

### Operative part of the judgment

Article 49 TFEU must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, pursuant to which the resident companies in a group are permitted to deduct, from their group profits, the losses sustained by a resident permanent establishment of a non-resident subsidiary of that group only in the case where the rules applicable in the Member State in which that subsidiary has its registered office do not permit those losses to be deducted from the latter's profits, when the application of that legislation is combined with that of a convention preventing double taxation allowing, in the latter Member State, the deduction from the income tax payable by the subsidiary of a sum corresponding to the income tax paid, in the Member State on the territory of which that permanent establishment is situated, in respect of the latter's activity. However, Article 49 TFEU must be interpreted as precluding such legislation in the case where the effect of its application is to deprive that group of any effective possibility of deducting those losses from the group's overall profits, where it is not possible to set off those losses against that subsidiary's profits in the Member State on the territory of which that subsidiary is established, these being matters for the referring court to verify.

<sup>(1)</sup> OJ C 121, 18.4.2017.

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### Judgment of the Court (First Chamber) of 5 July 2018 — Liam Jenkinson v European External Action Service, Council of the European Union, European Commission, Eulex Kosovo

(Case C-43/17 P) <sup>(1)</sup>

*(Appeal — Arbitration clause — Staff of international missions of the European Union — Jurisdiction to rule on disputes concerning employment contracts — Consecutive fixed-term contracts — Arbitration clauses conferring jurisdiction, in the final contract, on the Courts of the European Union, and, in the previous contracts, on the Brussels (Belgium) courts — Decision not to renew the final contract — Claim that all the contractual relationships should be recategorised as a 'contract of indefinite duration' — Claims for compensation for unfair dismissal — Contractual relationships prior to the final contract to be taken into account — Jurisdiction of the General Court of the European Union)*

(2018/C 301/07)

Language of the case: French

### Parties

Appellant: Liam Jenkinson (represented by: N. de Montigny and J.-N. Louis, avocats)

Other parties to the proceedings: Council of the European Union (represented by: A. Vitro and M. Bishop, acting as Agents), European Commission (represented initially by: G. Gattinara, L. Radu Bouyon and S. Bartelt, acting as Agents, and subsequently by G. Gattinara, A. Aresu and L. Radu Bouyon, acting as Agents), European External Action Service (EEAS) (represented by: S. Marquardt, R. Spac and E. Orgován, acting as Agents), Eulex Kosovo (represented by: M. Vicente Hernandez, avocate, and subsequently by E. Raoult, avocate)

### Operative part of the judgment

The Court:

1. Sets aside the order of the General Court of the European Union of 9 November 2016, *Jenkinson v Council and Others* (T-602/15, EU:T:2016:660);
2. Refers the case back to the General Court of the European Union;
3. Reserves the costs.

<sup>(1)</sup> OJ C 104, 3.4.2017.