JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition)

24 October 2019 (*)

(Social policy — Dialogue between the social partners at EU level — Agreement entitled ‘General framework for informing and consulting civil servants and employees of central government administrations’ — Joint request of the signatory parties seeking the implementation of that agreement at EU level — Refusal by the Commission to submit a proposal for a decision to the Council — Action for annulment — Challengeable act — Admissibility — Commission’s discretion — Autonomy of the social partners — Principle of subsidiarity — Proportionality)

In Case T–310/18,

European Federation of Public Service Unions (EPSU), established in Brussels (Belgium),

Jan Goudriaan, residing in Brussels,

represented by R. Arthur, Solicitor, and by R. Palmer and K. Apps, Barristers,

applicants,

v

European Commission, represented by I. Martínez del Peral, M. van Beek and M. Kellerbauer, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking the annulment of the Commission’s decision of 5 March 2018 refusing to submit to the Council of the European Union a proposal for a decision to implement the agreement entitled ‘General framework for informing and consulting civil servants and employees of central government administrations’, signed by the Trade Unions’ National and European Administration Delegation (TUNED) and European Public Administration Employers (EUPAE) on 21 December 2015,

THE GENERAL COURT (Ninth Chamber, Extended Composition),

Composed, at the time of deliberation, of S. Gervasoni, President, L. Madise, R. da Silva Passos, K. Kowalik-Bańczyk (Rapporteur) and C. Mac Eochaidh, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 23 May 2019,

gives the following

Judgment

Background to the dispute

1 By consultation document C(2015) 2303 final of 10 April 2015, the European Commission invited management and labour — the social partners —, 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.

2 On 2 June 2015, the social partners sitting on the Social Dialogue Committee for Central Government Administrations — namely the Trade Unions' National and European Administration Delegation (TUNED), on the one hand, and the European Public Administration Employers (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.

3 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' ('the Agreement').

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

5 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 EU level ('the contested decision').

6 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. Secondly, the Commission stated that provisions ensuring a certain degree of information and consultation of civil servants and employees of those administrations already existed in many Member States. Thirdly, 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 by a Council decision, the level of protection of civil servants and employees of public administrations would vary considerably across Member States.

Procedure and forms of order sought

7 By application lodged at the Court Registry on 15 May 2018, the applicants, namely, on the one hand, the European Federation of Public Service Unions (EPSU) — an association that brings together European trade union associations representing public service workers and which created TUNED jointly with the Confédération européenne des syndicats indépendants (European Confederation of Independent Trade Unions) (CESI) — and, on the other hand, Mr Jan Goudriaan, Secretary General of EPSU, brought the present action.

8 The Commission lodged its defence on 26 July 2018.

9 The applicants lodged their reply on 19 September 2018.

10 By a separate document lodged at the Court Registry on 11 October 2018, the applicants filed a request for confidential treatment vis-à-vis the public of certain information contained in the annexes of the application.

11 The Commission lodged a rejoinder on 14 November 2018.

12 By order of 13 December 2018, *EPSU and Willem Goudriaan* v *Commission* (T-310/18, not published, EU:T:2018:1018), the President of the Ninth Chamber rejected an application to intervene in support of the applicants made by the European Transport Workers' Federation (ETF).

13 By way of measures of organisation of procedure, adopted pursuant to Article 89(3)(a) and (b) of the Rules of Procedure, the Court set out written questions for the parties to answer at the hearing.

14 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 23 May 2019. At the end of the hearing, the President of the Ninth Chamber, extended composition, decided not to close the oral part of the procedure.

15 As a measure of organisation of procedure adopted pursuant to Article 89(3)(b) of the Rules of Procedure, the Court invited the applicants to comment in writing on an argument advanced by the Commission at the hearing. The applicants complied with that request within the time allowed.

16 The oral procedure was closed by decision of the President of the Ninth Chamber, Extended Composition, of the Court, on 24 June 2019.

17 The applicants claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

18 The Commission contends that the Court should:

– dismiss the action as inadmissible in so far as it is submitted by M. Goudriaan;

– dismiss the present action in its entirety as unfounded;

– order the applicants to pay the costs.

Law

Admissibility

Existence of a challengeable act

19 In the first place, it must be noted that, pursuant to the first paragraph of Article 263 TFEU, the EU judicature is required to review the legality of acts of the institutions which are 'intended to produce legal effects vis-à-vis third parties'.

20 It follows that an action for annulment is available in the case of all measures or provisions adopted by the institutions, whatever their nature or form, which are intended to have legal effects (judgments of 31 March 1971, *Commission* v *Council*, 22/70, EU:C:1971:32, paragraphs 39 and 42, and of 23 April 1986*, Les Verts* v *Parliament*, 294/83, EU:C:1986:166, paragraph 24).

21 In the present case, it is appropriate to examine, first, whether the contested decision may be classified as a preparatory act and, secondly, whether the broad discretion available to the Commission may have an effect on the admissibility of the action.

– *Whether the act is to be classified as a preparatory act*

22 According to settled case-law, it is in principle only those measures which definitively determine the position of the Commission upon the conclusion of an administrative procedure and which are intended to

have legal effects, which are open to challenge and not, inter alia, intermediate measures whose purpose is to prepare for the final decision and which do not have those effects (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 10, and of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraph 42).

23 It would be otherwise only if acts or decisions adopted in the course of the preparatory proceedings, first, were themselves the culmination of a special procedure distinct from that intended to permit the Commission or the Council to take a decision on the substance of the case and, second, themselves produce binding legal effects (see, to that effect, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 11).

24 The reference to a proposal is a clear indication that the content of the document is not intended to have legal effects and, therefore, that it is not an act that is open to challenge (see, to that effect, judgment of 1 December 2005, *Italy* v *Commission*, C-301/03, EU:C:2005:727, paragraph 22 and 33). That is the case, inter alia, for a proposal submitted by the Commission in the course of a process involving several stages where such a proposal is an intermediate measure that does not produce binding legal effects (see, to that effect, the order of 15 May 1997, *Berthu* v *Commission*, T-175/96, EU:T:1997:72, paragraphs 21 and 22).

25 In addition, where the decision amounts to a rejection, it must be appraised in the light of the nature of the request to which it constitutes a reply (judgments of 8 March 1972, *Nordgetreide* v *Commission*, 42/71, EU:C:1972:16, paragraph 5, and of 24 November 1992, *Buckl and Others* v *Commission*, C-15/91 and C-108/91, EU:C:1992:454, paragraph 22). It follows that a refusal constitutes an act in respect of which an action for annulment may be brought under Article 263 TFEU, provided that the act which the institution refuses to adopt could itself have been contested under that provision (see judgment of 22 October 1996, *Salt Union* v *Commission*, T-330/94, EU:T:1996:154, paragraph 32 and the case-law cited).

26 It follows that the actions for annulment directed against a refusal to advance a proposal are in principle inadmissible, in the same way as those directed against a proposal (see, to that effect, the order of 13 March 2007, *Arizona Chemical and Others* v *Commission*, C-150/06 P, not published, EU:C:2007:164, paragraphs 23 and 24).

27 However, under certain circumstances, where a text organises a preliminary procedure allowing certain persons to ask the Commission to submit a proposal for an act, the refusal by the Commission to submit such a proposal is an act that is open to challenge. In effect, that refusal, first, concludes the preliminary procedure initiated on the basis of that text and, second, excludes the commencement of the procedure for the adoption of the act itself. Such a refusal expresses the definitive position of the Commission and produces binding legal effects and, therefore, may be the subject of an action for annulment (see, to that effect, the judgments of 25 June 1998, *Lilly Industries* v *Commission*, T-120/96, EU:T:1998:141, paragraphs 53, 55, 56 and 58, and of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraphs 66, 77 and 101).

28 It is clear from the wording of Article 155 TFEU, reproduced in paragraph 49 below, that that provision authorises the social partners to negotiate an agreement at EU level and then to jointly request the Commission to submit a proposal seeking the implementation of that agreement by a decision of the Council. In those circumstances, the decision by which the Commission refused to submit a proposal on the basis of Article 155(2) TFEU is not purely a preliminary or preparatory act but, on the contrary, is a definitive position adopted by the Commission with the effect of, first, concluding the preliminary procedure laid down for the social partners and, second, not opening the procedure for the adoption of a substantive act. Consequently, such a decision produces binding legal effects.

29 It follows that the contested decision is not a preparatory act.

– *Possible effect of the broad discretion*

30 It is true that, in certain circumstances, a broad discretion results in the inadmissibility of an action for annulment. Such is the case where the action is brought against a Commission decision not to commence infringement proceedings since the Commission has complete discretion in that regard (judgments of 17 May 1990, *Sonito and Others* v *Commission*, C-87/89, EU:C:1990:213, paragraph 6, and of 20 February 1997, *Bundesverband der Bilanzbuchhalter* v *Commission*, C-107/95 P, EU:C:1997:71, paragraphs 10, 11 and 19). That is also the case where the action for annulment challenges a decision of the European Parliament as to how a petition that satisfies the conditions laid down in Article 227 TFEU should be dealt with since, in that regard, the Parliament enjoys a broad discretion of a political nature (judgment of 9 December 2014, *Schönberger* v *Parliament*, C-261/13 P, EU:C:2014:2423, paragraph 24).

31 However, the circumstances referred to in paragraph 30 above are exceptional and very specific.

32 The fact that an institution enjoys a broad discretion has, as a general rule, the sole consequence of restricting the scope and intensity of the review exercised by the EU judicature (see paragraph 110 below).

33 In particular, where the issue concerns the Commission's power of initiative, consisting of proposing EU acts, the broad discretion devolved to that institution does not suffice to preclude the admissibility of an application for annulment. Thus, the Court has held that a decision by the Commission to withdraw a proposal for a legislative act is an act against which an action for annulment may be brought and therefore amenable to judicial review (see, to that effect, the judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraphs 76 to 78). The same is true in respect of a decision by which the Commission refuses to submit a proposal for a legal act following a European citizens' initiative (see, to that effect, the judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraphs 88 to 101, 169 and 170).

34 A decision by which the Commission refuses to submit a proposal seeking the implementation at EU level of an agreement concluded by the social partners concerns the exercise of its power of initiative (see also paragraph 73 below).

35 It follows that, even if the examination of the merits of the action shows that the Commission has a broad discretion in this case, that finding would not preclude the admissibility of this action.

36 Therefore, the contested decision is an act that is open to challenge.

The applicants' standing to bring the action

37 The Commission submits that the action is inadmissible in so far as it is brought by Mr Goudriaan, since he does not have standing to bring proceedings.

38 It must be recalled that, where an application is lodged by a number of applicants, the action is admissible if one of them has standing to bring proceedings. In such a situation, there is no need to examine whether the other applicants have standing to bring proceedings (see judgment of 18 October 2018, *ArcelorMittal Tubular Products Ostrava and Others* v *Commission*, T-364/16, EU:T:2018:696, paragraph 47 and the case-law cited).

39 In the present case, the Commission does not dispute EPSU's standing to bring proceedings. In that regard, it is common ground that the contested decision is addressed inter alia to TUNED, which has no legal personality or autonomy, since the results of the social dialogue in which it participates must be approved by the decision-making bodies of EPSU and the CESI. Accordingly, the latter must be regarded as the addressees of the contested decision as regards the workers' representative associations (see, to that effect, the judgments of 19 March 2010, *Evropaïki Dynamiki* v *Commission*, T-50/05, EU:T:2010:101, paragraph 40, and of 22 May 2012, *Sviluppo Globale* v *Commission*, T-6/10, not published, EU:T:2012:245, paragraph 19). It follows that EPSU has standing to bring proceedings under the first limb of the fourth paragraph of Article 263 TFEU.

40 Accordingly, having regard to the case-law referred to in paragraph 38 above, it is not necessary to examine the plea of inadmissibility alleging that Mr Goudriaan does not have standing to bring proceedings.

Admissibility of Annex C.3

41 The Commission submits that Annex C.3 of the reply, which contains the legal opinion of a law professor, is inadmissible by virtue of the maxim of *iura novit curia*. According to it, annexes have a purely evidential and instrumental function and cannot consist of legal opinions on questions of EU law.

42 In that regard, it should be recalled that the maxim of *iura novit curia* cannot mean that the annexes to the application relating to the interpretation of EU law are inadmissible (judgment of 12 December 2018, *Servier and Others* v *Commission*, T-691/14, under appeal, EU:T:2018:922, paragraph 102).

43 The body of the application may be supported and supplemented on specific points by references to extracts from documents annexed to it, provided that the essential submissions in law appear in the application itself (see judgment of 13 December 2006, *FNCBV and Others* v *Commission*, T-217/03 and T-245/03, EU:T:2006:391, paragraph 79 and the case-law cited).

44 In the present case, the applicants sufficiently set out their argument as to the interpretation of Article 155(2) TFEU in their application and the reply. Consequently, the legal opinion produced in Annex C.3 to the reply serves merely to support and complement that argument. Therefore, that annex is admissible.

Merits

45 In support of their application, the applicants rely on two pleas in law alleging, first, an error of law as to the scope of the Commission's powers and, second, the manifestly insufficient and mistaken reasons for the contested decision.

The first plea in law, alleging an error of law as to the scope of the Commission's powers

46 The applicants submit, in essence, that the Commission erred in law by exercising a power of refusal which was not available to it under Article 155(2) TFEU. The applicants argue that, except where it finds either that the signatory parties to the agreement are insufficiently representative or that the clauses of that agreement are illegal, the Commission is required to grant a joint request of the signatory parties seeking the implementation of that agreement at EU level and, to that end, it is required to submit a proposal for a decision to the Council. In the present case, however, the Commission declined to act on the joint request of the signatory parties to the Agreement for other reasons that are connected with the inappropriateness of such action.

47 The Commission disputes the applicants' arguments. In particular, it contends that it is for it alone to decide whether it is appropriate to exercise its power initiative, including in the context of Article 155(2) TFEU.

48 Article 155(2)TFEU must be interpreted taking into account not only the wording of that provision, but also its context and objectives (see, to that effect, the judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 10 March 2005, *easyCar*, C-336/03, EU:C:2005:150, paragraph 21).

– *Literal Interpretation*

49 Article 155 TFEU provides as follows:

'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 [TFEU], at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The … Parliament shall be informed.

…'

50 Thus, it is clear from the first paragraph of Article 155(2) TFEU that an agreement reached at EU level by the social partners may be implemented in two different ways, namely 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, at EU level in accordance with a specific procedure leading to the adoption of an EU act (see, by analogy, the judgment of 17 June 1998, *UEAPME* v *Council*, T-135/96, EU:T:1998:128, paragraph 73).

51 As regards, more specifically, the procedure enabling the implementation of an agreement at EU level, the first paragraph of Article 155(2) TFEU merely states that implementation takes the form of a Council Decision adopted at the joint request of the signatory parties and on a proposal of the Commission and that the Parliament is to be informed.

52 It must be observed that Article 155(2) TFEU does not explicitly state whether, when it receives a joint request of the signatory parties seeking the implementation of an agreement at EU level, the Commission is required to submit a proposal for a decision to the Council to that effect or whether, on the contrary, it may refuse to submit such a proposal to the Council.

53 However, the applicants submit that the words 'shall be implemented' and 'intervient', used in the English and French versions of the first paragraph of Article 155(2) respectively, create an obligation for the Commission to act. They also refer to the genesis of that provision and submit that, during the negotiation of the Maastricht Treaty an original formulation that left a broad discretion to the Commission was replaced in each of the two language versions by an imperative formulation that excluded any discretion.

54 In that regard it is necessary to recall the origins of the present first paragraph of Article 155(2) TFEU, the wording of which was finalised during the negotiation of the Maastricht Treaty.

55 In the first instance, the Luxembourg presidency presented, on 18 June 1991, a draft Treaty on the European Union (CONF-UP-UEM 2008/91) which created a new article, Article 118B, paragraph 2, of the EC Treaty. The original French version of that provision was drafted in the following terms: 'Si les partenaires sociaux le souhaitent, la Commission peut présenter des propositions pour la transposition au niveau communautaire des accords [conclus par les partenaires sociaux].' [Should management and labour so desire, the Commission may submit proposals for the implementation at Community level of the agreements [concluded between management and labour]].

56 Secondly, in the context of an ad hoc group for dialogue between management and labour, the Union des Confédérations de l'Industrie et des Employeurs d'Europe (Union of Industrial and Employer's Confederations of Europe) (UNICE), the Confédération Européenne des Syndicats (European Trade Union Confederation) (ETUC) and the Centre Européen des Employeurs et Entreprises fournissant des services Publique (European Centre of Employers and Enterprises providing Public Services) (CEEP) negotiated and signed, on 31 October 1991, an agreement on proposals for the drafting of certain treaty articles under negotiation ('the agreement of 31 October 1991'). That agreement amended the drafting of Article 118B, paragraph 2, of the EC Treaty proposed by the Luxembourgish presidency by providing, for the first time, two separate and alternative procedures for the implementation of agreements concluded by the social partners. For the implementation of those agreements in accordance with either one or other of the two procedures referred to in Article 50 above, the English and French versions of the agreement of 31 October 1991 were worded: '[the] agreements […] may be realised' and 'la mise en œuvre des accords […] interviendra'.

57 Thirdly, the proposal that appeared in the agreement of 31 October 1991 was reproduced, in substance, in Article 4 of the Agreement on social policy 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) ('the Agreement on social policy'), annexed to the protocol (No 14) on social policy, itself annexed to the EC Treaty. The first paragraph of Article 4(2) of the Agreement on social policy provided that agreements concluded by management and labour were to be implemented in accordance with either one or other of the two procedures referred to in paragraph 50 above. In particular, the English and French versions of that provision were worded 'the agreements […] shall be implemented' and 'la mise en œuvre des accords […] intervient'. That wording was later reproduced in the first paragraph of Article 155(2) of TFEU.

58 It is therefore clear, in the wording proposed at the start of the negotiation of the Maastricht Treaty, that whether to lodge a proposal to implement an agreement at EU level was clearly within the Commission's discretion owing to the use of the modal verbs 'may' in the English version and 'pouvoir' in the French version. By contrast, in the wording finally adopted at the conclusion of that negotiation, those verbs disappeared in favour of a formulation that in certain language versions was imperative owing to the use of the present indicative, inter alia in the French version ('intervient'), or the future indicative, inter alia in the English version ('shall be implemented').

59 As the Commission correctly observes, the imperative formulation referred to in paragraph 58 above arose during the drafting of the Agreement on social policy, namely at the time when, in accordance with the proposal formulated by management and labour in the Agreement of 31 October 1991, the two procedures for the implementation of the agreements concluded by management and labour, referred to in paragraph 50 above, were brought within that same sentence. On that occasion the verb in the sentence ceased to relate to the submission by the Commission of proposals for the implementation of those agreements at EU level and thereafter related to the implementation of those agreements in accordance with one or other of the two procedures referred to in paragraph 50 above. In those circumstances, the imperative formulation referred to above may have the function of expressing the exclusivity of those two procedures.

60 Accordingly, the wording of Article 155(2) TFEU does not in itself permit the conclusion that the Commission is obliged to submit a proposal for a decision to the Council when it receives a joint request to that effect by the signatory parties.

61 Furthermore, it must be observed that the literal interpretation advanced by the applicants implies that the imperative formulation referred to in paragraph 58 above relates to the implementation of the agreements concluded by management and labour. If that interpretation was upheld, it would have two consequences.

62 First, the interpretation advanced by the applicants would mean that, when the social partners submit a joint request seeking the implementation of an agreement at EU level, both the Commission and the Council would be obliged, under any circumstances, to uphold that request: the Commission by submitting a proposal for a decision to the Council and the Council by adopting that proposal. However, such an interpretation contradicts the correct position, which is common ground between the parties that, first, the Commission may, at least in certain cases, refuse to submit to the Council a proposal for a decision seeking the implementation of an agreement (see paragraph 75 below) and, second, that the Council is never obliged to adopt such a proposal made by the Commission (see paragraph 76 below).

63 Second, the interpretation advanced by the applicants would mean that, when management and labour do not make a joint request seeking the implementation of an agreement at EU level, the social partners and the Member States would be obliged to implement that agreement at their level in accordance with their own procedures and practices. Such a consequence, which is moreover not referred to by the applicants, would be contrary to the intention of the 11 Member States that were signatories to the Agreement on social policy. It follows from Declaration No 2, annexed to that agreement, that by concluding the agreement the Member States concerned did not intend to commit themselves to apply directly the

agreements concluded at EU level between management and labour or to lay down the rules for the implementation of those agreements.

– *Contextual interpretation*

64 In the first place, it is necessary to recall in general terms the Commission's role in the adoption of EU acts.

65 Article 17(1) TEU provides that the Commission is to 'promote the general interest of the European Union and take appropriate initiatives to that end', 'ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them', and 'oversee the application of Union law under the control of the Court of Justice of the European Union'. Under Article 17(2) TEU, 'Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Treaties provide otherwise', whereas, 'other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide'. Moreover, 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 'shall neither seek nor take instructions from any government or other institution, body, office or entity'.

66 The Commission's power of initiative accorded under Article 17(2) TEU as regards legislative acts, or by a specific provision of the treaties in respect of non-legislative acts, means that it is for the Commission to decide whether or not to submit a proposal for a legislative act, except in a situation where it is obliged under EU law to submit such a proposal (see, by analogy, the judgments of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraph 70, and of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraph 109).

67 The reason that the power of initiative is conferred by the treaties on the Commission lies in that institution's function under Article 17(1) TEU which is, inter alia, to promote the general interest of the European Union and to oversee the application of EU law, and the independence that it enjoys, under the third paragraph of Article 17(3) TEU, in carrying out its responsibilities (see, to that effect, the judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraph 110).

68 In the second place, it is necessary to clarify certain characteristics of the procedure provided for in Article 155(2) TFEU.

69 In that regard, it must be observed that Article 155(2) TFEU does not contain any reference to the ordinary legislative procedure or the special legislative procedure. It follows that the procedure for the implementation, at EU level, of agreements concluded by the social partners is not a legislative procedure within the meaning of Article 289(1) and (2) TFEU and that the measures adopted upon the conclusion of that procedure are not legislative acts within the meaning of Article 289(3) TFEU (see, to that effect, the judgment of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraphs 60 to 62 and 65 to 67).

70 It should also be recalled that the procedure under Article 155 TFEU for the conclusion and implementation at EU level of agreements involves several stages during which the social partners and the institutions, and in particular the Commission and the Council, are assigned separate and specific roles.

71 First of all, during the consultation stage undertaken by the Commission and governed by Article 154(2) and (3) TFEU, management and labour may inform the Commission of their wish to engage the procedure laid down in Article 155 TFEU.

72 Next, during the negotiation phase itself, the social partners may, as Article 155(1) TFEU provides, enter into contractual relations, including by concluding an agreement.

73 Finally, the stage of implementing the agreement in accordance with one or other of the two procedures laid down in Article 155(2) TFEU commences (see paragraph 50 above). As regards the procedure permitting the agreement to be implemented at EU level, that provision expressly provides that the Council decision is adopted 'on a proposal by the Commission'. Thus, that provision gives specific expression, within the context of the non-legislative procedure that it lays down, to the Commission's power of initiative referred to in Article 17(2) TEU.

74 Thus, it must be held that, while the initiation of the negotiation stage and the conclusion of an agreement are exclusively for the management and labour concerned to have charge of, it remains the case that, at the stage of the implementation of the agreement, the Council acts on a proposal by the Commission. That is why, when management and labour have concluded an agreement and they jointly request its implementation at EU level, they must address their joint request to the Commission. In such circumstances, the Commission once again has a right to act and resumes control of the procedure. It is for the Commission therefore to determine whether it is appropriate to submit to the Council a proposal for a decision implementing that agreement at EU level (see, by analogy, the judgment of 17 June 1998, *UEAPME* v *Council*, T-135/96, EU:T:1998:128, paragraphs 75, 76, 79 and 84).

75 The General Court has already held that the Commission must act in conformity with the principles governing its actions in the field of social policy. As both the applicants and the Commission have correctly stated, it is for the Commission to verify inter alia whether the signatories to the agreement in question are representative (see, by analogy, the judgment of 17 June 1998, *UEAPME* v *Council*, T-135/96, EU:T:1998:128, paragraphs 85 and 88). Similarly, the parties rightly agree that the Commission can and must verify the legality of the clauses of an agreement concluded by management and labour before proposing its implementation by a decision of the Council.

76 The Council, for its part, is required to verify whether the Commission has fulfilled its obligations under the treaties and in particular Title X of the third part of the TFEU, on social policy, because, if that is not the case, it runs the risk of ratifying a procedural irregularity capable of vitiating the measure ultimately adopted by it (see, by analogy, the judgment of 17 June 1998, *UEAPME* v *Council*, T-135/96, EU:T:1998:128, paragraph 87). Furthermore, both the applicants and the Commission recognise that the Council has a discretion as to whether it is appropriate for it to adopt a decision implementing an agreement and that it may not be able to adopt such a decision in the absence of agreement by qualified majority or unanimity, depending on the case, within the Council.

77 The applicants nevertheless submit that, other than in the two sets of circumstances referred to in paragraph 75 above, the Commission is obliged to submit to the Council a proposal for a decision implementing an agreement concluded by management and labour.

78 However, first, such an interpretation would call into question the principle, expressed in the third paragraph of Article 17(3) TEU, that the Commission is to carry out its responsibilities independently and without receiving instructions from whomsoever.

79 Secondly, such an interpretation would prevent the Commission from completely fulfilling its role consisting, under Article 17(1)TEU, of promoting the general interest of the European Union and taking, where necessary, the appropriate initiatives to that end. The role assigned to the Commission by Article 17(1) TEU means that, before using its power of initiative, it determines, with regard to the general interest of the European Union, whether the initiative proposed is appropriate. Therefore, when it receives a request to implement at EU level an agreement concluded between management and labour, the Commission must not only verify the strict legality of the clauses of that agreement, but also assess whether implementation of the agreement at EU level is appropriate, including by having regard to political, economic and social considerations.

80 It should be added that, as the Commission submits, the task incumbent on that institution of promoting the general interest of the European Union cannot, by default, be fulfilled by the management and labour signatories to the agreement alone. Management and labour, even where they are sufficiently

representative and act jointly, represent only one part of multiple interests that must be taken into account in the development of the social policy of the European Union.

81 Thirdly, the interpretation proposed by the applicants would alter the institutional balance to the detriment of the Commission in favour of management and labour even though they are not amongst the institutions exhaustively listed in Article 13(1) TEU.

82 Moreover, if the interpretation advocated by the applicants were upheld, management and labour would have a power to compel the Commission to act, which is not available either to the Parliament or the Council. It should be recalled that Articles 225 and 241 TFEU authorise the Parliament and the Council respectively to request the Commission to submit any appropriate proposal, while providing that the Commission may decide not to submit a proposal, subject to the condition that it gives reasons for its refusal.

– *Teleological Interpretation*

83 Pursuant to the first paragraph of Article 151 TFEU, dialogue between management and labour is one of the objectives of the European Union. The first paragraph of Article 152 TFEU states that ‘the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems’ and it ‘shall facilitate dialogue between the social partners, respecting their autonomy’. 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’.

84 It follows from the provisions recalled in paragraph 83 that one of the aims of Title X of the third part of the TFEU is to promote the role of the social partners and to facilitate dialogue between them, respecting their autonomy.

85 Therefore, not only is it laid down in Article 154(2) and (3) TFEU that the Commission is to consult the social partners, but it is also stated, in Article 155 TFEU, that the social partners may negotiate and conclude agreements that may then be implemented in accordance with one or other of the two procedures in paragraph 50 above.

86 The social partners’ autonomy, recognised in Article 152 TFEU, means that during the stage of negotiating and concluding an agreement, which exclusively involves the social partners (see paragraph 74 above), the latter may engage in dialogue and act freely without receiving any order or instruction from whomsoever and, in particular, not from the Member States or the institutions. It follows that the institutions, and in particular the Commission, must refrain from any conduct aimed at directly influencing the course of the negotiations or imposing the principle or content of an agreement on the social partners.

87 On the other hand, once the social partners have freely negotiated and concluded an agreement and the signatory parties 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 (see paragraph 74 above).

88 It is true that the applicants submit that if the Commission was permitted to refuse, on the ground that it was not appropriate, to submit a proposal for a decision implementing an agreement concluded by the social partners, the latter would in practice be induced to negotiate the content of that agreement in advance with the Commission in order to enable its implementation later, which would reduce the scope of their autonomy.

89 However, it must be recalled that Article 155 TFEU merely involves the social partners in the process of the adoption of certain non-legislative acts without according them any decision-making power. The social partners are authorised only to conclude an agreement then request the Commission to submit to the Council a proposal for the implementation of that agreement at EU level. By contrast, the social partners

are not themselves accorded the power of adopting acts that produce binding legal effects as regards third parties, or even of directly submitting a proposal for a decision implementing an agreement to the Council.

90 Consequently, the objective of promoting the role of the social partners and the dialogue between them, respecting their autonomy, does not mean that the institutions, namely the Commission and then the Council, are bound to give effect to a joint request presented by the signatory parties to an agreement seeking the implementation of that agreement at EU level.

– *The applicants' other arguments*

91 The applicants invoke several other EU rules, principles and objectives in support of their interpretation of Article 155(2) TFEU.

92 First, the applicants rely on the principle, expressed in Article 13(2) TEU, that each institution acts within the limits of the powers conferred on it by the treaties.

93 In that respect the answer must be that, in determining whether it is appropriate to implement an agreement concluded by management and labour at EU level, the Commission merely exercises the prerogatives conferred on it by the first paragraph of Article 155(2) TFEU, read together with Article 17(1) and (3) TEU (see paragraphs 66, 67 and 79 above).

94 Secondly, the applicants invoke the principle of democracy, as recognised in Article 10(1) and (2) TEU.

95 In that regard, it should be recalled that the principle of democracy is given effect, principally, by the participation of the Parliament in the decision-making process (see, to that effect, the judgment of 17 June 1998, *UEAPME* v *Council*, T-135/96, EU:T:1998:128, paragraph 88 and the case-law cited). However, the Parliament may not compel the Commission to use its power of initiative (see paragraph 82 above). It is only where the Parliament does not act that respect for the principle of democracy may be assured, in the alternative, by the social partners provided that they are sufficiently representative (see, to that effect, the judgment of 17 June 1998, *UEAPME* v *Council*, T-135/96, EU:T:1998:128, paragraph 89).

96 It must be observed that, by obliging the Commission in certain cases to propose the implementation of an agreement by a decision of the Council taken on the basis of Article 155(2) TFEU, the applicants' interpretation would in practice preclude the Commission from submitting, on the basis of Article 153(2) TFEU, a proposal with the same objective and, possibly, the same content. Therefore, that interpretation would systematically give precedence to a non-legislative procedure in which the Parliament is merely informed over a legislative procedure in which, in principle, the Parliament has a co-decision power.

97 Thirdly, the applicants rely on a principle of 'horizontal subsidiarity', meaning that the social partners are best placed to assess whether an agreement must be implemented at the level of management and labour and the Member States or at EU level.

98 In that regard, it must be observed that, as is laid down in Article 5(3) TEU, the principle of subsidiarity governs the exercise by the EU of the competences that it shares with Member States. Therefore, that principle is understood as having a 'vertical' dimension, in the sense that it governs the relationship between the European Union on the one hand and Member States on the other. By contrast, contrary to what the applicants suggest, that principle does not have a horizontal dimension in EU law, since it is not intended to govern the relationship between the European Union, on the one hand, and management and labour at EU level on the other. Furthermore, the principle of subsidiarity cannot be relied on in order to alter the institutional balance.

99 Fourthly, the applicants rely on the right to negotiate and conclude collective agreements, enshrined in Article 28 of the Charter of Fundamental Rights of the European Union, the freedom of association recognised inter alia for trade unions by Article 12 of the Charter of Fundamental Rights, and the

objectives pursued by the European Union that are listed in Article 3(3) TEU and Article 9 TFEU, such as ‘social market economy, aiming at full employment and social progress’ and ‘adequate social protection’.

100 In that regard, it must be observed that none of the provisions referred to in paragraph 99 above mean that the management and labour signatories to the agreement may compel the institutions to implement such an agreement at EU level.

101 Fifthly, the applicants refer to the positions taken by the Commission in several communications and in particular in its communications COM(93) 600 final of 14 December 1993 on the implementation of the agreement on social policy, 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’.

102 In that respect, it must be observed that the communications referred to in paragraph 101 above are devoid of any binding legal force. Consequently, those communications may not successfully be invoked to preclude the interpretation of a provision of the treaties that follows from its wording, context and the purpose of that provision.

103 It follows from all the foregoing considerations that, where management and labour have negotiated and concluded an agreement on the basis of Article 155(1) TFEU and the signatory parties submit a joint request for the implementation of that agreement at EU level by a decision of the Council adopted on the basis of Article 155(2) TFEU, the Commission is not required to give effect to that request and it is for that institution to determine whether it is appropriate for it to submit a proposal to that effect to the Council.

104 It follows that, by refusing to submit to the Council a proposal for a decision implementing the Agreement, the Commission did not commit an error of law as to the scope of its powers.

105 Consequently, the first plea in law must be rejected.

The second plea in law, alleging that the contested decision was based on manifestly insufficient and mistaken reasons

106 The applicants submit that the reasons for the Commission’s refusal to submit a proposal for a decision to implement the Agreement at EU level to the Council are manifestly mistaken and ill-grounded. They submit that the three reasons given in the contested decision are insufficient to justify such a refusal.

107 The Commission disputes the applicants’ arguments.

108 As a preliminary matter, it is appropriate to recall that, when it receives a request to implement at EU level an agreement concluded by the social partners, the Commission must take into account the general interest of the European Union and determine whether that implementation is appropriate by also having regard to political, economic and social considerations (see paragraph 79 above).

109 It follows that the Commission has a broad discretion when determining whether it is appropriate for it to submit to the Council a proposal for a decision implementing at EU level the agreement concluded by the social partners (see, to that effect and by analogy, the judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraph 169).

110 It is settled case-law that where an institution has a broad discretion judicial review is, in principle, confined to verifying that the relevant rules governing procedure and the duty to give reasons have been complied with, that the facts relied on have been accurately stated and that there has been no error of law, manifest error in the assessment of the facts or misuse of power (see judgments of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 143 and the case-law cited).

111 The intensity of the Court's review must be limited in that way in particular when the institutions have to reconcile divergent interests and thus select options within the context of the policy choices which are its own responsibility (see, to that effect, the judgments of 5 October 1994, *Germany* v *Council*, C-280/93, EU:C:1994:367, paragraph 91, and of 14 July 2005, *Rica Foods* v *Commission*, C-40/03 P, EU:C:2005:455, paragraph 55 and the case-law cited).

112 Accordingly, the contested decision must undergo a limited review by the Court (see, to that effect, the judgment of 23 April 2018, *One of Us and Others* v *Commission*, T-561/14, under appeal, EU:T:2018:210, paragraph 170).

113 It is necessary to examine separately, first, whether the duty to state reasons established by Article 296 TFEU, which is an essential procedural requirement, is complied with and, second, whether the reasoning is well founded, which concerns the substantive legality of the measure at issue (see, to that effect, judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 67, and of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 37).

– *Whether the obligation to state reasons was complied with*

114 In their written submissions, the applicants allege that there are 'insufficient reasons' for the decision.

115 On the assumption that the applicants thereby intended to allege that the duty to state reasons under Article 296 TFEU was infringed, it should be recalled that it is settled case-law that the statement of reasons required by that provision must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, 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. 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 meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and all the legal rules governing the matter in question (judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63, and of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 88).

116 In the present case, the contested decision is based on the three reasons set out in paragraph 6 above. Those reasons are, in essence, first, the specific nature of central government administrations and, in particular, the fact that they exercise the powers of a public authority; second, the fact that provisions of national law concerning information and consultation of staff in that sector are already in place in many Member States and, third, the existence of significant differences between the Member States as to the definition and perimeters of those administrations such that a decision of the Council implementing the Agreement would have a greater or lesser scope of application depending on the Member State in question.

117 It should be recalled that, first, the Commission 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 is precisely following that consultation that the social partners negotiated and signed the Agreement (see paragraphs 1 to 3 above). Second, the Commission took more than 2 years to answer the request submitted by the social partners pursuant to Article 155(2) TFEU (see paragraphs 4 and 5 above). In those circumstances, and in the light of the Commission's attitude, the addressees of the contested decision could expect that institution to adopt a more substantial statement of reasons than the relatively succinct statement, which is summarised in paragraphs 6 and 116 above.

118 However, even if the Commission's manner of proceeding may be surprising, it remains the case that the addressees of the contested decision, namely TUNED and EUPAE, were able to ascertain the three reasons for that decision and the Court is in a position to exercise its power of review. Moreover, the applicants do not allege that they were prevented from contesting the merits of the reasons for the contested decision owing to the brevity or obscurity of those reasons.

119 In those circumstances, the contested decision may be regarded as having satisfied the obligation to state reasons laid down in Article 296 TFEU.

– *The merits of the reasons given*

120 In their written pleadings the applicants contest the merits of the three reasons in the contested decision, referred to in paragraphs 6 and 116 above.

121 In the first place, the applicants submit that the three reasons for the contested decision do not figure amongst the reasons for which the Commission may refuse to give effect to a joint request made by the signatory parties to an agreement for the implementation of that agreement at EU level, namely, first, the parties' lack of representativeness and, second, the illegality of the clauses of that agreement.

122 In that regard, it suffices to observe that it is clear from the answer given to the first plea that, in the context of the non-legislative procedure laid down in Article 155(2) TFEU, the Commission may refuse to exercise its power of initiative on the basis of reasons other than those connected with the lack of representativeness of the signatory parties to the agreement or the illegality of the clauses of that agreement.

123 In the second place, the applicants consider that the three reasons for the contested decision are mistaken, misplaced and insufficient to justify that decision.

124 As regards the first reason for the contested decision, the applicants submit that the European Union is competent to protect the employment rights of civil servants and employees of central government administrations. In addition, the implementation of the Agreement at EU level would not call into question the competence of Member States to determine the structure, organisation and functioning of those administrations. Moreover, the exclusion of all civil servants and employees of those administrations from the benefit of EU social law is less and less justified, in particular where the functions of those workers are not connected with national security or the exercise of public authority.

125 As regards the second reason for the contested decision, the applicants explain that the implementation of the Agreement at EU level remains useful since it would guarantee a minimum level of information and consultation for civil servants and employees of central government administrations in all Member States, and in particular in those in which that minimum level has not yet been achieved.

126 As regards the third reason for the contested decision, the applicants consider that the implementation of the Agreement at EU level would have the effect of reducing the differences in the level of protection that currently exist between workers. Indeed, such implementation would harmonise the situation of civil servants and employees of central government administrations with that of workers covered by EU directives governing the right to information and consultation.

127 In addition, the applicants are surprised that the Commission has relied on reasons that it had already necessarily rejected in 2015 when it launched a consultation of the social partners.

128 It is appropriate to examine the applicants' complaints summarised in paragraphs 123 to 127 above.

129 In that regard, first, the applicants have not demonstrated that the elements taken into account as part of the three reasons for the contested decision were substantially incorrect or entirely irrelevant for the purpose of assessing whether it was appropriate to implement the Agreement at EU level.

130 As regards the first reason for the contested decision, 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. By contrast, the Commission did take note of the particularities of those administrations. The applicants do not seriously contest those particularities, especially the fact that certain civil servants and certain employees of those administrations may exercise powers of public authority. In addition, contrary to the submissions made by the applicants, the implementation of the Agreement could have an impact on the functioning of central government administrations by altering the relations that the latter have with their civil servants and employees.

131 As regards the second reason for the contested decision, it is permissible for the Commission to take into account the protection already guaranteed in some Member States, even where there may be gaps in other Member States. At the hearing the applicants did not call into question the assertion by the Commission that, in 2014, 22 Member States already had rules on the information and consultation of civil servants and employees of central government administrations.

132 As regards the third reason for the contested decision, the applicants' argument that the implementation of the Agreement at EU level would harmonise the situation of civil servants and employees of central government administrations with that of private sector workers does not call into question the fact that, at the same time, the effect of that implementation 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.

133 Secondly, it is necessary to recall the broad discretion available to the Commission (see paragraph 109 above), including for the purpose of determining, first, 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 and, second, whether the implementation of the Agreement is the appropriate means of remedying that gap. In order to contest the Commission's assessment, the applicants merely rely on the existence of an EU competence and the usefulness that the exercise of that competence would have in this case. Accordingly, and having regard to all the elements taken into account by the Commission as part of the three reasons for the contested decision, it does not appear that, by refusing to submit to the Council a proposal for a decision implementing the Agreement, the Commission made a manifest error of assessment.

134 That conclusion cannot be called into question by the fact that the Commission had, in 2015, initiated a consultation covering, inter alia, the situation of civil servants and employees of public administrations of the Member States as regards the scope of application of the directives on the information and consultation of workers. On that occasion the Commission merely launched a debate without prejudging the form and content of any possible action to be undertaken.

135 In the third place, the applicants 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. They criticise the Commission for not having carried out any impact assessment whatsoever with regard to those principles.

136 In that regard, it must be observed that the wording of the contested decision does not indicate that the Commission based the contested decision on reasoning that the implementation of the Agreement at EU level by a Council decision taken on the basis of Article 155(2) TFEU was legally precluded by virtue of the principles of subsidiarity and proportionality, as set out in Article 5(3) and (4) TEU.

137 However, it is clear from the reasons given for the contested decision that the Commission considered that the implementation of the Agreement at EU level did not appear to it to be either necessary or appropriate to the extent that, inter alia, Member States were competent as regards the functioning of central government administrations and a number of them had already implemented provisions ensuring a certain level of information and consultation of civil servants and employees of those administrations.

Furthermore, at a meeting with the social partners that took place on 17 January 2018, the Commission announced the effect of the contested decision, stating that it was ‘strong on subsidiarity’, and that it considered that it was better for the Agreement to be implemented by the social partners at national level. Thus, the Commission took into account considerations of subsidiarity and proportionality at the time of determining the appropriateness of EU action, rather than when it determined the possibility of such action. It follows from what has been stated in paragraph 133 above that the Commission did not make a manifest error of assessment in finding that it was not appropriate to implement the Agreement at EU level.

138 Finally, as regards the lack of an impact assessment, the applicants do not indicate the provision under which the Commission was required to conduct such an analysis before refusing to exercise its power of initiative.

139 It follows that, even on the assumption that a plea alleging that the principle of subsidiarity may be effective in circumstances such as those in the present case, the complaint that the principles of subsidiarity and proportionality were infringed must be rejected as unfounded.

140 Consequently, the second plea in law must be rejected.

141 It follows from all the foregoing considerations that the action must be dismissed.

Costs

142 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. However, pursuant to Article 135(1) of those rules, if equity so requires, the General Court may decide that an unsuccessful party is to pay a proportion of the costs of the other party in addition to bearing his own, or even that he is not to be ordered to pay any.

143 In the present case, the applicants have been unsuccessful. Moreover, the Commission has expressly sought an order for the applicants to pay the costs. However, having regard to the circumstances of the case, and in particular the attitude of the Commission (see paragraphs 117 and 118 above), equity requires, in accordance with Article 135(1) of the Rules of Procedure, that each party shall bear its own costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders the European Federation of Public Service Unions (EPSU) and Jan Goudriaan, and the European Commission to each bear their own costs.

Gervasoni Madise da Silva Passos

Kowalik-Bańczyk Mac Eochaidh

Delivered in open court in Luxembourg on 24 October 2019.

E. Coulon S. Gervasoni

Registrar President

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* Language of the case: English.