

ORDER OF THE PRESIDENT OF THE NINTH CHAMBER OF THE GENERAL COURT

13 December 2018 (*)

(Intervention — No interest in the result of a case — Rejection)

In Case T-310/18,

European Federation of Public Service Unions (EPSU), established in Brussels (Belgium),**Jan Willem Goudriaan**, residing in Brussels,

represented by R. Arthur, Solicitor, and R. Palmer, Barrister,

applicants,

v

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

defendant,

APPLICATION under Article 263 TFEU for annulment of the decision of the Commission of 5 March 2018 not 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 the European Public Administration Employers (EUPAE) on 21 December 2015,

THE PRESIDENT OF THE NINTH CHAMBER OF THE GENERAL COURT

makes the following

Order

- 1 By application lodged at the Court Registry on 15 May 2018, the applicants, the European Federation of Public Service Unions (EPSU) and Mr Jan Willem Goudriaan, brought an action for annulment of the decision of the Commission of 5 March 2018 not 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 the European Public Administration Employers (EUPAE) on 21 December 2015 (‘the contested decision’ and ‘the agreement’, respectively).
- 2 By document lodged at the Court Registry on 13 September 2018, the European Transport Workers’ Federation (ETF), which unites European trade unions representing employees in the transport sector, including logistics, fishing and tourism, applied for leave to intervene in the present case in support of the form of order sought by the applicants.

- 3 The application to intervene was served on the main parties in accordance with Article 144(1) and (2) of the Rules of Procedure of the General Court. The Commission did not raise any objection to the application. The applicants were in favour of the application to intervene being granted and lodged an application for confidential treatment of some sections of the application in respect of any party to whom leave to intervene might be granted.
- 4 Under the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, applicable to proceedings before the General Court pursuant to the first paragraph of Article 53 of that statute, any person establishing an interest in the result of a case brought before the Court other than a dispute between Member States, between institutions of the European Union or between Member States and institutions of the European Union, may intervene in that case.
- 5 According to settled case-law, the concept of an ‘interest in the result of a case’, within the meaning of that provision, must be defined in the light of the precise subject matter of the case and be understood as meaning a direct, existing interest in the ruling on the form of order sought, and not as an interest in relation to the pleas in law or arguments put forward. The term ‘the result of the case’ refers to the final decision sought, as it would be set out in the operative part of the judgment to be delivered (see the order of the President of the Court of Justice of 6 October 2015, *Comité d’entreprise SNCM v Commission*, C-410/15 P(I), EU:C:2015:669, paragraph 5 and the case-law cited).
- 6 In that regard, it is necessary to establish, inter alia, that the applicant for leave to intervene is directly concerned by the contested measure and that it has a definite interest in the result of the case. In principle, an interest in the result of the case can be considered to be sufficiently direct only to the extent to which that result is likely to alter the legal position of the applicant for leave to intervene (order of the President of the Court of Justice of 6 October 2015, *Comité d’entreprise SNCM v Commission*, C-410/15 P(I), EU:C:2015:669, paragraph 6 and the case-law cited). It is therefore necessary to distinguish between applicants for leave to intervene establishing a direct interest in the ruling on the specific act whose annulment is sought and those who can establish only an indirect interest in the result of the case by reason of similarities between their situation and that of one of the parties. The interest necessary in this respect must not relate merely to abstract legal arguments but to the actual form of order sought by a party to the main action (see the order of the President of the Court of Justice of 17 June 1997, *National Power and PowerGen v Commission*, C-151/97 P(I) and C-157/97 P(I), EU:C:1997:307, paragraph 53 and the case-law cited).
- 7 In the present case, the applicant for leave to intervene submits that it is a recognised social partner at EU level. It submits that it has negotiated and signed 7 of the 12 agreements concluded to date between management and labour at EU level under Article 155(1) TFEU then implemented, also at EU level, by way of decisions adopted by the Council on a proposal from the Commission under Article 155(2) TFEU. The applicant for leave to intervene explains that it is affected by the way in which the Commission interpreted Article 155(2) TFEU and by the way in which the institution dealt with the joint request of the signatory parties to the agreement seeking the implementation of that agreement. It is of the opinion that by refusing, for the first time, to submit a proposal to implement an agreement concluded by management and labour at EU level, the Commission has weakened social dialogue and has attempted to influence the outcome of future negotiations between management and labour. The applicant for leave to intervene infers that the contested decision has made it uncertain and has restricted its autonomy as a social partner.
- 8 It is clear that, by its arguments, the applicant for leave to intervene does not seek to show that it has a direct, existing interest in the ruling on the contested decision itself. First, it is not disputed that the applicant for leave to intervene did not participate in the negotiation of the agreement, nor did it initiate the request to implement that agreement. Secondly, the agreement concerns a sector and staff that have nothing in common with those represented by the applicant for leave to intervene. Consequently, the outcome of the present case is not likely to alter the legal position of the applicant for leave to intervene, nor is it likely to affect the interests of its members — which, moreover, the applicant for leave to intervene does not allege.

- 9 In fact, the only interest claimed by the applicant for leave to intervene relates to the acceptance of the applicants' argument that the Commission is required, at the joint request of the signatory parties, to submit a proposal to implement the agreements concluded by management and labour at EU level under Article 155 TFEU. However, from the point of view of the applicant for leave to intervene, such interest is hypothetical because it is based on uncertain events, that is, (i) the negotiation then conclusion at EU level of an agreement to which the applicant for leave to intervene would be a party, (ii) the submission of a joint request of the signatory parties to implement that agreement and (iii) a refusal by the Commission to submit a proposal to implement that agreement. Moreover, in such a situation, the applicant for leave to intervene would have an interest, as a signatory to the agreement, in bringing an action for annulment against the Commission's refusal.
- 10 It follows that the applicant for leave to intervene has not shown that it has a direct, existing interest in the outcome of the case and, therefore, its application to intervene must be rejected, without there being any need to rule on the applicants' application for confidential treatment.
- 11 Under Article 144(6) and Article 134 of the Rules of Procedure and since the main parties have not sought an order as to the costs relating to the present application to intervene, it is appropriate to order the main parties and the applicant for leave to intervene to each bear their own costs.

On those grounds,

THE PRESIDENT OF THE NINTH CHAMBER OF THE GENERAL COURT

hereby orders:

- 1. The application to intervene lodged by the European Transport Workers' Federation (ETF) is rejected.**
- 2. The European Federation of Public Service Unions (EPSU), Mr Jan Willem Goudriaan, the European Commission and the ETF shall each bear their own costs relating to the application to intervene.**

Luxembourg, 13 December 2018.

E. Coulon

S. Gervasoni

Registrar

President

* Language of the case: English.