



## **Appeal by EPSU: the Commission is not bound to give effect to the social partners' request seeking implementation, at EU level, of the agreement that they have concluded**

*The Court of Justice upholds the judgment of the General Court and points out that the Commission enjoys a discretion when deciding whether it is appropriate to submit to the Council a proposal seeking such implementation pursuant to Article 155(2) TFEU*

In April 2015, the Commission launched a consultation concerning the possible extension of the scope of application of several directives on information and consultation of workers<sup>1</sup> to cover civil servants and employees of central administrations of the Member States. A few months later, in the context of that consultation, two social partners, the Trade Unions' National and European Administration Delegation (TUNED) and European Public Administration Employers (EUPAE), concluded an agreement establishing a general framework for informing and consulting civil servants and employees of those national administrations. The parties to the agreement then requested the Commission to submit to the Council of the European Union a proposal for a decision implementing the agreement at EU level, on the basis of Article 155(2) TFEU.<sup>2</sup> By decision of 5 March 2018, the Commission refused their request ('the contested decision').

In May 2018, the European Federation of Public Service Unions (EPSU), an association which brings together European trade unions representing public service workers and which contributed to the creation of TUNED, challenged that decision before the General Court of the European Union, seeking its annulment. The General Court dismissed the action,<sup>3</sup> holding that Article 155(2) TFEU does not require the EU institutions to give effect to a joint request submitted by the signatories to an agreement seeking its implementation at EU level. After holding that the contested decision had to be the subject of a limited review, the General Court found that that decision satisfied the obligation to state reasons laid down in Article 296 TFEU and that the three contested reasons in the decision were well founded.

Hearing an appeal brought by EPSU, the Court of Justice, sitting as the Grand Chamber, upholds the judgment of the General Court, while noting the discretion enjoyed by the Commission in that area and the limited judicial review of such decisions.

### **Findings of the Court**

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<sup>1</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16); Council Directive 2001/23/EC 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); and 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).

<sup>2</sup> Essentially, under that provision, agreements concluded between management and labour at EU 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 (that is to say, in fields falling within social policy), at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

<sup>3</sup> Judgment of 24 October 2019, *EPSU and Goudriaan v Commission*, [T-310/18](#).

As regards, first of all, the literal interpretation of Article 155(2) TFEU, the Court observes that that provision does not contain an indication that the Commission may be obliged to submit a proposal for a decision to the Council. The imperative formulations used in a number of language versions are thus intended solely to express the exclusivity of the two alternative procedures laid down in that provision, one of which is a specific procedure resulting in the adoption of an EU act.

Next, so far as concerns the contextual and teleological interpretation of Article 155(2) TFEU, the Court analyses that provision within the framework of the powers conferred on the Commission by the Treaties, in particular by Article 17 TEU, paragraph 1 of which assigns it the task of promoting the general interest of the European Union and paragraph 2 of which accords it a general power of legislative initiative. The Court concludes therefrom that Article 155(2) TFEU confers upon the Commission a specific power, which falls within the scope of the role that is assigned to it in Article 17(1) TEU and consists in determining whether it is appropriate to submit a proposal to the Council on the basis of an agreement between management and labour (the social partners), for the purpose of its implementation at EU level. A different interpretation would have the effect that the interests of the management and labour signatories to an agreement alone would prevail over the task, entrusted to the Commission, of promoting the general interest of the European Union. That conclusion is not called into question by the autonomy of the social partners, which is enshrined in the first paragraph of Article 152 TFEU and must be taken into account in the context of the dialogue between management and labour promoted as an objective of the European Union by the first paragraph of Article 151 TFEU. The existence of that autonomy, which characterises the stage of negotiation of a possible agreement between social partners, does not mean that the Commission must automatically submit to the Council at their request a proposal for a decision implementing such an agreement at EU level, because that would be tantamount to according those social partners a power of initiative of their own that they do not have.

The Court points out, moreover, that the question, raised by EPSU, as to whether legal acts adopted on the basis of Article 155(2) TFEU are legislative in nature is separate from the question of the power that the Commission holds to decide whether it is appropriate to submit a proposal to the Council pursuant to that provision and that the scope of that power of the Commission is the same whether or not the act is legislative in nature.

Furthermore, regarding the issue of the standard of judicial review of the contested decision, the Court points out that the Commission has a discretion when deciding whether it is appropriate to submit a proposal to the Council pursuant to Article 155(2) TFEU. Given the complex assessments that must be carried out by the Commission for that purpose, judicial review of that type of decision is limited. It must be limited in particular when the EU institutions, as in the present instance, have to take account of potentially divergent interests and to take decisions involving policy choices that have regard to political, economic and social considerations.

Finally, the appellant pleaded an alleged infringement of its legitimate expectations, submitting that the Commission departed from the communications previously published by it concerning social policy. In that regard, the Court acknowledges that, in adopting rules of conduct and announcing by publishing them that it will henceforth apply them to the cases to which they relate, an institution imposes a limit on the exercise of its discretion. However, the view cannot be taken in the absence of an explicit and unequivocal commitment on the part of the Commission that in the present instance it has imposed a limit on the exercise of its power laid down in a provision of primary law, by undertaking to examine solely certain specific considerations before submitting its proposal, thereby transforming that discretion into a circumscribed power where certain conditions are met.

Thus, the Court confirms that the General Court did not commit any error of law and dismisses EPSU's appeal in its entirety.

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**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If

the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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