



The Council of the European Union was entitled to reject the Commission's proposal, based on the 'adjustment method', intended to increase the salaries of European officials by 1.7% in 2011

The European Commission is required to submit to the European Parliament and the Council new proposals which take into account the serious and sudden deterioration in the economic and social situation identified by the Council in 2011

The Staff Regulations of Officials of the European Union¹ provided, until 2012, that the Council was to decide, on a proposal from the Commission, before the end of each year, on the adjustment of remuneration and pensions, with effect from 1 July, by applying a certain method. That method consisted of a mathematical and automatic calculation based on changes in the cost of living in Brussels and in the purchasing power of salaries of national civil servants in central government in eight Member States. The method did not leave any margin of discretion, either to the Commission or the Council, as regards either the content of the proposal or the measure to adopt it.

However, the Staff Regulations also provided for an exception clause whereby it was possible to set aside that "adjustment method" in order to be able to take into account an economic crisis when adjusting remuneration. That clause provided that, in the event of a serious and sudden deterioration in the economic and social situation within the EU, the European Parliament *and* the Council are to decide *together*, on a proposal from the Commission, according to the ordinary legislative procedure, on adjustment of remuneration, without being bound by the "adjustment method".

That exception clause stated that the Commission was to provide objective data as to the existence of such a deterioration. It did not however specify which institution(s) had the task of assessing the data provided by the Commission in order to determine whether or not there was a serious and sudden deterioration. This question was raised in particular in 2011 when the Commission and the Council came to opposite conclusions as to the existence of such a situation.

By today's judgments, delivered in respect of the three cases where the Council and the Commission are in dispute concerning the adjustment of remuneration and pensions for 2011², the Court of Justice rules that it was, at that stage of the procedure, the task of the Council and not the Commission to determine whether or not there was a serious and sudden deterioration in the economic and social situation such as to trigger, if necessary, the exception clause. Where the Council determined, on the basis of the data provided by the Commission, the existence of a serious and sudden deterioration, the Commission was obliged to submit to the European Parliament and the Council appropriate proposals on the basis of the exception clause.

In that situation, the Commission had, nonetheless, its own margin of discretion as regards the content of its proposals, namely the measures which it deemed to be appropriate, taking into

¹ Set out in Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ 1968 L 56, p. 1), as amended by Regulation (EU, Euratom) No 1080/2010 of the European Parliament and the Council of 24 November 2010 (OJ 2010 L 311, p. 1), in the version following a corrigendum published on 5 June 2012 (OJ 2012 L 144, p. 48)

² As regards the 2009 adjustment, see Case [C-40/10 Commission/Council](#), Press Release [No 114/10](#).

account the given economic and social situation and, as necessary, other factors to be taken into consideration, such as those affecting management of human resources, and in particular recruitment needs.

Given that, for 2011, the Council had, on the basis of the data provided by the Commission, determined the existence of a serious and sudden deterioration, it was not obliged to adopt the Commission's proposal presented on the basis of the "adjustment method" for that year.

The exception clause also applied to the annual adjustment of correction coefficients, the purpose of which is to take account of the cost of living in various places of employment; the Council was also not obliged to adopt the Commission's proposal in so far as it concerned the adjustment of those coefficients for 2011.

Consequently, the Court dismisses the Commission's action in Case C-63/12, seeking the annulment of the Council's decision³ whereby the Council had refused to adopt the Commission's proposal to increase, with effect from 1 July 2011, the remuneration and pensions of officials of the EU by 1.7 % and to adjust the correction coefficients.

The Court further dismisses, as being inadmissible, the action for failure to act brought by the Commission against the Council (Case C-196/12). The Council did not fail to make a decision on the Commission's proposal, which was based on the "adjustment method", but rejected it, and the Commission was able to challenge that decision to reject in Case C-63/12.

As regards the action brought by the Council against the Commission (Case C-66/12), whereby the Council claimed that the Commission was in breach of the exception clause laid down by the Staff Regulations and of the EU and FEU Treaties by submitting a proposal based on the "adjustment method" and by thereby refusing to submit appropriate proposals on the basis of that clause, the Court holds that, in the light of the judgment delivered in Case C-63/12, that action is now devoid of purpose and, consequently, there is no need to adjudicate on it.

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.

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The full texts of the judgments ([C-63/12](#), [C-66/12](#) and [C-196/12](#)) are published on the CURIA website on the day of delivery.

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³ Council Decision 2011/86/EU of 19 December 2011 concerning the Commission's proposal for a Council Regulation adjusting with effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2011 L 341, p. 54))