JUDGMENT OF THE COURT (Grand Chamber)

2 September 2021 (*)

(Appeal – Law governing the institutions – Social policy – Articles 154 and 155 TFEU – Social dialogue between management and labour at EU level – Informing and consulting civil servants and employees of central government administrations of the Member States – Agreement concluded between the social partners – Joint request of the signatories to that agreement seeking its implementation at EU level – Refusal of the European Commission to submit a proposal for a decision to the Council of the European Union – Standard of judicial review – Obligation to state reasons for the decision refusing to submit the proposal)

In Case C-928/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 December 2019,

**European Federation of Public Service Unions (EPSU),** established in Brussels (Belgium), represented by R. Arthur, Solicitor, and K. Apps, Barrister,

appellant,

the other parties to the proceedings being:

**Jan Willem Goudriaan,** residing in Brussels, represented by R. Arthur, Solicitor, and K. Apps, Barrister,

applicant at first instance,

**European Commission,** represented by I. Martínez del Peral, M. Kellerbauer and B.-R. Killmann, acting as Agents,

defendant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Prechal, M. Vilaras, E. Regan, N. Piçarra and A. Kumin, Presidents of Chambers, E. Juhász, M. Safjan, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos, P.G. Xuereb and N. Jääskinen (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 26 October 2020,

after hearing the Opinion of the Advocate General at the sitting on 20 January 2021,

gives the following

## Judgment

1 By its appeal, the European Federation of Public Service Unions (EPSU) asks the Court of Justice to set aside the judgment of the General Court of the European Union of 24 October 2019, *EPSU and Goudriaan* v *Commission* (T-310/18, EU:T:2019:757; 'the judgment under appeal'), by which the General Court dismissed the action for annulment of the decision of the European Commission of 5 March 2018 ('the contested decision') refusing to submit to the Council of the European Union a proposal for a decision implementing at EU level the agreement entitled 'General framework for informing and consulting civil servants and employees of central government administrations [of the Member States]', concluded between the Trade Unions' National and European Administration Delegation (TUNED) and European Public Administration Employers (EUPAE) ('the agreement at issue').

## Legal context

2 As set out in Article 151 TFEU:

'The [European] Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.'

3 The first paragraph of Article 152 TFEU provides:

'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.'

4 Article 153(1)(e) TFEU provides:

'1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:

…

(e) the information and consultation of workers;

…'

5 Article 154 TFEU states:

'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.'

6 Article 155 TFEU provides:

'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).'

**Background to the dispute and the contested decision**

7 The background to the dispute is set out in paragraphs 1 to 6 of the judgment under appeal and, for the purposes of the present proceedings, may be summarised as follows.

8 By consultation document C(2015) 2303 final of 10 April 2015, entitled 'First phase consultation of Social Partners under Article 154 TFEU on a consolidation of the EU Directives on information and consultation of workers', the Commission, in accordance with Article 154(2) TFEU, invited the social partners – management and labour – to express their views on the possible direction of EU action concerning a consolidation of 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) (together, 'the directives on information and consultation of workers'). That consultation concerned inter alia the possible extension of the scope of application of the directives on information and consultation of workers to cover civil servants and employees of central government administrations of the Member States.

9 On 2 June 2015, the social partners sitting on the Social Dialogue Committee for Central Government Administrations (SDC CGA) – namely TUNED, on the one hand, and 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.

10 On 21 December 2015, TUNED and EUPAE signed the agreement at issue.

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

12 On 5 March 2018, the Commission adopted the contested decision, by which it refused to submit such a proposal for a decision to the Council.

13 In the contested decision, first, the Commission stated, in essence, that central government administrations of the Member States 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. Second, the Commission noted that provisions ensuring a certain degree of information and consultation of civil servants and employees of those administrations already existed in many Member States. Third, the Commission observed that the size of those administrations depended on the degree of centralisation or decentralisation of the Member States, so that, in the event of implementation of the agreement at issue by a Council decision, the level of protection of the civil servants and employees concerned would vary considerably across Member States.

**The proceedings before the General Court and the judgment under appeal**

14 By application lodged at the Registry of the General Court on 15 May 2018, EPSU – an association which brings together European trade unions representing public service workers and which created TUNED jointly with the Confédération européenne des syndicats indépendants (European Confederation of Independent Trade Unions) (CESI) – and Mr Jan Willem Goudriaan, Secretary General of EPSU (together, 'the applicants'), sought the annulment of the contested decision.

15 The applicants put forward two pleas in law in support of their action. By their first plea, alleging an error of law as to the scope of the Commission's powers, they submitted, in essence, that under Article 155(2) TFEU the Commission could not refuse to submit to the Council a proposal for a decision implementing the agreement at issue at EU level. Their second plea alleged that the contested decision was based on manifestly insufficient and mistaken reasons.

16 By the judgment under appeal, the General Court dismissed the applicants' action in its entirety and ordered them to pay the costs.

17 In particular, as regards the examination of the action's merits, the General Court rejected the first plea, inter alia interpreting Article 155(2) TFEU – in paragraphs 49 to 90 of the judgment under appeal – from a literal, contextual and teleological viewpoint and concluding therefrom that the EU institutions are not bound to give effect to a joint request submitted by the signatories to an agreement seeking the implementation of that agreement at EU level. It then examined, in paragraphs 91 to 102 of the judgment, the EU rules, principles and objectives relied on by the applicants in support of their interpretation of that provision. It concluded, in paragraph 104 of the judgment, that, by refusing to submit to the Council a proposal for a decision implementing the agreement at issue at EU level, the Commission had not committed an error of law as to the scope of its powers.

18 So far as concerns the second plea, in paragraphs 106 to 140 of the judgment under appeal the General Court examined whether the Commission had complied in the contested decision with the obligation to state reasons laid down in Article 296 TFEU and whether the reasons set out in that decision were well founded. 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.

**Forms of order sought by the parties before the Court of Justice**

19 By its appeal, EPSU claims that the Court should:

– set aside the judgment under appeal;

– annul the contested decision; and

– order the Commission to pay the costs of the proceedings at first instance and the appeal.

20 The Commission contends that the Court should:

– dismiss the appeal; and

– order EPSU to pay the costs.

21 By document lodged at the Court Registry on 2 March 2020, Mr Goudriaan informed the Court that he did not wish to be party to the appeal proceedings.

**The appeal**

22 EPSU puts forward four grounds in support of its appeal.

23 It is appropriate to examine in turn the second, first, third and fourth grounds of appeal.

***Second ground of appeal: error of law in the interpretation of Articles 154and 155 TFEU***

*Arguments of the parties*

24 By the second ground of appeal, EPSU submits that the General Court's literal, contextual and teleological interpretations of Articles 154 and 155 TFEU are vitiated by errors of law so far as concerns, 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. In essence, EPSU contends that, under Article 155(2) TFEU, unless the Commission finds that the signatories to an agreement are not sufficiently representative or that the clauses of that agreement are unlawful, it is required to grant a joint request of those signatories for implementation of the agreement at EU level and to submit a proposal for a decision to the Council to that end.

25 As regards, in the first place, the literal interpretation of Article 155(2) TFEU, EPSU contends that the General Court committed an error of law in paragraphs 49 to 63 of the judgment under appeal. It submits that the words 'shall be implemented', used in the English-language version of that provision, express an obligation on the Commission to submit to the Council a proposal for a decision implementing at EU level the agreement concluded between the social partners concerned. EPSU also contends that the fact that the two methods of implementing an agreement between social partners under Article 155(2) TFEU were brought within the same sentence does not reduce the mandatory nature of the institutions' duties under the second procedure, since the choice as to which method to adopt lies with the social partners and not the institutions.

26 As regards, in the second place, the contextual and teleological interpretations of Article 155(2) TFEU, EPSU submits that the General Court committed errors of law in paragraphs 34, 62, 63, 69 to 82, 87, 89, 93 to 100 and 109 of the judgment under appeal.

27 First, EPSU pleads, in essence, that the General Court wrongly expanded the Commission's role at the expense of the role of the social partners and of the Council in the procedure laid down in Articles 154 and 155 TFEU.

28 Second, EPSU contests the General Court's interpretation, in paragraphs 74 to 77, 87 and 96 of the judgment under appeal, as to the operation of the procedure laid down in Articles 154 and 155 TFEU.

29 Third, EPSU contends that, in paragraphs 74 to 76 of the judgment under appeal, the General Court misinterpreted paragraph 84 of the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96,

EU:T:1998:128), from which it follows that the Commission's powers in the procedure laid down in Articles 154 and 155 TFEU are limited to checking the representativeness of the management and labour signatories to the agreement concerned and the legality of the clauses of the agreement, as that judgment does not mention, on the other hand, a check as to whether it is appropriate to submit to the Council a proposal for a decision implementing the agreement at EU level.

30 Fourth, EPSU submits that the General Court committed an error of law, in paragraphs 82 and 94 to 98 of the judgment under appeal, in its definition of the Parliament's role in the context of the procedure laid down in Articles 154 and 155 TFEU compared with that of the social partners. In that regard, EPSU, relying, in particular, on paragraph 89 of the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128), contends that the powers of the Parliament and the social partners are different and complementary.

31 The Commission contests EPSU's contentions and supports the General Court's interpretation of Articles 154 and 155 TFEU and of the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128).

*Findings of the Court*

32 In the first place, so far as concerns EPSU's contentions to the effect that the General Court erred in its literal interpretation of Article 155(2) TFEU, it should be observed that, according to the wording of 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, at the joint request of the signatories to those agreements, by a Council decision on a proposal from the Commission.

33 Thus, as the General Court was correct in pointing out, in paragraph 59 of the judgment under appeal, the use of the imperative formulations '*intervient*', in the French-language version of the first subparagraph of Article 155(2) TFEU, and 'shall be implemented', in the English-language version of that provision, may have the function of specifying that an agreement concluded at EU level between management and labour must necessarily be implemented by means of one or other of two alternative procedures, that is to say, 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, in accordance with a specific procedure resulting in the adoption of an EU act.

34 In particular, so far as concerns implementation of such an agreement at EU level, it must be pointed out that the first subparagraph of Article 155(2) TFEU merely provides that implementation may take the form of adoption of a Council decision at the joint request of the signatories to the agreement concerned and on a proposal from the Commission, and does not state whether the Commission is bound to submit such a proposal to the Council.

35 It follows that the General Court cannot be criticised for having held, in paragraph 60 of the judgment under appeal, that the imperative formulations used in the French-language version of the first subparagraph of Article 155(2) TFEU ('*intervient*') and in the English-language version of that provision ('shall be implemented') do not in themselves 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 from the signatories to an agreement.

36 That conclusion cannot be called into question by EPSU's line of argument, which is, moreover, not substantiated, that the fact that, in Article 155(2) TFEU, the two procedures laid down for the purpose of implementing an agreement between management and labour are mentioned in the same sentence is not such as to reduce the mandatory nature of the EU institutions' duties under the second of those procedures. In that regard, it should be pointed out, in particular, that EPSU does not state why the fact that the initial choice between the alternative procedures referred to in that sentence lies with the social partners means

that the imperative formulations at issue apply specifically to the second procedure, with the result that the Commission is allegedly obliged to submit such a proposal to the Council.

37 Furthermore, the General Court was correct in holding, in paragraph 62 of the judgment under appeal, that the literal interpretation of Article 155(2) TFEU put forward by the applicants would entail, in addition to an obligation on the Commission, in all circumstances, to submit to the Council a proposal for a decision implementing at EU level the agreement concluded between management and labour, an obligation on the Council to implement that agreement and adopt the decision concerned.

38 EPSU acknowledges that the Commission is entitled not to submit such a proposal to the Council in certain circumstances, namely where the management and labour signatories to the agreement concerned are not representative or the clauses of that agreement are unlawful. In particular, as regards the Council, acceptance of the literal interpretation advanced by the applicants would render redundant the second subparagraph of Article 155(2) TFEU under which the Council is to act unanimously in respect of the Commission's proposal where the agreement in question contains provisions relating to certain areas, as this would make no sense if the Council were required to adopt the decision proposed by the Commission.

39 Finally, it should be pointed out that, in paragraph 63 of the judgment under appeal, the General Court held that 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 are obliged to implement that agreement at their level in accordance with their own procedures and practices, which would be contrary to the intention of the 11 Member States that were signatories to 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). Whilst EPSU asserts, in the appeal, that the General Court misinterpreted the factual context as to what EUPAE agreed, that argument is not substantiated in any way and it also does not call into question the General Court's finding, in paragraph 63 of the judgment under appeal, in relation to Declaration No 2 annexed to that agreement.

40 The General Court therefore did not err in law in the literal interpretation of Article 155(2) TFEU, which underscores that the imperative formulations used in the French-language and English-language versions are intended solely to express the exclusivity of the two alternative procedures laid down in that provision, a fact which is, moreover, borne out by a number of other language versions of the provision, as has been noted by the Advocate General in point 49 of his Opinion.

41 In the second place, so far as concerns EPSU's contentions that the General Court erred in its contextual and teleological interpretation of Article 155(2) TFEU, EPSU submits, first, that, in paragraphs 34, 63 to 81 and 93 of the judgment under appeal, the General Court committed an error of law in its interpretation of Article 17(1) and (2) TEU, on the ground that that general provision cannot extend the Commission's powers beyond the limits laid down in Articles 154 and 155 TFEU, as those articles constitute a *lex specialis*.

42 However, EPSU does not explain why Articles 154 and 155 TFEU should be regarded as constituting a *lex specialis* in relation to Article 17(1) and (2) TEU. It merely asserts that Article 17 TEU cannot prevail over Articles 154 and 155 TFEU.

43 Nor, moreover, is it apparent from those paragraphs of the judgment under appeal that the General Court departed from Articles 154 and 155 TFEU in order to apply Article 17 TEU instead of those provisions. On the contrary, the General Court correctly held, in paragraph 93 of the judgment under appeal, 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'.

44 Furthermore, it must be pointed out that the power to propose the implementation at EU level of an agreement concluded between management and labour, as referred to in the first subparagraph of

Article 155(2) TFEU, falls within the framework of the powers conferred by the Treaties on the Commission, in particular in Article 17 TEU.

45 The powers conferred by the Treaties on the Commission consist, inter alia, in promoting, pursuant to Article 17(1) TEU, the general interest of the European Union and in taking, as the case may be, appropriate initiatives to that end.

46 In the specific field of social policy, one of the aims of Title X of Part Three of the FEU Treaty, as the Advocate General has noted in point 73 of his Opinion, is to promote the role of the social partners and to facilitate dialogue between them, while respecting their autonomy, and Article 154(1) TFEU provides that the Commission is to have inter alia the task of promoting the consultation of management and labour at EU level. Furthermore, in the specific context of implementation of agreements concluded between management and labour at EU level, Article 155(2) TFEU has conferred on management and labour a right comparable to that possessed more generally, under Articles 225 and 241 TFEU respectively, by the Parliament and the Council to request the Commission to submit appropriate proposals for the purpose of implementing the Treaties.

47 However, by the words 'on a proposal from the Commission', Article 155(2) TFEU confers on that institution a specific power which, although it can be exercised only following a joint request by management and labour, is, once such a request has been made, similar to the general power of initiative laid down in Article 17(2) TEU for the adoption of legislative acts, since the existence of a Commission proposal is a precondition for the adoption of a decision by the Council under that provision. That specific power falls within the scope of the role assigned to the Commission in Article 17(1) TEU, which consists in the present context in determining, in the light of the general interest of the European Union, whether it is appropriate to submit a proposal to the Council on the basis of an agreement between management and labour, for the purpose of its implementation at EU level.

48 It should also be borne in mind, in that regard, that, under Article 13(2) TEU, each EU institution is to act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. That provision reflects the principle of institutional balance, characteristic of the institutional structure of the European Union, a principle which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions (judgment of 14 April 2015, *Council* v *Commission*, C-409/13, EU:C:2015:217, paragraph 64 and the case-law cited). The Commission's power of initiative referred to in Article 17(2) TEU is one of the expressions of that principle (judgment of 19 December 2019, *Puppinck and Others* v *Commission* C-418/18 P, EU:C:2019:1113, paragraph 60). The same is true, in the particular context of implementation of agreements concluded between management and labour at EU level, of the specific power conferred on the Commission by Article 155(2) TFEU.

49 Thus, the interpretation of Article 155(2) TFEU put forward by EPSU would jeopardise that balance and could well hinder the Commission's pursuit of its task, noted in paragraph 45 of the present judgment, of promoting the general interest of the European Union, in accordance with Article 17(1) TEU. Indeed, the effect of that interpretation would be 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.

50 Finally, as provided in the third subparagraph of Article 17(3) TEU, 'in carrying out its responsibilities, the Commission shall be completely independent', 'the members of the Commission … neither [seeking] nor [taking] instructions from any Government or other institution, body, office or entity'. As the General Court correctly held in paragraph 78 of the judgment under appeal, an interpretation of Article 155(2) TFEU under which the Commission would be obliged, in the exercise of its power of initiative, to submit to the Council a proposal for a decision implementing at EU level the agreement concluded by management and labour would be contrary to the principle, as laid down in the third subparagraph of Article 17(3) TEU, that the Commission is to carry out its responsibilities independently.

51 That conclusion cannot be called into question by EPSU's line of argument that the Commission's independence would be safeguarded since it would, in any event, be able to present its view to the Council by means of an 'explanatory memorandum'. Indeed, the explanatory memorandum that accompanies a Commission proposal is supposed merely to state the grounds that justify the proposal.

52 In the light of the foregoing considerations, it must be found that, in paragraphs 34, 63 to 81 and 93 of the judgment under appeal, the General Court did not commit an error of law in its interpretation of Article 17(1) to (3) TEU. The General Court did not expand the Commission's role at the expense of the role of the social partners and of the Council in the procedure laid down in Articles 154 and 155 TFEU.

53 Second, as regards EPSU's line of argument that the General Court committed an error of law in paragraphs 74 to 77 and 87 of the judgment under appeal in finding that, once the social partners have concluded an agreement, the Commission 'resumes control of the procedure' in order to assess whether it is appropriate to submit to the Council a proposal for a decision implementing that agreement at EU level, it must be stated that EPSU merely complains that the General Court adopted that interpretation in the light solely of the wording of Article 155(2) TFEU, without taking the purpose and context of Articles 154 and 155 TFEU into consideration.

54 In that regard, it should be pointed out that the findings set out by the General Court in paragraph 74 of the judgment under appeal flow specifically from the analysis carried out by it, in paragraphs 71 to 73 of that judgment, as to the respective roles of the institutions and the social partners in the separate stages – provided for in Articles 154 and 155 TFEU – of consultation, negotiation and implementation at EU level of agreements concluded in the field of social policy.

55 Thus, the General Court was correct in pointing out that, during the consultation stage undertaken by the Commission and governed by Article 154(2) and (3) TFEU, management and labour may inform it of their wish to initiate the procedure laid down in Article 155 TFEU. Next, during the negotiation stage, they may, as Article 155(1) TFEU provides, enter into contractual relations, including by concluding an agreement. Finally, the stage of implementation of the agreement in accordance with one or other of the two procedures laid down in Article 155(2) TFEU commences. In particular, 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 from the Commission', and gives specific expression, within the context of the non-legislative procedure that it lays down, to the Commission's power of initiative under Article 17(2) TEU.

56 It follows that, in order to reach, in paragraph 74 of the judgment under appeal, the conclusion in question, the General Court, in paragraphs 71 to 73 of that judgment, did not rely exclusively on the wording of Article 155(2) TFEU, but also took account of the context formed by Articles 154 and 155 TFEU and Article 17(2) TEU taken together, that context confirming that, as has been found in paragraphs 45 to 49 of the present judgment, whilst responsibility for the initiation of the negotiation stage and the conclusion of an agreement lies exclusively with the social partners concerned, at the stage of implementation of that agreement, on the basis of Article 155(2) TFEU, it is for the Commission to determine whether it is appropriate to submit to the Council a proposal for a decision implementing the agreement at EU level, with the result that the Commission resumes control of the procedure.

57 Consequently, it is necessary to reject EPSU's line of argument that the General Court committed an error of law in the judgment under appeal in finding that, once the social partners have concluded an agreement and requested its implementation at EU level, the Commission 'resumes control of the procedure'.

58 Third, EPSU submits that the General Court committed an error of law in the judgment under appeal since an interpretation under which the Commission exercises a 'political' discretion as to whether it is appropriate to submit to the Council a proposal for a decision implementing at EU level agreements concluded between social partners would amount to an infringement of the latter's autonomy and alter the nature of the process provided for in Article 155 TFEU, contrary to the fundamental rights enjoyed by the social partners. The Commission would thus occupy 'a third seat at the negotiation table' and the Council

would be deprived of an opportunity to exercise its power to choose whether to adopt the text of the agreement concluded between the social partners whose implementation at EU level is envisaged pursuant to Article 155(2) TFEU.

59 Such a line of argument cannot succeed either, because EPSU misinterprets Article 155(2) TFEU as regards the relationship between the negotiation stage and the stage of implementation of agreements negotiated and concluded by management and labour at EU level.

60 It is true that the first paragraph of Article 151 TFEU provides that 'dialogue between management and labour' constitutes one of the objectives of the European Union. Furthermore, as has been pointed out in paragraph 46 of the present judgment, Title X of Part Three of the FEU Treaty, relating to 'social policy', has the aim of promoting the role of the social partners and facilitating dialogue between them, while respecting their autonomy.

61 That autonomy, enshrined in the first paragraph of Article 152 TFEU, means, as the General Court correctly stated in paragraph 86 of the judgment under appeal, that, during the stage of negotiation of an agreement by the social partners, which 'exclusively involves' the latter, they 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 EU institutions.

62 However, 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 a proposal for a decision implementing such an agreement at EU level at the joint request of the social partners, because that would be tantamount to according the social partners a power of initiative of their own that they do not have.

63 Indeed, as follows from what has been held in paragraphs 47 to 49 of the present judgment, if the existence of that autonomy had such a consequence, the institutional balance resulting from Articles 154 and 155 TFEU would be altered, by granting the social partners a power vis-à-vis the Commission, which neither the Parliament nor the Council has.

64 Thus, the General Court was correct in holding, in paragraph 87 of the judgment under appeal, that, where social partners have freely negotiated and concluded an agreement and the signatories to that agreement have jointly requested its implementation at EU level, the Commission 'once again has a right to act and resumes control of the procedure', pursuant to Article 155(2) TFEU.

65 Acceptance of EPSU's interpretation would effectively confuse the stage of negotiation of the agreement concerned, when the social partners enjoy total autonomy, which was respected in the present instance, with the stage of implementation of that agreement at EU level, when they no longer have an active role, because, as the General Court pointed out in paragraph 74 of the judgment under appeal, under Article 155(2) TFEU 'the Council acts on a proposal by the Commission'.

66 It follows that the General Court was correct in holding, in paragraph 90 of the judgment under appeal, that the objective, laid down in the FEU Treaty, of promoting the role of the social partners and the dialogue between them, respecting their autonomy, does not mean that the Commission is bound to give effect to a joint request presented by the signatories to an agreement seeking the implementation of that agreement at EU level pursuant to Article 155(2) TFEU.

67 Furthermore, the paramount importance in EU law of the right – enshrined in Article 28 of the Charter of Fundamental Rights of the European Union – to negotiate and conclude collective agreements should be borne in mind (see, to that effect, judgment of 15 July 2010, *Commission* v *Germany*, C-271/08, EU:C:2010:426, paragraph 37). In the present instance, that fundamental right was observed at the stage of negotiation by the social partners of the agreement at issue. Consequently, EPSU cannot argue that the interpretation of Article 155(2) TFEU adopted by the General Court, under which the Commission has a decision-making power at the stage of implementation of the agreement at issue if the social partners

choose to submit to it a request that that agreement be implemented at EU level, infringes the social partners' fundamental rights.

68 That argument is all the less sustainable given that, under Article 155(2) TFEU, agreements concluded at EU level may in any event be implemented in accordance with the procedures and practices specific to management and labour and the Member States.

69 In any event, it must be held that the line of argument by which EPSU complains that the General Court wrongly departed from its own case-law arising from the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128) – on the ground that it is, in its submission, clear from that judgment that the Commission's powers at the stage of implementation of an agreement concluded between management and labour at EU level, on the basis of Article 155(2) TFEU, are limited to checking the representativeness of the management and labour signatories to that agreement and the legality of the agreement, and do not extend to checking whether it is appropriate to submit to the Council a proposal for a decision implementing the agreement – is based on a misreading of that judgment and is therefore unfounded.

70 In the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128), the General Court, after stating in paragraph 84 that, following a joint request by management and labour for implementation of an agreement at EU level, the Commission resumes control of the procedure, expressly held, in paragraph 85, that the Commission, on regaining the right to take part in the conduct of the procedure, must 'in particular' examine the representativeness of the signatories to the agreement, and did not thereby rule out in the slightest the Commission's having other powers. Furthermore, as the question of examination, by the Commission, of the appropriateness of implementing the agreement at EU level did not arise in the case which gave rise to that judgment, the General Court did not have to address that issue.

71 It follows that, contrary to EPSU's assertions, the words 'whether it is appropriate' used in paragraph 84 of the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128), cannot be interpreted as limiting the powers conferred on the Commission at the stage of implementation of an agreement at EU level to checking solely the representativeness of management and labour and the legality of the clauses of the agreement.

72 Fourth, as regards EPSU's line of argument that the General Court committed an error of law in paragraphs 82 and 94 to 98 of the judgment under appeal as regards the definition of the Parliament's role in the context of the procedure laid down in Articles 154 and 155 TFEU compared with that of the social partners, it must be pointed out that, by this line of argument, EPSU in fact contests the General Court's findings in paragraph 82 of the judgment under appeal, and does not criticise in the slightest those set out in paragraphs 94 to 98 of that judgment, findings which relate to the principle of democracy, enshrined in Article 10(1) and (2) TEU, and to the alleged principle of 'horizontal subsidiarity'.

73 As regards paragraph 82 of the judgment under appeal, in so far as the applicants submitted that management and labour have the power to compel the Commission to submit to the Council a proposal for a decision implementing their agreements at EU level, the General Court was correct in pointing out that, if such an interpretation were adopted, management and labour would exert a greater influence over the content of legal acts adopted in relation to social policy on the basis of Articles 154 and 155 TFEU than that which may be exerted by the Parliament, which, pursuant to Article 155(2) TFEU, must merely be informed before legal acts are adopted.

74 Furthermore, the General Court was correct in holding that the interpretation put forward by the applicants would result in management and labour having the power to compel the Commission to act in the field of social policy whereas Article 225 TFEU merely grants the Parliament the right to request the Commission to submit to the Council 'any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties' and, if the Commission does not submit a proposal, the right to be informed by it of the reasons. Similarly, under Article 241 TFEU, the Council may merely request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives and to submit to it any appropriate proposals, and it has the right,

if the Commission does not submit a proposal, to be informed by it of the reasons. This conclusion cannot be called into question by EPSU's line of argument according to which the social partners negotiate, draft and agree the text of the agreement concerned autonomously and the Parliament always participates in such a process since the Commission is required to inform it.

75 It is apparent from all the foregoing considerations that, contrary to EPSU's assertions, the General Court did not err in law so far as concerns the literal, contextual and teleological interpretations of Article 155(2) TFEU and did not alter the institutional balance resulting from Articles 154 and 155 TFEU either.

76 That conclusion cannot be called into question by EPSU's general line of argument that the General Court committed an error of law by not applying the principles set out in paragraph 70 of the judgment of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217).

77 In paragraph 70 of the judgment of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217), the Court held that the power of legislative initiative accorded to the Commission in Article 17(2) TEU and Article 289 TFEU means that it is for the Commission to decide whether or not to submit a proposal for a legislative act, except in the situation where it is obliged to do so under EU law.

78 It is true that it is apparent from the judgment of 14 April 2015, *Council* v *Commission* (C-409/13, EU:C:2015:217), that there are situations laid down in the Treaties where the Commission is required to submit a legislative proposal.

79 However, EPSU does not substantiate its line of argument that, under the case-law arising from that judgment, implementation at EU level pursuant to Article 155(2) TFEU of an agreement concluded between the social partners constitutes such a situation. It merely asserts that, under that provision, the Commission is obliged to submit such a proposal and that it is for the Council to decide, in the light of the text of the agreement concluded between the social partners the implementation of which at EU level is envisaged, whether that proposal should be adopted. This line of argument must accordingly be rejected.

80 In the light of all the foregoing, the second ground of appeal must be rejected in its entirety.

***First ground of appeal:error of law as regards the legislative nature of legal acts adopted on the basis of Article 155(2) TFEU***

*Arguments of the parties*

81 By the first ground of appeal, EPSU contends that the General Court committed an error of law in paragraphs 69, 73, 89, 96 and 100 of the judgment under appeal by holding that legal acts adopted through a Council decision under Article 155(2) TFEU are not legislative in nature.

82 First, EPSU submits that the 'consequences' of directives adopted by Council decision under Article 155(2) TFEU are no different from those of directives adopted under Article 153 TFEU.

83 Second, EPSU contends that, in paragraphs 69 and 89 of the judgment under appeal, the General Court focused on the nature of the stage of implementation of the agreement at issue on the basis of Article 155(2) TFEU and on the classification of the act adopted under that provision, rather than on the 'substantive consequences' of that act. Furthermore, it contends that the conclusion drawn by the General Court in paragraph 96 of the judgment under appeal is inconsistent (i) with measures adopted under Article 155(2) TFEU maintaining their legislative nature and (ii) with the case-law of the Court of Justice relating to directives adopted in the field of social policy.

84 Third, EPSU submits that the stage of implementation of an agreement concluded between social partners at EU level on the basis of Article 155(2) TFEU constitutes a 'special legislative procedure', within the meaning of Article 289(2) TFEU. In its submission, the reference made by the General Court in paragraph 69 of the judgment under appeal to the judgment of 6 September 2017, *Slovakia and Hungary* v

*Council* (C-643/15 and C-647/15, EU:C:2017:631), is not relevant and cannot deprive measures adopted pursuant to Article 155(2) TFEU of their 'essentially legislative' nature.

85 The Commission contends that the first ground of appeal must be rejected as ineffective and, in any event, as unfounded.

*Findings of the Court*

86 First of all, it should be noted that, in paragraph 69 of the judgment under appeal, the General Court stated, in the course of its contextual interpretation of Article 155(2) TFEU, that, since that provision does not contain any reference to the 'ordinary legislative procedure' or the 'special legislative procedure', within the meaning of Article 289(1) and (2) TFEU, the implementation stage, at EU level, of agreements concluded between social partners does not constitute a 'legislative procedure', within the meaning of Article 289(1) and (2) TFEU, and that the measures adopted at the end of that stage are not 'legislative acts', within the meaning of Article 289(3) TFEU.

87 In that regard, it must be pointed out that the question as to whether legal acts adopted under 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 to the Council a proposal implementing at EU level agreements concluded between social partners.

88 As the Advocate General has observed in point 72 of his Opinion, the scope of that power is the same whether or not the act the proposal for which is submitted to the Council in order for it to be adopted is legislative in nature.

89 It follows that the first ground of appeal must be rejected.

***Third ground of appeal:error of law committed by the General Courtin determining the standard for its judicial review***

*Arguments of the parties*

90 By the third ground of appeal, EPSU contends that the General Court committed an error of law, in paragraphs 31 to 33, 78, 79, 109 to 112, 122 and 133 of the judgment under appeal, in limiting the intensity of the judicial review of the contested decision on account of, first, the political nature of that decision and, second, the risk of compromising the Commission's independence.

91 EPSU states that the General Court's interpretation that the Commission enjoys a broad discretion of a political nature when deciding whether to submit to the Council a proposal for a decision implementing the agreement concluded between social partners at EU level rests on a misinterpretation of the provisions of the FEU Treaty and their context and purpose, and of the judgment of 17 June 1998, *UEAPME* v *Council* (T-135/96, EU:T:1998:128). In EPSU's submission, the Commission's role prior to submitting to the Council the proposal for a decision implementing such an agreement at EU level is not in fact a political one, but 'essentially a legal one'.

92 In addition, EPSU contends that the General Court committed an error of law, in paragraph 112 of the judgment under appeal, in 'drawing parallels' with the judgment of 23 April 2018, *One of Us and Others* v *Commission* (T-561/14, EU:T:2018:210), delivered in relation to European citizens' initiatives. In its submission, the procedure laid down in Articles 154 and 155 TFEU is not akin to the European citizens' initiative procedure given that, first, the latter constitutes neither a process of collective bargaining nor the exercise of a fundamental right enshrined in Article 28 of the Charter of Fundamental Rights and, second, the instigators of such a procedure do not participate in the drawing up of the text of the legislative proposal.

93 The Commission contests EPSU's arguments. In particular, it contends that the General Court was correct in holding that the intensity of its judicial review of the contested decision was limited, pursuant to settled case-law of the Court of Justice.

*Findings of the Court*

94 In the third ground of appeal, EPSU complains, in essence, that the General Court committed an error of law so far as concerns the intensity of its judicial review of the contested decision and refers to paragraphs 31 to 33, 78, 79, 109 to 112, 122 and 133 of the judgment under appeal.

95 In that regard, it is apparent, in essence, from paragraphs 62 and 64 of the present judgment, that the Commission does not have to submit to the Council a proposal for a decision implementing at EU level the agreement concluded between social partners, pursuant to Article 155(2) TFEU, given that it has a discretion when deciding whether it is appropriate to submit such a proposal to the Council.

96 As the General Court correctly pointed out in paragraphs 110 and 111 of the judgment under appeal, it is clear from settled case-law that where an institution must carry out complex assessments, 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 powers (see judgment 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). Judicial review must be limited in that way in particular when the EU institutions, as in the present instance, have to, first, take account of potentially divergent interests, such as the general interest of the European Union and that of the social partners, and, second, take decisions that involve policy choices (see, to that effect, 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).

97 EPSU's arguments cannot call into question the General Court's findings concerning the standard for its judicial review of the contested decision.

98 As regards, first, EPSU's line of argument that the discretion enjoyed by the Commission when deciding whether to submit to the Council a proposal for a decision implementing an agreement concluded between social partners at EU level is not political in nature, but 'essentially legal', it is true that the Commission carries out a legal assessment when it is called upon to examine the representativeness of the signatories to that agreement and the legality of its clauses, in accordance with Article 155(2) TFEU. However, as the General Court correctly found in paragraph 79 of the judgment under appeal, when the Commission receives from the social partners concerned a request to implement that agreement at EU level, it must also assess whether, in the light inter alia of political, economic and social considerations, implementation of the agreement at EU level is appropriate.

99 Second, EPSU's line of argument that the General Court committed an error of law, in paragraph 112 of the judgment under appeal, in 'drawing parallels' with the judgment of 23 April 2018, *One of Us and Others* v *Commission* (T-561/14, EU:T:2018:210), delivered in relation to European citizens' initiatives, is not capable of resulting in the setting aside of the judgment under appeal, since, as is clear from the foregoing grounds, the General Court did not err in law in restricting its judicial review of the contested decision.

100 In the light of the foregoing considerations, it must be concluded that the General Court did not err in law in holding that the intensity of its judicial review of the contested decision was limited in this instance.

101 The third ground of appeal must therefore be rejected.

***Fourth ground of appeal: error of lawas regards the legality of the reasons stated inthe contested decision***

*Arguments of the parties*

102 By the fourth ground of appeal, EPSU contends that the General Court committed an error of law, in paragraphs 116 to 140 of the judgment under appeal, in holding that the reasons on which the contested decision is based were not 'mistaken, misplaced and insufficient'.

103 First, EPSU submits that the General Court committed an error of law, in paragraph 118 of the judgment under appeal, in holding that the statement of reasons for the contested decision was sufficient, in accordance with Article 296 TFEU, for the purpose of enabling the reasons underlying the Commission's assessment to be ascertained. In that regard, EPSU contends that the reasons set out in the contested decision are flawed and that they do not correspond to the reasons relied on during the procedure that preceded the adoption of that decision.

104 Second, EPSU contends that the General Court committed a number of errors in the analysis of the reasons in paragraphs 130, 131, 133 and 136 of the judgment under appeal, whilst the reasons are 'substantially incorrect and/or irrelevant'. Nor did the General Court take account, in paragraphs 136 and 138 of the judgment under appeal, of the fact that the Commission did not state in the contested decision (i) why, contrary to what it had announced in its correspondence with EPSU, it did not carry out an 'impact assessment' and (ii) the reasons that justified departing from the relevant communications that it had published. In particular, EPSU criticises the General Court for having held, in paragraph 138 of the judgment under appeal, that the applicants had not indicated the provision under which the Commission was required to conduct such an 'impact assessment' before refusing to exercise its power of initiative, when those communications gave rise to a 'legitimate expectation' on the part of the applicants that made it obligatory to carry out a 'legal check' and an 'impact assessment'.

105 Third, EPSU contests the General Court's interpretation, in paragraphs 131 and 132 of the judgment under appeal, concerning the case-law of the Court of Justice relating to the directives on information and consultation of workers.

106 The Commission contends that the fourth ground of appeal must be rejected.

*Findings of the Court*

107 The fourth ground of appeal is essentially divided into two parts, alleging, first, an error of law committed by the General Court as regards compliance by the Commission with the obligation to state reasons for the contested decision and, second, an error of law committed by the General Court as regards the contested decision's merits.

– *First part of the fourth ground of appeal: error of law as regards compliance by the Commission with the obligation to state reasons*

108 First of all, it should be recalled that, according to settled case-law, the obligation to provide a statement of reasons laid down in Article 296 TFEU is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. To that end, the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the court having jurisdiction to exercise its power of review (see judgment of 14 October 2010, *Deutsche Telekom* v *Commission*, C-280/08 P, EU:C:2010:603, paragraph 130 and the case-law cited).

109 Next, according to equally settled case-law of the Court, recalled by the General Court in paragraph 115 of the judgment under appeal, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure at issue, 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 (judgment 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 and the case-law cited).

110 EPSU submits that the General Court committed an error of law in paragraph 118 of the judgment under appeal in holding that the addressees of the contested decision, namely TUNED and EUPAE, had been able to ascertain the reasons for that decision.

111 In the present instance, the General Court recalled, in paragraph 116 of the judgment under appeal, the three reasons on which the contested decision was based, which are set out in paragraph 13 of the present judgment. In paragraph 117 of the judgment under appeal, the General Court recalled the context in which that decision had been adopted. It pointed out that the Commission had consulted the social partners concerned as to whether EU action relating to the information and consultation of civil servants and employees of central government administrations was appropriate and it was precisely following that consultation that those social partners had negotiated and signed the agreement at issue. Thus, in the light of the reasons stated in the contested decision and the context in which that decision was adopted, the General Court did not err in law in holding, in paragraph 118 of the judgment under appeal, that the statement of reasons for the decision was sufficient in the light of Article 296 TFEU, so that, first, its addressees, namely TUNED and EUPAE, had been able to ascertain the three reasons underlying the Commission's assessment and to contest them and, second, the General Court was able to review them.

112 As the Advocate General has observed in point 104 of his Opinion, the contested decision is intended for the social partners that concluded the agreement at issue, which, due to their position and the prior exchanges and consultation conducted by the Commission, were already aware of the context in which the refusal decision had been adopted.

113 Accordingly, the line of argument that the General Court incorrectly held that the statement of reasons for the contested decision was sufficient and the addressees of that decision were thus able to ascertain the reasons for it must be rejected.

114 It follows that the General Court was correct in holding, in paragraph 119 of the judgment under appeal, that the contested decision satisfied the obligation to state reasons laid down in Article 296 TFEU.

115 The first part of the fourth ground of appeal must therefore be rejected.

– *Second part of the fourth ground of appeal: error of law committed by the General Court as regards the merits of the statement of reasons for the contested decision*

116 As regards the merits of the statement of reasons for the contested decision, EPSU submits that the reasons given in that decision are substantially incorrect and/or irrelevant.

117 In the first place, EPSU submits, so far as concerns paragraphs 130 and 136 of the judgment under appeal, which relate to the first of those reasons, that the General Court's reasoning is factually and legally inaccurate since many directives already apply to civil servants and employees of central government administrations of the Member States and the Commission had no basis without having carried out an 'impact assessment' for suggesting that the adoption by the Council of the decision implementing the agreement at issue at EU level would have been liable to alter the structure, organisation and functioning of those administrations.

118 In that regard, it must be found at the outset that, in so far as EPSU seeks to challenge the findings of fact made by the General Court in themselves without pleading a distortion of the facts, its submissions are inadmissible (see, to that effect, judgment of 16 December 2020, *Council and Others* v *K. Chrysostomides*

*& Co. and Others*, C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P, EU:C:2020:1028, paragraph 128 and the case-law cited).

119 Moreover, as regards the line of argument that no 'impact assessment' in respect of the agreement at issue was carried out, EPSU does not explain why such an 'impact assessment' would have been necessary in order to determine whether implementation of the agreement at issue at EU level was liable to have an effect on the functioning of the central government administrations of the Member States and, therefore, has not identified an error of law committed by the General Court.

120 So far as concerns the second reason in the contested decision, EPSU submits that the General Court failed to consider the fact that the agreement at issue contained a 'non-regression' clause conferring on the persons concerned more extensive rights than those already recognised in certain Member States and preventing the removal of those rights in the event of a change of government.

121 In that regard, first, EPSU has not explained why the failure to consider the fact that the agreement at issue contained such a 'non-regression' clause means that the General Court erred in law in paragraph 131 of the judgment under appeal. Second, and in any event, EPSU does not plead any distortion in respect of the finding made by the General Court in paragraph 131 relating to the Commission's assertion that, in 2014, 22 Member States already had rules on the information and consultation of civil servants and employees of central government administrations.

122 So far as concerns the third reason in the contested decision, EPSU contends that, in paragraph 133 of the judgment under appeal, the General Court failed to have regard to the sectoral nature of the agreement at issue or the representativeness of the social partners concerned. In EPSU's submission, EUPAE is the social partner for central government administrations of the Member States, so the agreement at issue related to central and not local government of the Member States. Furthermore, the agreement at issue does not affect the structure of the central government administrations of the Member States, as it relates only to the rights to information and consultation of civil servants and employees of those administrations.

123 It must be pointed out that it is not paragraph 133 of the judgment under appeal but paragraph 132 thereof that relates specifically to examination of the third reason in the contested decision. In paragraph 132, the General Court carried out a factual assessment, according to which the effect of implementation of the agreement at issue at EU level would vary considerably across the Member States, depending on their degree of centralisation or decentralisation. That finding enabled the General Court to state that there was nothing to prohibit the Commission from taking that fact into account in forming the view that implementation of the agreement at issue at EU level was not desirable. Since EPSU has not pleaded any distortion of the facts taken into account for that factual assessment, its line of argument relating to the third reason in the contested decision cannot be examined by the Court of Justice.

124 It follows from the foregoing considerations that EPSU's line of argument relating to the fact that the reasons given in the contested decision are incorrect or irrelevant must be rejected.

125 As regards, in the second place, EPSU's line of argument that the General Court did not take account, in the judgment under appeal, of the fact that the Commission, after announcing in its correspondence that an 'impact assessment' would be carried out, or was being carried out, did not state in the contested decision why it had not carried out such an assessment, it must be pointed out that the General Court held, in paragraph 138 of the judgment under appeal, that the applicants had not indicated the provision under which the Commission was required to conduct such an 'impact assessment' before refusing to exercise its power of initiative, and accordingly rejected their line of argument as unfounded. EPSU cannot therefore claim that the General Court failed to take account of such considerations in the judgment under appeal. Furthermore, since EPSU did not plead at first instance that its legitimate expectations were infringed on account of those considerations, such a line of argument – as the Advocate General has observed in point 107 of his Opinion – cannot be relied upon by it for the first time in the present appeal and is therefore inadmissible.

126 In the third place, EPSU criticises the General Court for having held, in paragraph 138 of the judgment under appeal, that the communications published by the Commission concerning social policy did not give rise to a 'legitimate expectation' on the part of the applicants that made it obligatory in particular to carry out a 'legal check' and an 'impact assessment' and for not having accounted for the fact that the Commission departed from those communications when EPSU had a legitimate expectation that the Commission would follow them. In that regard, it must be pointed out that that paragraph of the judgment under appeal does not concern the communications published by the Commission in the field of social policy, but the 'impact assessment' whose launch it is said to have announced in its correspondence.

127 In so far as EPSU seeks, by this line of argument, to plead an alleged infringement of its legitimate expectation that should have been found by the General Court, on account of the fact that the Commission departed from those communications, it must be pointed out that EPSU derived several specific arguments from those communications in its first plea at first instance relating to an alleged infringement of Article 155(2) TFEU and a lack of power, thereby starting from the premiss that the Commission was required to observe those communications. Accordingly, in pleading before the Court of Justice an infringement of its legitimate expectation that the Commission would abide by the commitments made in its own communications, EPSU has developed the line of argument already put forward by it at first instance.

128 It is true 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 and cannot depart from those rules, if it is not to be found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations.

129 However, in the case, as here, of exercise of a power, conferred on the Commission by a provision of primary law, to decide whether or not to submit to the Council a proposal which constitutes a precondition for the adoption of a decision by the latter institution, the view cannot be taken in the absence of an explicit and unequivocal commitment on the part of the Commission – in the light in particular of the importance, recalled in paragraph 48 of the present judgment, of the institutional balance within which that power falls – that it has imposed a limit on the exercise of its power, 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. It is not apparent from the arguments put forward by EPSU in the present instance that the Commission made such a commitment, in the communications relied upon, so far as concerns exercise of the power conferred on it by Article 155(2) TFEU.

130 In the fourth place, EPSU's line of argument that, in paragraphs 131 and 132 of the judgment under appeal, the General Court misunderstood the case-law of the Court of Justice relating to the directives on information and consultation of workers, on the ground that 'there is already a disparity between local and central government', must be rejected as manifestly inadmissible since it does not refer specifically to the error of law allegedly vitiating those paragraphs of the judgment under appeal (see, to that effect, judgment of 23 January 2019, *Deza* v *ECHA*, C-419/17 P, EU:C:2019:52, paragraph 94).

131 The second part of the fourth ground of appeal, and the fourth ground of appeal in its entirety, must therefore be rejected.

132 In the light of all the foregoing considerations, the appeal must be dismissed in its entirety.

**Costs**

133 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded, the Court is to make a decision as to the costs.

134 Under Article 138(1) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of 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.

135 Since EPSU has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the Commission.

On those grounds, the Court (Grand Chamber) hereby:

**1. Dismisses the appeal;**

**2. Orders the European Federation of Public Service Unions (EPSU) to bear its own costs and to pay those incurred by the European Commission.**

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|---|---|---|
| Lenaerts | Silva de Lapuerta | Prechal |
| Vilaras | Regan | Piçarra |
| Kumin | Juhász | Safjan |
| Rodin | Biltgen | Jürimäe |
| Lycourgos | Xuereb | Jääskinen |

Delivered in open court in Luxembourg on 2 September 2021.

A. Calot Escobar K. Lenaerts

Registrar President

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* Language of the case: English.