



The Court annuls the provisions of the Council Regulation making adjustments to the salaries of EU officials with effect from July 2009

By fixing, in the regulation, an adjustment of officials' salaries different to that proposed by the Commission, without invoking the special procedure provided for by the Staff Regulations in case of a serious and sudden deterioration in the economic situation, the Council exceeded the powers conferred on it by the Staff Regulations

The Staff Regulations¹ provide that the Council shall decide, before the end of each year, on the adjustment of EU officials' salaries, any adjustment taking effect from 1 July of that same year.

In November 2009, the Commission proposed a salary increase of 3.7%. On 23 December 2009, the Council decided on an increase, in the contested regulation.² It considered that the Commission's proposal for adjusting salaries should be modified to take account of the economic and financial crisis. It fixed new salary levels on the basis of an increase of 1.85%.

The Commission brought an action for annulment against the provisions of the regulation setting out those amounts. It argued that the Staff Regulations establish an automatic method for adjusting salaries that leaves no margin of discretion to the Council that would allow it to reject the Commission's proposal.

The Council's position, on the other hand, was that it still had a margin of discretion in respect of annual salary adjustments, although it did not question the correctness of the calculation of the proposed adjustment, made by the Commission in accordance with the provisions of the Staff Regulations.

The Court notes that Article 65 of the Staff Regulations sets out the basic rule governing the annual review and the adjustment, when appropriate, of EU officials' salaries and that this provision confers a power of assessment on the Council. However, the Staff Regulations comprise, for an eight-year period, an Annex XI that sets out in detail how Article 65 must be applied and whose Article 3 contains an exhaustive list of the criteria governing the annual adjustment of salary levels. Those criteria are based, in substance, on the idea that salary adjustments at EU level should be aligned, albeit with a certain time-lag, with those that were applied between July of the previous year and July of the current year, in the eight Member States taken as a point of reference for that purpose.

Having examined the purpose of Annex XI of the Staff Regulations, as well as its legal status and origins, the Court came to the conclusion that, by adopting that Annex, the Council decided to bind itself, for the period of that instrument's validity, to exercise its power of assessment under Article 65 of the Staff Regulations in accordance with the criteria exhaustively set out in Article 3 of the Annex. That decision was justified, in particular, by the need to ensure a certain degree of stability

¹ Staff Regulations of EU Officials, laid down by Council Regulation (EEC, Euratom, ECSC) No. 259/68 of the Council of 29 February 1968 (OJ 1968 L 56, p. 1), as modified by Council Regulation (EC, Euratom) No. 723/2004 of 22 March 2004 (OJ 2004 L 124, p.1).

² Council Regulation (EU, Euratom) No. 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2009 L 348, p. 10).

in the medium term and to avoid repeated negotiations and conflicts, not least between bodies representing staff and the EU institutions concerned, regarding the extent to which an adjustment of salaries is justified or necessary.

Concerning the possibility that account may be taken of a serious economic crisis, the Court recalls that Annex XI of the Staff Regulations contains, in Article 10, an exceptional clause providing for a special salary adjustment procedure to be followed in case of a serious and sudden deterioration in the economic and social situation. That provision represents the only possibility open to the Council, under the Staff Regulations, should it wish to take into account an economic crisis in the context of the annual salary adjustment and to depart from the criteria laid down in Article 3 of that Annex.

Even though the application of that special procedure can only be set in train by a proposal from the Commission, the making of appropriate proposals in case of a serious and sudden deterioration in the economic and social situation is not, however, a discretionary power for that institution, since it is bound to act in accordance with the duty of loyal cooperation between EU institutions.

Thus, the Court concludes that the Council has no margin of discretion allowing it to decide upon a salary adjustment different to that proposed by the Commission on the basis of the criteria laid down in Article 3 of Annex XI of the Staff Regulations alone, except under the special procedure provided for by Article 10 of that Annex.

Consequently, the articles of the regulation that fix new amounts for salaries are annulled. However, in order to avoid creating a legal vacuum in the EU salary regime, the effects of those articles are maintained until such time as a new regulation, adopted by the Council, enters into force.

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

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