposal under Article 155(2) TFEU, it is required to weigh up the competing interests involved and that balancing exercise unquestionably falls within the scope of its discretion. To ensure that that balancing exercise reflects the general interest of the European Union, the Commission must exercise its discretion, in accordance with Article 17(3) TEU, entirely independently. (87) Consequently, I am of the opinion that the General Court did not err in finding that the Commission enjoys a broad discretion when it examines, under Article 155(2) TFEU, whether it is appropriate to submit to the Council a proposal for a decision to implement, at EU level, an agreement concluded by management and labour. Specifically, the General Court must restrict itself to considering, on the substance, whether the Commission's exercise of its power of initiative contains a manifest error or constitutes a misuse of power or whether the institutions concerned clearly exceeded the bounds of their discretion. (88)

89. The fact that a Commission decision adopted under Article 155(2) TFEU is subject to a limited judicial review follows, moreover, from the recent judgment of the Court of Justice in *Puppinck and Others* v *Commission*, (89) although the background to that dispute was different from that of the present case. In that case, the Court of Justice was required to examine the legality of a decision in which the Commission stated that it would not take any action following a European citizens' initiative submitted to it. In its judgment, the Court of Justice upheld the General Court's approach that the Commission's obligation to promote the general interest of the European Union under Article 17(1) TEU inherently entails a broad discretion, since that obligation involves difficult choices and the balancing of different interests. That broad discretion goes hand in hand with a limited judicial review which may consist, inter alia, in a review of the absence of manifest errors of assessment. (90) In the light of the foregoing, it seems to me that the case-law in that respect is now well settled so that it cannot be called into question by the present case.

90. Accordingly, I propose that the Court reject the third ground of appeal as unfounded.

C. Fourth ground of appeal

1. Arguments of the parties

91. EPSU submits that, in paragraphs 116 to 140 of the judgment under appeal, the General Court erred in law in upholding the statement of reasons for the contested decision.

92. In that regard, first of all, EPSU claims that the General Court erred in finding, in paragraph 129 of the judgment under appeal, that the reasons for the contested decision were not substantially incorrect or entirely irrelevant for the purpose of assessing whether it was appropriate to implement the agreement at issue at EU level. EPSU criticises the General Court, inter alia, for not taking account of the Commission's failure to justify, on the one hand, the passage of time between its earlier correspondence and the decision and, on the other, the fact that it departed from the communications which it itself had published. (91) Those two elements gave rise to a legitimate expectation on EPSU's part that an impact assessment would be carried out or was ongoing. Furthermore, in paragraphs 136 to 138 of the judgment under appeal, the General Court distorted EPSU's arguments in that regard. EPSU also submits that, contrary to the General Court's findings, the three reasons set out in the contested decision are factually or legally inaccurate or irrelevant.

93. Next, EPSU submits that the General Court erred in law in paragraphs 118 and 119 of the judgment under appeal in finding that the statement of reasons for the contested decision was sufficient to enable EPSU to understand the reasons for that decision. In that regard, EPSU contends that those reasons are incorrect and that the justification provided by the Commission does not tally with the justification given throughout the procedure.

94. Last, EPSU challenges the General Court's interpretation, in paragraphs 130 and 132 of the judgment under appeal, of the Court of Justice's case-law on the information and consultation directives.

95. The Commission disputes EPSU's arguments.

2. Assessment

96. By this ground of appeal, EPSU complains that the General Court erred in law in its assessment of the Commission's obligation to state reasons, as enshrined in Article 296 TFEU. (92)

97. As a preliminary point, it should be recalled, first of all, that the obligation to state reasons laid down in the second paragraph of Article 296 TFEU requires the authority which adopted the measure to disclose in a clear and unequivocal fashion its reasons so as, on the one hand, to make the persons concerned aware of the reasons for the measure and thereby enable them to defend their rights and, on the other, to enable the Court to exercise its review. In addition, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. (93) It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient 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. (94)

98. Next, where a Union institution, like the Commission in this case, has a broad discretion, respect for the rights guaranteed by the legal order of the European Union in administrative procedures is of even more fundamental importance. Those guarantees include, in particular, the duty of the competent institution to provide adequate reasons for its decisions. Only in this way can the EU Courts verify whether the factual and legal elements upon which the exercise of the discretion depends were present. (95)

99. Last, the duty to state reasons is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. (96) In the present case, after examining, in paragraphs 114 to 119 of the judgment under appeal, whether the contested decision contained an adequate statement of reasons in the light of

Article 296 TFEU, the General Court found, in paragraph 119 of that judgment, that it did. Since the second part of this ground of appeal concerns the adequacy of the statement of reasons for the contested decision and given that the conclusions which the General Court drew from that examination have been decisive in enabling the EU Courts to exercise their power to review that decision, (97) I will consider that part first.

(a) Error of law as regards the adequacy of the statement of reasons for the contested decision

100. By the second part of the fourth ground of appeal, EPSU submits that the General Court erred in law in paragraph 118 of the judgment under appeal in finding that EPSU was able to ascertain the reasons for the contested decision.

101. In that regard, it must be observed that the General Court considered the adequacy of the statement of reasons for the contested decision in paragraphs 116 to 118 of the judgment under appeal. It recalled that, first, the Commission had consulted the social partners as to whether EU action relating to the information and consultation of civil servants and employees of public administrations was appropriate and it was precisely following that consultation that the social partners negotiated and signed the agreement at issue.

102. Second, having examined the contested decision, I must agree with the General Court's assessment that, since the Commission took more than two years to deal with the request submitted by the social partners pursuant to Article 155(2) TFEU, the addressees of that decision could expect that institution to adopt a more substantial statement of reasons than the relatively succinct statement set out in that decision. However, it is also common ground that the adequacy of the statement of reasons for that decision cannot be assessed solely on the basis of the number or length of the sentences it contains. It is possible for a succinct statement of reasons adopted in support of a decision to be fully comprehensible if it is detailed and clear.

103. In the present case, it should be noted that the Commission essentially relied on three reasons to support its refusal, namely, first, the specific nature of central government administrations, particularly the fact that they exercise the powers of a public authority; second, the fact that provisions of national law concerning information and consultation of civil servants and employees of those administrations are already in place in many Member States; and, third, the existence of significant differences between the Member States as to the structure and competences of those administrations such that the implementation of the agreement would have a greater or lesser scope of application depending on the Member State in question.

104. According to 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 and, in particular, to all the relevant applicable rules. (98) In the present case, in assessing whether the statement of reasons is sufficient, it is significant that it was not directed at an uninformed addressee, but rather at the social partners that had concluded the agreement at issue. Due to their status and the prior consultation held by the Commission, the social partners were already aware of the context in which the refusal decision had been adopted. Furthermore, as the General Court pointed out, 'at a meeting with the social partners that took place on 17 January 2018, the Commission announced the effect of the contested decision'. (99) To my mind, it follows from this that the Commission provided reasons to the social partners even before the adoption of that decision. I am therefore of the opinion that those reasons disclose in sufficient detail why the Commission – whose fundamental task is, under Article 17(1) TEU, to promote the general interest of the European Union – did not consider it appropriate to propose to the Council the implementation, at EU level, of an agreement concluded between the social partners concerned.

105. Accordingly, my view is that the General Court was right to find, in paragraph 118 of the judgment under appeal, that EPSU was able to ascertain the reasons for the Commission's assessment and that the General Court was able to review those reasons. In those circumstances, the complaint that the General Court was wrong to find that the contested decision satisfied the obligation to state reasons laid down in Article 296 TFEU must be rejected.

(b) First part: error as to the accuracy and relevance of the reasons for the contested decision upheld by the General Court

106. The first part of the fourth ground of appeal, concerning the error as to the accuracy and relevance of the reasons for the contested decision upheld by the General Court, comprises, in essence, two complaints. By the first complaint, EPSU takes issue with the General Court for not taking account of the Commission's failure to justify, on the one hand, the passage of time between its earlier correspondence (100) and the decision and, on the other, the fact that it departed from the communications which it itself had published. (101) It also complains that the General Court did not correctly reflect the arguments it put forward at first instance. By its second complaint, EPSU criticises the General Court's assessment of the three reasons for the contested decision.

107. Concerning the first complaint, EPSU criticises the General Court for failing to take account of the assurances given in earlier correspondence and the communications that the Commission had published, which, EPSU claims, show that the Commission was required to conduct a review of legality and an impact assessment and that that review and assessment were ongoing, thereby infringing the principle of the protection of legitimate expectations. I note that no arguments relating to the principle of the protection of legitimate expectations were put forward in the proceedings at first instance, with the result that the judgment under appeal does not consider possible infringements of that principle.

108. More specifically, it should be noted that as regards the correspondence referred to, EPSU criticised the Commission for failing to carry out an impact assessment, 'contrary to what it had communicated for more than one year', and for therefore being unable to justify its conclusion in the contested decision. (102) As for the communications, EPSU relied on them before the General Court only to argue that they had created the impression that the Commission felt bound by the social partners' requests regarding proposals for the implementation of their agreements at EU level. (103)

109. It is settled case-law that where, in an appeal, the Court of Justice's review is confined to the findings of law on the pleas argued before the General Court, a party may not put forward for the first time before the Court of Justice an argument which it did not raise before the General Court. (104) In those circumstances, I consider the first complaint inadmissible in so far as it alleges a breach of legitimate expectations.

110. For the sake of completeness, I must reject EPSU's contention that, by its correspondence and communications, the Commission had given assurances from which it subsequently departed, since it runs counter to the objective of the consultation provided for in the social policy field. As is apparent from point 60 of this Opinion, under Article 154(2) TFEU, before submitting proposals in the social policy field, the Commission is to consult management and labour on the possible direction of Union action. It follows from the very wording of that provision that consultation is designed to enable the various parties to submit their requests and observations, with a view to having the Commission submit, at EU level, a particular proposal. Therefore, if consultation and the provision of related information were considered to create a binding obligation for interested parties, that process would be deprived of its natural content. It thus seems to me impossible to support EPSU's contention that consultation may cause the parties to such consultation to entertain legitimate expectations as to future political decisions. (105) In addition, as to the possibility of the Commission being bound by its earlier observations or communications it has published, like the position taken by the Commission at the hearing, it is clear to me that those observations or those communications cannot, under any circumstances, alter the powers conferred on that institution by the Treaties and, in particular, by Article 17(2) TEU.

111. In so far as the first complaint alleges that, in paragraphs 136 to 138 of the judgment under appeal, the General Court distorted the arguments relied on by EPSU before it at first instance, it should be noted that, in paragraph 135 of that judgment, the General Court summarised the argument of the applicants at first instance as seeking to 'submit that in the present case the principles of subsidiarity and proportionality provide no justification for the Commission's rejection of the implementation of the [agreement at issue]', the applicants having criticised 'the Commission for not having carried out any impact assessment

whatsoever with regard to those principles'. It seems to me that, in so doing, the judgment under appeal summarises – albeit briefly but faithfully – the argument put forward by the applicants in paragraph 106 of the application at first instance. Paragraphs 136 to 138 of the judgment under appeal are intended to address their arguments and thus constitute the General Court's assessment, so that the complaint alleging that the General Court distorted the arguments which EPSU put before it is, in my view, unfounded.

112. Therefore, the first complaint must be rejected.

113. By its second complaint, EPSU criticises the General Court's assessment of the three reasons for the contested decision.

114. As a preliminary point, concerning the merits of the reasons for the contested decision and as is apparent from the analysis of the third ground of appeal, (106) the General Court's review had to be limited to whether the elements were substantially incorrect or entirely irrelevant for the purpose of assessing the appropriateness of implementing the agreement at issue at EU level.

115. Concerning, in particular, the first reason for the contested decision, EPSU considers that the General Court erred in paragraphs 130 and 136 of its judgment, since, first, numerous directives now apply to workers in central administrations and since, second, there is nothing to support the conclusion that the implementation of the agreement concluded by the social partners would alter the 'structure, organisation and functioning' of those central government administrations, especially since the Commission did not conduct an impact assessment.

116. In that regard, as the General Court pointed out, by giving that reason the Commission did not call into question the competence of the European Union to adopt acts relating to the employment rights of civil servants and employees of central government administrations, but made clear that the agreement at issue concerned a specific area linked to the sovereignty of the Member States. The purpose of that reason is to draw attention to the fact that some civil servants and employees of central government administrations exercise powers of a public authority. Although – as EPSU essentially argues – there is nothing to prevent the EU legislature, in principle, from adopting provisions which guarantee those civil servants and public sector employees the right to information and consultation, the Commission may and must take account of the particular role and specific features of those administrations to ensure that the general interests of the Member States are safeguarded, which are, moreover, apparent from the express derogations contained in the Treaties. (107)

117. Furthermore, as regards the alleged obligation to conduct an impact assessment, it seems to me that any such assessment would fall to the Commission when it makes use of its power of initiative, (108) particularly in an area falling within the competences that are shared between the European Union and the Member States. The Commission cannot be criticised for failing to carry out such an assessment when it decides to refuse to take action. For the purposes of this case, it must be observed that the Commission's decision to refuse to submit the proposal to implement the agreement concluded by the social partners to the Council is, by its very nature, a decision which does not require an impact assessment.

118. As regards the second reason for the contested decision, EPSU complains that the General Court failed to take account of the fact that the agreement negotiated by the social partners contained a 'non-regression' clause conferring broader rights than those already recognised by Member States and preventing Member States from revoking the rights conferred by the agreement at issue.

119. In that regard, it is necessary to recall the broad discretion enjoyed by the Commission in this case, in particular for the purpose of determining whether it is necessary to close a potential gap in the scope of application of the EU directives governing the right to information and consultation of workers. Even if the General Court had taken that 'non-regression' clause into account, it would have had to demonstrate that the rules on the information and consultation of civil servants and employees of central government administrations existing in Member States did not enable that information and consultation to be sufficiently achieved at the level of those Member States. In the context of the review of legality under

Article 263 TFEU, the General Court cannot substitute its own reasoning for that of the author of the contested measure and it cannot fill, by its own reasoning, a gap in the reasoning for that measure, so that its examination would be unrelated to any assessment featuring in the contested measure. (109) EPSU cannot therefore expect the General Court to act out such a substitution, especially since it was required to conduct a limited review of the contested decision. That being so, it must be stated that in deciding whether the agreement concluded by the social partners should be submitted to the Council with a view to its implementation, the Commission was confronted with the key question of whether it was appropriate to harmonise at EU level the information and consultation of civil servants and employees of central government administrations. Since the Commission answered that question in the negative, it was not necessary for it to assess the possible impact of the 'non-regression' clause had that agreement been implemented at EU level.

120. As regards the third reason for the contested decision, EPSU submits that, in paragraph 133 of the judgment under appeal, the General Court did not take into account either the sectoral nature of the agreements concluded by the social partners specific to certain sectors or the representativeness of the social partners. Thus, EUPAE is the social partner for central government administrations, so that the agreement concluded between the social partners relates to central and not local government. Moreover, the agreement at issue does not affect the structure of the Member States' governments as it relates only to workers' rights to information and consultation.

121. In that regard, suffice it to note that since the agreement at issue relates to the consultation and information of civil servants and employees of central government, the effect of its implementation at EU level would vary considerably across the Member States, depending on their degree of centralisation or decentralisation. There is nothing to prohibit the Commission from taking that fact into account as an undesired consequence of the implementation of the agreement at EU level.

122. Consequently, I consider that the General Court did not commit any error of law in upholding the three reasons for the contested decision.

(c) Third part: error of law as regards the information and consultation directives

123. By the third part of the fourth ground of appeal, EPSU submits that, in paragraphs 131 and 132 of the judgment under appeal, the General Court misinterpreted the case-law of the Court of Justice on the information and consultation directives. (110) Divergence between local and central government already exists as regards, in particular, Directive 2001/23/EC. (111)

124. I note that EPSU does not explain the link between the directives mentioned in the preceding point of the present Opinion and the alleged divergence between those two levels of government. EPSU also does not state why, in its view, the General Court erred in law in the judgment under appeal. That line of argument is therefore manifestly inadmissible.

(d) Conclusion

125. Based on the foregoing, I propose that the Court reject the fourth ground of appeal as in part inadmissible and in part unfounded.

126. In the light of all the considerations set out above, I am of the view that all the grounds of appeal put forward by EPSU must be rejected and the appeal dismissed in its entirety.

VI. Costs

127. In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, applicable to

appeals pursuant to Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

128. In the present case, given that I propose that the Court dismiss the appeal and as the Commission has applied for costs in its pleadings, EPSU should, in my view, be ordered to pay the costs.

VII. Conclusion

129. In the light of the foregoing considerations, I propose that the Court dismiss the appeal and order European Federation of Public Service Unions (EPSU) to pay the costs.

---

1 Original language: French.

---

2 T-310/18, EU:T:2019:757.

---

3 Agreement concluded on 21 December 2015, entitled 'General framework for informing and consulting civil servants and employees of central government administrations', and signed by the Trade Unions' National and European Administration Delegation (TUNED) and European Public Administration Employers (EUPAE).

---

4 Management and labour entered into negotiations on the agreement following a consultation conducted by the Commission on the basis of Article 154(2) TFEU.

---

5 On 26 April 2012, the Commission opposed a European framework agreement on the protection of occupational health and safety in the hairdressing sector signed by Coiffure EU and UNI Europa Hair & Beauty. No action was brought at that time and a new version of the agreement was proposed by the social partners. For a critical analysis, see Dorssemont, F., Lörcher, K., Schmitt, M., 'On the Duty to Implement European Framework Agreements: Lessons to be Learned from the Hairdressers Case', *Industrial Law Journal*, vol. 48, No 4, December 2019, pp. 571 to 603.

---

6 See Schmitt, M., Moizard, N. and Frapard, M., 'Droit social européen', *J.D.E.*, 2020/6, No 270, p. 297.

---

7 C(2015) 2303 final.

---

8 In that connection, EPSU challenges paragraphs 69, 73, 96 and 100 of the judgment under appeal.

---

9 That ground of appeal is directed, inter alia, at paragraphs 34, 54 to 63, 69 to 82, 93 and 94 to 98 of the judgment under appeal.

---

10 That ground of appeal is directed at the findings of the General Court in paragraphs 31 to 33, 78, 79, 109 to 112, 122 and 133 of the judgment under appeal.

---

11 Its arguments are directed in particular at paragraphs 116 to 140 of the judgment under appeal.

---

12 EPSU criticises paragraphs 69, 73, 89, 96 and 100 of the judgment under appeal.

13 EPSU criticises paragraphs 69 and 89 of the judgment under appeal. Furthermore, it states that the finding in paragraph 96 of that judgment is incompatible with the measures adopted under that provision, which are legislative in nature, and with the line of authority devolving from the judgment of 8 September 2011, *Hennings and Mai* (C-297/10 and C-298/10, EU:C:2011:560, paragraph 66).

14 C-643/15 and C-647/15, EU:C:2017:631.

15 The criticism is directed at paragraph 62 of the judgment under appeal.

16 EPSU challenges the approach taken by the General Court in paragraphs 62, 63, 69 to 82, 87, 89, 99, 100 and 109 of the judgment under appeal.

17 C-409/13, EU:C:2015:217, paragraph 70.

18 EPSU refers to paragraphs 34, 63 to 81 and 93 of the judgment under appeal.

19 See paragraphs 34 and 74 of the judgment under appeal.

20 EPSU criticises paragraphs 74 to 77, 87 and 96 of the judgment under appeal.

21 T-135/96, EU:T:1998:128, paragraph 84.

22 EPSU criticises paragraphs 82 and 94 to 98 of the judgment under appeal. The existence of political 'discretion' would deprive the Council of the possibility of exercising its power to choose whether or not to adopt a decision under Article 155(2) TFEU, nullify the independence of the social partners and give the Commission a seat at the negotiating table alongside them. The approach taken by the General Court to the Commission's review of appropriateness undermines the independence of the social partners and infringes their fundamental rights. That review is limited to agreements concluded outside the consultation process provided for by the Treaty.

23 While the 'second' procedure provided for in Articles 154 and 155 TFEU confers on management and labour the task of negotiating, drafting and approving the content of the agreement independently, there is no analogous procedure allowing the Parliament to draw up the content of a legislative proposal independently.

24 See, in particular, paragraph 64 et seq. of the judgment under appeal, specifically paragraph 69 thereof.

25 See order of 9 March 2007, *Schneider Electric* v *Commission* (C-188/06 P, EU:C:2007:158, paragraph 64). See also, to that effect, judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 148), and of

19 April 2007, *OHIM* v *Celltech* (C-273/05 P, EU:C:2007:224, paragraphs 56 and 57), and the order of 23 February 2006, *Piau* v *Commission* (C-171/05 P, EU:C:2006:149, paragraph 86).

---

26 See, in that regard, Opinion of Advocate General Szpunar in *LL* v *Parliament* (C-326/16 P, EU:C:2017:605, point 69).

---

27 See paragraph 48 of the judgment under appeal.

---

28 See, in particular, judgments of 17 November 1983, *Merck* (292/82, EU:C:1983:335, paragraph 12), and of 26 February 2019, *Rimšēvičs and ECB* v *Latvia* (C-202/18 and C-238/18, EU:C:2019:139, paragraph 45).

---

29 As will be explained (in point 54 et seq. of the present Opinion), the origin of Article 155(2) TFEU supports the interpretation that it is not a mandatory rule.

---

30 Descriptivism theory posits that the present indicative reflects the very function of the law, being to establish the status of each individual (see, in that regard, Villey, M., 'De l'indicatif dans le droit', *Archives de philosophie du droit*, Dalloz, Paris, Vol. 19, 1974, pp. 33 to 61). According to Cornu, G., the indicative might 'lead the reader to believe that the rule laid down is not imposed arbitrarily, but is naturally well founded, that the law is close to the nature of things' (Cornu, G., *Linguistique juridique*, Montchrestien, Paris, 1990, p. 271).

---

31 It seems to me that, under Article 153(1) and (2) and Article 155(2) TFEU, read in conjunction with Article 16(3) TEU, that agreement falls within an area governed by Article 153 TFEU in respect of which the Council may act by a qualified majority.

---

32 In particular, in the Spanish language, 'La aplicación de los acuerdos celebrados a nivel de la Unión se realizará, ya sea según … ya sea …'; in the German language, 'Die Durchführung der auf Unionsebene geschlossenen Vereinbarungen erfolgt entweder … oder …'; in the Estonian language, 'Liidu tasandil sõlmitud kokkuleppeid rakendatakse tööturu osapoolte ja liikmesriikide kehtivate menetluste või tavade kohaselt, artiklis 153 käsitletud küsimustes aga allakirjutanute ühisel taotlusel'; in the Italian language, 'Gli accordi conclusi a livello dell'Unione sono attuati secondo le procedure e … o, e …'; in the Dutch language, 'De tenuitvoerlegging van de op het niveau van de Unie gesloten overeenkomsten geschiedt hetzij …, hetzij …'; in the Portugese language, 'Os acordos celebrados ao nível da União serão aplicados, quer … quer, …'; and in the Finnish language, 'Unionin tasolla tehdyt sopimukset pannaan täytäntöön joko työmarkkinaosapuolten ja jäsenvaltioiden omien menettelyjen ja käytäntöjen mukaisesti tai …'.

---

33 See Franssen, E., *Legal Aspects of the European Social Dialogue*, Intersentia, Antwerp, 2002, pp. 287 to 288.

---

34 See, to that effect, judgment of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217).

---

35 EU:T:1998:128.

---

36 See Dorssemont, F., Chap. 1, 'Some Reflections on the Origin, Problems and Perspectives of the European Social Dialogue', in Vos (de), Marc, *A Decade Beyond Maastricht: The European Social Dialogue Revisited*,

Kluwer Law International, The Hague, 2003, p. 29.

37 Article 288 TFEU provides that ‘to exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions’.

38 See Dorssemont, F., cited in footnote 36, p. 29.

39 *Ibidem*, pp. 29 and 30.

40 According to legal literature, there are a number of acts which are not legislative in nature and which are adopted directly on the basis of the TFEU. See Best, E., ‘Legislative Procedures after Lisbon: Fewer, Simpler, Clearer’, *Maastricht Journal of European and Comparative Law*, 2007, 15, No 1, p. 93.

41 See, inter alia, Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9); Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4); and Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

42 See Dorssemont, F., cited in footnote 36, p. 17.

43 Koster, J.-V., ‘Le dialogue social européen à l’épreuve de la “modernisation” du marché du travail’, *Revue française des affaires sociales*, No 1, 2012, pp. 62 to 79. For a general historical overview, see Barnard, C., *EU Employment Law*, Oxford European Union Law Library, Oxford, 2012, p. 713 et seq.

44 Article 22 of the Single European Act, which was signed in Luxembourg on 17 February 1986 and The Hague on 28 February 1986 and came into force on 1 July 1987, supplemented the EEC Treaty with the insertion of Article 118b. For a historical overview, see Pochet, P., and Degryse, C., ‘The European Social Dialogue: What Is the Role of Employers and What Are the Hopes for the Future?’, in Vandenbroucke, F., Barnard, C. and De Baere, G. (Eds.), *A European Social Union after the Crisis*, Cambridge University Press, Cambridge, 2017, pp. 211 to 237.

45 See Henni, A., ‘Le dialogue social européen. Enjeux, structures, résultats’, *Courrier hebdomadaire du CRISP*, 2001, vol. 1741, No 36, pp. 5 to 50.

46 Agreement concluded between the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland (OJ 1992 C 191, p. 91). Specifically, Article 3(2) to (4) and Article 4 of the Agreement on social policy laid down the procedure currently set out in Article 154(2) to (4) TFEU. Moreover, under Article 4(1) of the Agreement on social policy (now Article 155(1) TFEU), management and labour were given the power to request the Commission to propose the implementation, by the Council, of the agreement negotiated by them, under Article 4(2) of the agreement on social policy (now Article 155(2) TFEU).

47 On the implementation of agreements concluded by management and labour under Article 139 of the EC Treaty, see Deinert, O., ‘Modes of Implementing European Collective Agreements and Their Impact on Collective Autonomy’, *Industrial Law Journal*, vol. 32, No 4, December 2003, pp. 317 to 325.

---

48 Agreement signed by ETUC, UNICE and CEEP. That agreement proposed the recasting of Article 118(4) and of Articles 118a and 118b of the EEC Treaty.

---

49 Henni, A., ‘Le dialogue social européen. Enjeux, structures, résultats’, *Courrier hebdomadaire du CRISP*, vol. 1741, No 36, 2001, pp. 5 to 50.

---

50 See, in particular, communications COM(93) 600 final of 14 December 1993 concerning the application of the Agreement on social policy presented by the Commission to the Council and to the European Parliament; COM(1998) 322 final of 20 May 1998, ‘Adapting and promoting the social dialogue at community level’; and COM(2002) 341 final of 26 June 2002, ‘The European social dialogue, a force for innovation and change’.

---

51 Mias, A, ‘Du dialogue social européen au travail législatif communautaire. Maastricht, ou le syndical saisi par le politique’, *Droit et société*, 2004, No 58, pp. 657 to 682.

---

52 An information report produced by the French Senate in 2017 shows that, since 1992, approximately 30 topics had been the subject of consultation under Article 154 TFEU and that, in practice, the Commission had given the 87 organisations identified (including 65 employers’ associations, most of them industry based, and 22 trade unions) six weeks to submit their observations during the first and second rounds of consultation. Report available at the following website: https://www.senat.fr/rap/r16-556-1/r16-556-130.html.

---

53 See Didry, C., ‘L’émergence du dialogue social en Europe: retour sur une innovation institutionnelle méconnue’, *Année sociologique*, 2009, vol. 59, No 2, pp. 417 to 447. Available at https://www.cairn.info/revue-l-annee-sociologique-2009-2-page-417.htm.

---

54 That provision lays down the possibility of an extension, which is to be decided on jointly by the management and labour concerned and by the Commission.

---

55 See paragraphs 73 and 74 of the judgment under appeal.

---

56 See, to that effect and by analogy, judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128, paragraph 84), according to which, where management and labour conclude an agreement which they jointly request be implemented at EU level, they are to address a joint request to the Commission which thereupon resumes control of the procedure and determines whether it is appropriate to submit a proposal to that effect to the Council.

---

57 See point 51 of this Opinion.

---

58 T-135/96, EU:T:1998:128.

---

59 UNICE, CEEP and ETUC.

60 Council Directive of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4).

61 See, to that effect, judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128, paragraphs 4 to 11).

62 See, to that effect, judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128, paragraphs 83 to 90).

63 T-135/96, EU:T:1998:128.

64 See, to that effect, judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128, paragraphs 110 and 111).

65 For the corresponding provisions, see footnote 46 of this Opinion.

66 See, to that effect, judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128, paragraph 71 et seq., particularly paragraphs 84 and 85).

67 See points 55 and 56 of this Opinion.

68 See, by analogy, judgments of 16 February 2017, *Margarit Panicello* (C-503/15, EU:C:2017:126, paragraph 37 and the case-law cited), and of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217, paragraph 70).

69 See, in particular, judgments of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217, paragraphs 70 and 74), and of 19 December 2019, *Puppinck and Others* v *Commission* (C-418/18 P, EU:C:2019:1113, paragraph 59).

70 See, to that effect, judgment of 22 May 1990, *Parliament* v *Council* (70/88, EU:C:1990:217, paragraph 19).

71 Concerning effects *inter partes*, see Hasselbalch, O., 'European Collective Agreements', in Olsen, B.E., and Søensen, K.E., *Regulation in the EU*, Thomson, Copenhagen,, 2006, p. 381 to 384.

72 See, inter alia, and most recently, Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ 2010 L 68, p. 13); Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation

(ESO) and the European Transport Workers' Federation (ETF) (OJ 2014 L 367, p. 86); Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by the HOSPEEM and the EPSU (OJ 2010 L 134, p. 66); and Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ 2009 L 124, p. 30).

---

73 See Deinert O., 'Self-Executing Collective Agreements in EC Law', in Vos (de), Marc, *A Decade Beyond Maastricht: The European Social Dialogue Revisited*, Kluwer Law International, The Hague, 2003, p. 48.

---

74 See judgment of 6 September 2017, *Slovakia and Hungary* v *Council* (C-643/15 and C-647/15, (EU:C:2017:631, paragraph 62).

---

75 For a general and historical overview, see Barnard C., *EU Employment Law*, Oxford European Union Law Library, Oxford, 4th edition, 2012, p. 713 et seq., and Bercusson, B., *European Labour Law*, Cambridge University Press, Cambridge, 2nd edition, 2009, p. 126 et seq.

---

76 Communication from the Commission entitled 'The European social dialogue, a force for innovation and change', (COM(2002) 341 final of 26 June 2002, p. 6).

---

77 That provision applies to the European Union and, under Article 13 TEU, to all the institutions, as opposed to Article 154 TFEU, which is binding only on the Commission.

---

78 See point 51 of the present Opinion.

---

79 Furthermore, in that situation, the social partners would be accorded the power to require the Commission to act in the field of social policy, whereas Article 225 TFEU merely confers on the Parliament the right to request the Commission to submit a proposal and to be informed of the reasons for refusal if the Commission decides not to submit the requested proposal. The same is true as regards the Council under Article 241 TFEU.

---

80 T-135/96, EU:T:1998:128.

---

81 EPSU criticises paragraphs 31 to 33, 78, 79, 109 to 112, 122 and 133 of the judgment under appeal.

---

82 T-135/96, EU:T:1998:128.

---

83 See paragraph 112 of the judgment under appeal.

---

84 See, in particular, judgment of 6 September 2017, *Slovakia and Hungary* v *Council* (C-643/15 and C-647/15, EU:C:2017:631, paragraph 124 and the case-law cited).

---

85 In an Opinion I delivered recently, I had the opportunity to draw attention to the fact that, according to the case-law, legislation in the civil service field entails choices of a political, economic and social nature and that the legislature is therefore called upon to conduct complex assessments and evaluations in respect of which it enjoys a broad discretion (see, as regards the scope of judicial review, my Opinion in Joined Cases *Alvarez y Bejarano and Others* v *Commission and Council*, C-517/19 P and C-518/19 P, EU:C:2020:848, point 36).

---

86 See judgment of 19 November 1998, *United Kingdom* v *Council* (C-150/94, EU:C:1998:547, paragraph 54).

---

87 See point 69 of this Opinion.

---

88 See, in particular, judgments of 22 November 2001, *Netherlands* v *Council* (C-110/97, EU:C:2001:620, paragraph 62), and of 2 July 2009, *Bavaria and Bavaria Italia* (C-343/07, EU:C:2009:415, paragraph 82).

---

89 Judgment of 19 December 2019 (C-418/18 P, EU:C:2019:1113).

---

90 See, to that effect, judgment of 19 December 2019, *Puppinck and Others* v *Commission* (C-418/18 P, EU:C:2019:1113, paragraphs 87 to 97).

---

91 Commission Communication of 14 December 1993 presented by the Commission to the Council and the European Parliament concerning the application of the agreement on social policy (COM(93) 600 final); Commission Communication of 18 September 1996 concerning the Development of the Social Dialogue at Community level (COM(96) 418 final); Communication from the Commission of 20 May 1998 adapting and promoting the social dialogue at Community level (COM(1998) 322 final); and Communication from the Commission of 2 October 2013 to the European Parliament, Council, the European Economic and Social Committeee and to the Committee of the Regions, ‘Regulatory Fitness and Performance (REFIT): Results and Next Steps’ (COM(2013) 685 final).

---

92 This ground is directed against paragraphs 116 to 140 of the judgment under appeal.

---

93 Judgment of 17 September 2020, *Rosneft and Others* v *Council* (C-732/18 P, not published, EU:C:2020:727, paragraph 77 and the case-law cited).

---

94 See judgment of 17 September 2020, *Rosneft and Others* v *Council* (C-732/18 P, not published, EU:C:2020:727, paragraph 77 and the case-law cited).

---

95 See judgment of 21 November 1991, *Technische Universität München* (C-269/90, EU:C:1991:438, paragraph 14).

---

96 See judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala* (C-413/06 P, EU:C:2008:392, paragraph 181).

---

97 See point 97 of this Opinion.

98 See, to that effect, judgment of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217, paragraph 79).

99 See paragraph 137 of the judgment under appeal.

100 EPSU refers to the letters of 9 March 2016 and 3 February 2017 and to the oral communication of 15 November 2016.

101 See footnote 91 of the present Opinion.

102 See paragraph 106 of the application at first instance.

103 See paragraphs 29 to 39 of the application at first instance.

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

105 According to the Court's case-law, the protection of legitimate expectations extends, as a corollary of the principle of legal certainty, to any individual in a situation where European Union authorities have caused him or her to entertain legitimate expectations. Information which is precise, unconditional and consistent and comes from authorised and reliable sources, in whatever form it is given, constitutes assurances capable of giving rise to such expectations. However, a person may not plead breach of the principle unless he or she has been given precise assurances by the administration (see judgment of 3 December 2019, *Czech Republic* v *Parliament and Council* (C-482/17, EU:C:2019:1035, paragraph 153 and the case-law cited)).

106 See points 86 to 90 of this Opinion.

107 Reference should be made, inter alia, to Article 45(4) TFEU, which provides that the authorities of the Member States may reserve access to certain public sector posts to their nationals. The Court has consistently held that this exception covers posts involving direct or indirect participation in the exercise of powers of a public authority and duties designed to safeguard the general interests of the State or of other public bodies.

108 Under Article 5(3) TEU, pursuant to the principle of subsidiarity, the European Union, in areas which do not fall within its exclusive competence, is to act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at EU level. Paragraph 13 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ 2016 L 123, p. 1) states that the Commission 'will carry out impact assessments of its legislative … initiatives … which are expected to have significant economic, environmental or social impacts', although that paragraph is limited to legislative acts and to relations between the institutions.

109 See, to that effect, judgment of 24 January 2013, *Frucona Košice* v *Commission* (C-73/11 P, paragraphs 87 to 90 and the case-law cited).

110 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ 2002 L 80, p. 29), Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ 2009 L 122, p. 28) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ 2001 L 294, p. 22).

111 Council Directive of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16).