Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 November 2013*

(Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Staff Regulations — Action for annulment — Communication COM(2011) 829 final — Proposal COM(2011) 820 final — Action for failure to act — Submission of proposals on the basis of Article 10 of Annex XI to the Staff Regulations — Failure of the Commission — Application devoid of purpose — No need to adjudicate)

In Case C-66/12,

ACTION for annulment under Article 263 TFEU and, in the alternative, action for failure to act under Article 265 TFEU, brought on 9 February 2012,

Council of the European Union, represented by M. Bauer and J. Herrmann, acting as Agents,

applicant,

supported by

Czech Republic, represented by M. Smolek, D. Hadroušek and J. Vláčil, acting as Agents,

Kingdom of Denmark, represented by V. Pasternak Jørgensen and C. Thorning, acting as Agents,

Federal Republic of Germany, represented by T. Henze and N. Graf Vitzthum, acting as Agents,

Ireland, represented by E. Creedon, acting as Agent, and by C. Toland BL and A. Joyce, Solicitor,

Kingdom of Spain, represented by N. Díaz Abad and S. Centeno Huerta, acting as Agents,

French Republic, represented by G. de Bergues, D. Colas and J.-S. Pilczer, acting as Agents,

Republic of Latvia, represented by I. Kalniņš and A. Nikolajeva, acting as Agents,

Kingdom of the Netherlands, represented by C. Wissels and M. Bulterman, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by E. Jenkinson and J. Beeko, acting as Agents, and R. Palmer, Barrister,

interveners,

v

* Language of the case: French.

European Commission, represented by J. Currall, D. Martin and J.-P. Keppenne, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

European Parliament, represented by A. Neergaard and S. Seyr, acting as Agents,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, T. von Danwitz (Rapporteur), E. Juhász, M. Safjan, C.G. Fernlund and J.L. da Cruz Vilaça, Presidents of Chambers, A. Rosas, G. Arestis, J.-C. Bonichot, A. Arabadjiev, C. Toader and C. Vajda, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 2 July 2013,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2013,

gives the following

Judgment

1 By its application, the Council of the European Union requests:

— the annulment, under Article 263 TFEU, of

  — the Communication from the Commission of 24 November 2011, providing supplementary information to the Commission's report of 13 July 2011 on the exception clause (COM(2011) 829 final; 'the contested communication'), in so far as the European Commission there definitively refuses to submit appropriate proposals to the European Parliament and to the Council on the basis of Article 10 of Annex XI of the Staff Regulations of Officials of the European Union, 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, English Special Edition 1968(I), p. 1), as amended by Regulation (EU, Euratom) No 1080/2010 of the European Parliament and of the Council of 24 November 2010 (OJ 2010 L 311, p. 1) ('the Staff Regulations'), and

  — 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, submitted on 24 November 2011 (COM(2011) 820 final; 'the contested proposal');

— in the alternative, a declaration, under Article 265 TFEU, of an infringement of the Treaties by reason of the Commission's failure to submit appropriate proposals to the European Parliament and to the Council on the basis of Article 10 of Annex XI to the Staff Regulations.

Legal context

2 Article 65 of the Staff Regulations provides:

'1. The Council shall each year review the remuneration of the officials and other servants of the Union. This review shall take place in September in the light of a joint report by the Commission based on a joint index prepared by the Statistical Office of the European Union in agreement with the national statistical offices of the Member States; the index shall reflect the situation as at 1 July in each of the countries of the Union.

During this review the Council shall consider whether, as part of economic and social policy of the Union, remuneration should be adjusted. Particular account shall be taken of any increases in salaries in the public service and the needs of recruitment.

2. In the event of a substantial change in the cost of living, the Council shall decide, within two months, what adjustments should be made to the weightings and if appropriate to apply them retrospectively.

3. For the purposes of this article, the Council shall act by a qualified majority on a proposal from the Commission as provided in Article 16(4) and (5) [TEU].'

3 Under Article 82(2) of the Staff Regulations, where the Council, in accordance with Article 65(1) of the Staff Regulations, decides to adjust remunerations, the same adjustment is to be applied to pensions.

4 Pursuant to Article 65a of the Staff Regulations, the rules for implementing Articles 64 and 65 thereof are set out in Annex XI to the Staff Regulations.

5 Article 1 of Annex XI, which is part of Section 1 in Chapter 1 of that annex, provides that, for the purposes of the review provided for in Article 65(1) of the Staff Regulations, Eurostat is to draw up every year before the end of October a report on changes in the cost of living in Brussels (Belgium) (Brussels International Index), changes in the cost of living outside Brussels (economic parities and implicit indices) and changes in the purchasing power of salaries of national civil servants in central government in eight Member States (specific indicators).

6 Article 3 of Annex XI to the Staff Regulations, which forms Section 2 in Chapter 1 of that annex, headed 'Arrangements for the annual adjustment of remuneration and pensions', provides:

'1. Under Article 65(3) of the Staff Regulations, the Council, acting on a Commission proposal and on the basis of the criteria set out in Section 1 of this Annex, shall take a decision before the end of each year adjusting remuneration and pensions, with effect from 1 July.

2. The amount of the adjustment shall be obtained by multiplying the Brussels International Index by the specific indicator. The adjustment shall be in net terms as a uniform across-the-board percentage.

...

5. No correction coefficient shall be applicable in Belgium and Luxembourg. The correction coefficients applicable:

(a) to the salaries of officials of the Union serving in the other Member States and in certain other places of employment,

(b) ... pensions paid in the other Member States for the part corresponding to the acquired rights acquired before 1 May 2004,

shall be determined on the basis of the ratios between the corresponding economic parities referred to in Article 1 and the exchange rates specified in Article 63 of the Staff Regulations for the relevant countries.

...'

7 Chapter 5 of Annex XI to the Staff Regulations is headed 'Exception Clause'. It consists solely of Article 10 which provides:

'If there is a serious and sudden deterioration in the economic and social situation within the Union, assessed in the light of objective data supplied for this purpose by the Commission, the latter shall submit appropriate proposals on which the European Parliament and Council shall decide in accordance with Article 336 [TFEU].'

8 Under Article 15(1) of Annex XI, its provisions are to apply from 1 July 2004 to 31 December 2012.

Background to the dispute

9 In December 2010 the Council considered that the latest financial and economic crises that had occurred within the European Union had created a 'serious and sudden deterioration in the economic and social situation within the Union' within the meaning of Article 10 of Annex XI to the Staff Regulations, and asked the Commission to submit, on the basis of Article 10, appropriate proposals in time for the European Parliament and the Council to examine and adopt them before the end of 2011.

10 In response to that request, the Commission submitted, on 13 July 2011, the report on the exception clause (Article 10 of Annex XI to the Staff Regulations) (COM(2011) 440 final), in which it concluded, in reliance on 15 indicators and on the European economic forecasts published by its Directorate-General for Economic and Financial Affairs on 13 May 2011, that there was no need to submit a proposal under Article 10 of Annex XI to the Staff Regulations.

11 Examination of that report led to subsequent discussions within the Council, the outcome being that a further request was made by the Council to the Commission that Article 10 should be applied and that an appropriate proposal for the adjustment of remuneration should be submitted.

12 In response to that request, the Commission submitted the contested communication, which was based, inter alia, on the economic forecasts published by the Commission's Directorate-General for Economic and Financial Affairs on 10 November 2011. The Commission again concluded that the Union was not facing an extraordinary situation for the purposes of Article 10 of Annex XI to the Staff Regulations and that it was therefore not in a position to trigger the exception clause.

13 On the same date, the Commission submitted the contested proposal, which was based on the 'normal' method for the adjustment of remunerations laid down in Article 3 of Annex XI to the Staff Regulations and proposed an adjustment of 1.7%.

14 By Council Decision 2011/866/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), the Council decided 'not to adopt the [contested] proposal', inter alia on the following grounds:

'(8) ... The Council is convinced that the financial and economic crisis currently taking place within the Union and resulting in substantial fiscal adjustments, inter alia, national officials' salary adjustments, in a great number of Member States constitutes a serious and sudden deterioration of the economic and social situation within the Union.

...

(13) In the light of the above, the Council considers that the Commission's position as regards the existence of a serious and sudden deterioration in the economic and social situation and its refusal to submit a proposal under Article 10 of Annex XI to the Staff Regulations is based on manifestly insufficient and erroneous grounds.

(14) Since the … Court of Justice held in [the case giving rise to the judgment of 24 November 2010 in] Case C-40/10 [*Commission* v *Council* [2010] ECR I-12043] that, for the period of application of Annex XI to the Staff Regulations, the procedure laid down in Article 10 thereof constitutes the only means of taking account of an economic crisis in the adjustment of remuneration, the Council was dependent on a proposal from the Commission to apply that Article in times of crisis.

(15) The Council is convinced that, in light of the wording of Article 10 of Annex XI to the Staff Regulations and under the duty of sincere cooperation between the institutions as enshrined in the second sentence of Article 13(2) [TEU], the Commission was obliged to submit an appropriate proposal to the Council. The Commission's conclusions and its failure to submit such a proposal are therefore in breach of that obligation.

(16) As the Council may act only on a proposal from the Commission, the Commission's failure to draw the correct conclusions from the evidence and to present a proposal under Article 10 of Annex XI to the Staff Regulations has prevented the Council from reacting correctly to the serious and sudden deterioration in the economic and social situation through the adoption of an act under Article 10 of Annex XI to the Staff Regulations.'

Forms of order sought by the parties and the procedure before the Court

15 The Council claims that the Court should:

— annul, under Article 263 TFEU, the contested communication, in so far as the Commission there definitively refuses to submit appropriate proposals to the European Parliament and to the Council on the basis of Article 10 of Annex XI to the Staff Regulations, and the contested proposal,

— in the alternative, declare, under Article 265 TFEU, an infringement of the Treaties by reason of the fact that the Commission failed to submit appropriate proposals to the European Parliament and to the Council on the basis of Article 10 of Annex XI to the Staff Regulations, and

— order the Commission to pay the costs.

16 The Commission contends that the Court should dismiss the action and order the Council to pay the costs.

17 By order of the President of the Court of 20 April 2012, the European Parliament was granted leave to intervene in support of the form of order sought by the Commission. By order of the President of the Court of 6 July 2012, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Republic of Latvia, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the Council.

The action

18 By its action, the Council claims that the Commission infringed Article 10 of Annex XI to the Staff Regulations, read together with the second sentence of Article 13(2) TEU and Article 241 TFEU, by submitting the contested proposal on the basis of the 'normal' method for adjustment laid down in Article 3 of Annex XI and by thereby refusing to submit appropriate proposals on the basis of Article 10.

19 The Commission submits that the action is inadmissible, since the Council's decision to bring this action was not made by a qualified majority of its members. Further, neither the contested communication nor the contested proposal are challengeable acts for the purposes of Article 263 TFEU. Lastly, the conditions stated in Article 265 TFEU are not satisfied, inter alia by reason of the fact that the Commission defined its position on the Council's request by asserting that the conditions under which the procedure laid down in Article 10 of Annex XI to the Staff Regulations might be initiated were not satisfied. However, the Council is not deprived of judicial protection, given that it was able to state its case in an action brought by the Commission against the refusal of the Council to adopt the contested proposal submitted on the basis of Article 3 of Annex XI to the Staff Regulations. In the alternative, the Commission denies that the action for annulment and the action for failure to act are well founded, and maintains that the Council had not demonstrated that the Commission committed a manifest error in the assessment of the economic and social situation within the Union.

20 It must be observed that, like the case which gave rise to the judgment of 19 November 2013 in Case C-63/12 *Commission* v *Council* [2013] ECR, this action concerns the adjustment for 2011 of remuneration and pensions of officials and other servants of the European Union and is the result of the inability of the Commission and the Council to agree on whether it was appropriate, that year, to apply the 'normal', automatic method, laid down in Article 3 of Annex XI to the Staff Regulations, or the exception clause, laid down in Article 10 of that annex, which is applicable 'if there is a serious and sudden deterioration in the economic and social situation within the Union'. The close relationship of these two cases is also apparent from the fact that, in each of them, the parties refer to the content of their written pleadings lodged in the other case, attached as annexes.

21 In paragraphs 57 to 77 of the judgment of 19 November 2013 in Case C-63/12 *Commission* v *Council*, the Court ruled on the division of roles between the institutions in the context of the annual adjustment of remuneration and pensions, in particular in respect of the determination of the legal basis for that adjustment and the triggering of the exception clause.

22 In those circumstances, it is clear that the present action has become devoid of purpose, and there is thus no need to adjudicate on it.

Costs

23 Under Article 142 of the Rules of Procedure of the Court of Justice, where a case does not proceed to judgment, the costs are at the discretion of the Court.

24 In this case, the action has become devoid of purpose not because of the conduct of one of the parties, but because of the fact that the Court has ruled on the action for annulment brought in the case which has given rise to the judgment of 19 November 2013 in Case C-63/12 *Commission* v *Council*.

25 In those circumstances, it must be held that the Council and the Commission, and the interveners, are each to bear their own costs.

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

1. Declares that there is no need to adjudicate on the action;

2. Orders the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Kingdom of Spain, the French Republic, the Republic of Latvia, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, the European Parliament, the Council of the European Union and the European Commission to bear their own costs.

[Signatures]