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Judgment of the Court of Justice in Case C-27/04

Commission of the European Communities v Council of the European Union

IN THIS JUDGMENT THE COURT OF JUSTICE CLARIFIES THE POWERS OF THE COMMISSION AND THE COUNCIL RELATING TO THE EXCESSIVE DEFICIT PROCEDURE

The Court declares the action inadmissible insofar as it concerns the Commission's claim that it should annul the Council's failure to adopt decisions to give notice to France and Germany. On the other hand, the Court annuls the conclusions adopted by the Council in which the Council held the excessive deficit procedures in abeyance and modified the recommendations previously made by it to each of those Member States for correction of their excessive deficit.

A. Provisions relating to the excessive deficit procedure

In the context of economic and monetary union, the EC Treaty establishes an excessive deficit procedure¹ whose aim is to encourage and, if necessary, compel the Member State concerned to reduce the deficit identified. Responsibility for making the Member States observe budgetary discipline lies essentially with the Council.

The excessive deficit procedure is a procedure in stages with the Treaty specifying the manner in which it is carried out and the respective roles and powers of the institutions. The procedure may result in the imposition of sanctions on Member States.

Each stage of the procedure at which the Council is called upon to act involves consideration by it, following a recommendation from the Commission, as to whether the defaulting Member State has complied with the obligations resulting from the recommendations and decisions previously adopted by the Council.

¹ Article 104 of the Treaty establishing the European Community.

The Treaty rules relating to the excessive deficit procedure are defined more precisely and strengthened by the Stability and Growth Pact, which is constituted, in particular, by the Resolution of the European Council of 17 June 1997 and by the regulation of the same year on speeding up and clarifying the implementation of the excessive deficit procedure.²

This regulation lays down a strict framework of deadlines to be met in the course of the excessive deficit procedure and the conditions for holding it in abeyance.

B. Background to the case

The Council decided, on a recommendation from the Commission, that excessive deficits existed in France and in Germany. It adopted two recommendations setting those two Member States a deadline for adoption of the measures recommended for correcting their excessive deficit.

After expiry of the deadlines, the Commission recommended to the Council that it adopt decisions establishing that neither France nor Germany had taken adequate measures to reduce their deficit in response to the Council's recommendations. The Commission also recommended the Council to give the two Member States concerned notice to take measures to reduce their deficit.

On 25 November 2003 the Council voted on the Commission's recommendations for decisions, but did not achieve the required majority. On the same day the Council adopted, in respect of each of the two Member States concerned, essentially similar conclusions stating that it had decided to hold the excessive deficit procedures in abeyance with regard to France and Germany and addressing recommendations to them for correcting the excessive deficit in the light of the commitments made by each of them.

On 27 January 2004 the Commission brought an action before the Court of Justice challenging (i) the Council's failure to adopt the decisions recommended by the Commission and (ii) the conclusions adopted by the Council.³

C. The claim seeking annulment of the Council's failure to adopt, despite the Commission's recommendations, decisions establishing that neither France nor Germany had taken adequate measures to reduce their deficits and decisions giving notice to each of those two Member States

The Court finds first of all that, where the Commission recommends to the Council that it adopt decisions such as those at issue in the present case and the required majority is not achieved in the Council, a decision, even an implied one, does not exist for the purposes of the Treaty.

Consequently, the Court finds that failure by the Council to adopt the decisions recommended by the Commission **does not constitute an act challengeable by an action for annulment and it declares this part of the action to be inadmissible.**

D. The claim seeking annulment of the conclusions adopted by the Council in so far as they contain decisions to hold in abeyance the excessive deficit procedures with regard to

² Regulation (EC) No 1467/97 of 7 July 1997 (OJ 1997 L 209, p. 6).

³ On application by the Commission, the President of the Court ordered on 13 February 2004 that the case was to be determined in accordance with an expedited procedure.

France and Germany and decisions modifying the recommendations previously made by the Council to those two Member States for correction of their excessive deficits

The Court accepts that the action is admissible in so far as it is directed against **the conclusions**, on the ground that they **are intended to have legal effects**: they hold the ongoing excessive deficit procedures in abeyance and modify the recommendations previously adopted by the Council.

The Court then states that the Council has a discretion in this field, as it can modify the measure recommended by the Commission on the basis of a different assessment of the economic data, of the measures to be taken and of the timetable to be met by the Member State concerned.

However, **the Council cannot depart from the rules laid down by the Treaty or those which it set for itself in Regulation No 1467/97.**

- **With regard to holding the excessive deficit procedure in abeyance**, the Court points out that the regulation sets out exhaustively the situations in which the excessive deficit procedure is to be held in abeyance, namely where the Member State concerned acts in compliance with recommendations made, or notice given, by the Council under the Treaty. The Court accepts that the procedure may de facto be held in abeyance if a Commission recommendation is placed before the Council and the latter does not manage to achieve the majority required for adopting a decision.

Nevertheless, in its conclusions of 25 November 2003, the Council does not simply record that the excessive deficit procedure is de facto held in abeyance because it has not been possible to adopt a decision recommended by the Commission. In so far as the Council's conclusions make holding the procedure in abeyance conditional upon compliance by the Member States concerned with their commitments, they restrict the Council's power to give notice on the basis of the Commission's earlier recommendation so long as the commitments are considered to be complied with. Consequently, the Council's assessment for the purposes of a decision to give notice will no longer be based on the content of the recommendations for correcting the deficit which the Council previously made to the Member States concerned, but on unilateral commitments of those States.

- **As regards modification of the recommendations adopted by the Council for correction of the excessive deficit**, the Court observes that where the Council has adopted such recommendations, **it cannot modify them without being prompted again by the Commission**, which has a right of initiative in the excessive deficit procedure.

However, the Council's conclusions were not preceded by Commission initiatives seeking the adoption of Council recommendations for correcting the excessive deficit different from those adopted previously.

Furthermore, the recommendations contained in the conclusions were adopted in accordance with the voting rules prescribed for a decision to give notice, which are different from those prescribed for the adoption of recommendations for correcting the excessive deficit.

The Court accordingly annulled the Council's conclusions of 25 November 2003.

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Available languages: all languages

*The full text of the judgment can be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

In principle it will be available from midday CET on the day of delivery.

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