Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 November 2013*

(Action for annulment — Decision 2011/866/EU — Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Staff Regulations — Article 65 of the Staff Regulations — Method of adjustment — Article 3 of Annex XI to the Staff Regulations — Exception clause — Article 10 of Annex XI to the Staff Regulations — Serious and sudden deterioration in the economic and social situation — Adjustment of correction coefficients — Article 64 of the Staff Regulations — Council decision — Refusal to adopt the Commission's proposal)

In Case C-63/12,

ACTION for annulment under Article 263 TFEU, brought on 3 February 2012,

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

applicant,

supported by:

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

intervener,

v

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

defendant,

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,

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

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

* Language of the case: French.

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

interveners,

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 European Commission asks the Court to annul 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 contested decision'), on the ground that that decision constitutes an infringement of, inter alia, Article 65 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 Articles 1, 3 and 10 of Annex XI to the Staff Regulations.

Legal context

2 Article 64 of the Staff Regulations provides:

'An official's remuneration expressed in euros shall, after the compulsory deductions set out in these Staff Regulations or in any implementing regulations have been made, be weighted at a rate above, below or equal to 100%, depending on living conditions in the various places of employment.

These weightings shall be adopted by the Council, acting by a qualified majority on a proposal from the Commission as provided in Article 16(4) and (5) [TEU].'

3 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 shall 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].’

4 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.

5 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.

6 Annex XI, headed ‘Rules for implementing Articles 64 and 65 of the Staff Regulations’, includes several chapters: Chapter 1, comprising Articles 1 to 3, being headed ‘Annual review of remuneration provided for in Article 65(1) of the Staff Regulations’, and Chapter 4 being headed ‘Creation and withdrawal of correction coefficients (Article 64 of the Staff Regulations)’.

7 Article 1 of Annex XI to the Staff Regulations, 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). Article 1 also contains details of the process to be followed by Eurostat, with the cooperation of the Member States, in order to calculate those changes.

8 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.

3. The amount of the adjustment thus fixed shall be incorporated, in accordance with the following method, in the basic salary tables appearing in Article 66 of the Staff Regulations …

…

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 of this annex and the exchange rates specified in Article 63 of the Staff Regulations for the relevant countries.

The procedures laid down in Article 8 of this Annex concerning the retrospective application of correction coefficients in places of employment with a high rate of inflation shall apply.

...'

9 Article 8 of Annex XI to the Staff Regulations fixes the dates when the annual and intermediate adjustments of the correction coefficient are to come into effect for places with a high cost-of-living increase.

10 Chapter 5 of Annex XI 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].'

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

Background to the dispute and the contested decision

12 In December 2010 the Council stated that 'the latest financial and economic crises that have occurred within the [European Union] and that result in substantial fiscal adjustments and increased job uncertainty in several Member States create a serious and sudden deterioration of the economic and social situation within the Union'. The Council asked the Commission to submit, on the basis of Article 10 of Annex XI to the Staff Regulations and in the light of objective data supplied for that purpose by the Commission, appropriate proposals in time for the European Parliament and the Council to examine and adopt them before the end of 2011 (see Council Document No 17946/10 ADD 1 of 17 December 2010).

13 On 13 July 2011 the Commission submitted a report to the Council on the exception clause (Article 10 of Annex XI to the Staff Regulations) (COM(2011) 440 final; 'the report of 13 July 2011'). In order to assess whether it was necessary to use in 2011 the exception clause laid down in Article 10 of Annex XI to the Staff Regulations ('the exception clause'), the Commission chose 15 indicators, namely gross domestic product (GDP) growth, domestic demand, inventories, net exports, private consumption, public consumption, total investment and inflation within the Union, the general government balance and public debt within the Union, total employment, the unemployment rate and the remuneration of employees within the Union, the economic sentiment indicator and employment expectations within the Union. In that regard, the Commission relied on the European economic forecasts published by the Directorate-General for Economic and Financial Affairs on 13 May 2011.

14 According to the report of 13 July 2011, the indicators showed that a gradual economic recovery was underway within the Union. The report concluded that there was no serious and sudden deterioration in the economic and social situation within the Union during the reference period from 1 July 2010, the date when the last annual adjustment of remuneration took effect, and mid-May 2011, the date when the latest data were made available, and that there was no need to submit a proposal under Article 10 of Annex XI to the Staff Regulations.

15 Examination of the report of 13 July 2011 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 in time for the European Parliament and the Council to examine and adopt it before the end of 2011 (see Council Document No 16281/11 of 31 October 2011).

16 In response to that request, the Commission submitted Communication COM(2011) 829 final of 24 November 2011, providing supplementary information to the report of 13 July 2011 ('the supplementary information'), which is based on, inter alia, the European economic forecasts published by the Commission's Directorate-General for Economic and Financial Affairs on 10 November 2011. In that supplementary information, the Commission stated that those forecasts 'show worsening trends for 2011 as compared to the Forecast released in spring both as regards economic and social indicators and that the European economy is currently experiencing a turmoil.' Nonetheless, the Commission considered that, taking into account a number of factors, the Union was not facing an extraordinary situation for the purposes of Article 10 of Annex XI to the Staff Regulations such as to justify the adoption of measures going beyond the loss of purchasing power brought about by the 'normal' method laid down in Article 3 of Annex XI. Consequently, the Commission stated that it was not in a position to trigger the exception clause without being in breach of Article 10.

17 On the same date, the Commission submitted a 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 (COM(2011) 820 final, 'the proposal for a regulation'), with an explanatory memorandum. The adjustment of remuneration proposed on the basis of the 'normal' method laid down in Article 3 of Annex XI to the Staff Regulations was 1.7%.

18 By the contested decision, the Council decided 'not to adopt the …proposal [for a regulation]', inter alia, for the following reasons:

'(6) The Council considers that neither of the documents submitted by the Commission, namely, the "report [of 13 July 2011]" and the "supplementary information", provides for an accurate and comprehensive reflection of the current economic and social situation within the Union.

(7) Moreover, in the view of the Council, the Commission made an error in defining the time span to be covered by its analysis too narrowly. That error prevented the Commission from making a proper assessment of the situation and therefore has significantly distorted the conclusions derived from both documents, namely that there was no sudden and serious deterioration of an economic and social situation within the Union.

(8) The Council does not share these conclusions. 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.

…

(10) With respect to the economic situation, the forecast for growth in the Union has been substantially reduced for the year 2012 from + 1,9% to + 0,6%. EU quarterly growth is down from + 0,7% in the first quarter of 2011 to + 0,2% in the second and in the third quarters of that year. As for the fourth quarter of 2011 and first quarter of 2012, no growth of GDP is foreseen.

(11) While assessing the current economic and social situation, more focus should have been put on the situation on the financial markets, in particular on distortions to credit supply and declines in asset prices, which are major determinants for the economic development.

(12) With respect to the social situation, job creation has been insufficient to remedy a major reduction in the unemployment rate. The EU unemployment rate in 2010 and 2011 fluctuated to reach 9.8% in October 2011 and should remain constantly high.

(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

19 The Commission claims that the Court should annul the contested decision and order the Council to pay the costs.

20 The Council contends that the Court should:

— dismiss the action as being inadmissible;

— in the alternative, dismiss the action as being unfounded, and

— order the Commission to pay the costs.

21 By order of the President of the Court of 29 March 2012, the European Parliament was granted leave to intervene in support of the form of order sought by the Commission.

22 By order of the President of the Court of 6 July 2012, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the form of order sought by the Council.

Admissibility of the action

Arguments of the parties

23 The Council submits that the action is inadmissible on the ground that the contested decision does not constitute an act which produces independent legal effects and is therefore not an act which is open to challenge under Article 263 TFEU.

24 In adopting that decision, the Council did not either amend or definitively reject the proposal for a regulation, but did no more, in the interests of transparency, than set out the reasons why it was not able to adopt the proposal. The contested decision had no effect on the legal existence of the proposal for a regulation.

25 On the other hand, the Commission states that the Council did in fact adopt a 'decision' within the meaning of the fourth paragraph of Article 288 TFEU, which was published in the *Official Journal of the European Union*, L series. The Commission claims that the Council intended to take action with regard to the proposal for a regulation, since it expressly referred to that proposal in the third citation and in recital 5 of the preamble to the contested decision.

26 According to the Commission, that decision produces independent legal effects. The result of that decision is that the annual adjustment laid down in Articles 64 and 65 of the Staff Regulations is prevented, and it is very clear from the statement of reasons that the position adopted by the Council is final, and consequently the refusal to adopt the proposal for a regulation is equivalent to a rejection of that proposal.

27 Further, the refusal of an institution to adopt a decision constitutes an act against which an action for annulment can be brought under Article 263 TFEU, since the act which the institution refuses to adopt could have been challenged under that provision. The act which the Council refused to adopt, namely a regulation, is, per se, an act which is open to challenge.

Findings of the Court

28 In accordance with settled case-law, acts open to challenge, within the meaning of Article 263 TFEU, are any measures adopted by the institutions, whatever their nature or form, which are intended to have binding legal effects (see, inter alia, Case 22/70 *Commission* v *Council* [1971] ECR 263 (the '*AETR*' judgment), paragraph 42; Case C-521/06 P *Athinaiki Techniki* v *Commission* [2008] ECR I-5829, paragraph 29; Case C-322/09 P *NDSHT* v *Commission* [2010] ECR I-11911, paragraph 45; and Case C-314/11 P *Commission* v *Planet* [2012] ECR, paragraph 94.

29 In this case, what is at issue is a specific procedure where the institutions are required to make a decision each year on the adjustment of remuneration, either by undertaking a 'mathematical' adjustment according to the method laid down in Article 3 of Annex XI to the Staff Regulations, or by departing from that mathematical calculation in accordance with Article 10 of that annex.

30 In that regard, it must be noted that, as part of the 'normal' procedure for the annual adjustment of remuneration and pensions laid down in Article 3(1) of Annex XI to the Staff Regulations, the Commission submitted a proposal for a regulation on which the Council should have issued its decision before the end of 2011.

31 In the recitals in the preamble to the contested decision, the Council however stated that the financial and economic crisis currently taking place within the European Union constitutes a serious and sudden deterioration in the economic and social situation within the Union and that the Commission was obliged to submit an appropriate proposal under Article 10 of Annex XI to the Staff Regulations.

32 It follows that, by the contested decision, the Council did not defer its decision on the proposal for a regulation submitted on the basis of Article 3 of Annex XI to the Staff Regulations. On the contrary, the Council rejected that proposal, thereby bringing the procedure commenced under Article 3 of Annex XI to an end.

33 It follows from the foregoing that the purpose of the contested decision is to produce binding legal effects.

34 Consequently, the action for the annulment of that decision is admissible.

Substance

35 In support of its action, the Commission relies on two grounds of complaint relating, first, to the Council's refusal to adjust remuneration and pensions and, secondly, to the Council's refusal to adjust the correction coefficients which are applied, according to the various places of employment or residence, to remuneration and pensions.

The first ground of complaint, relating to the Council's refusal to adjust remuneration and pensions

Arguments of the parties

36 By its first ground of complaint, the Commission claims, primarily, that the Council misused its powers and infringed Article 65 of the Staff Regulations and Articles 3 and 10 of Annex XI to the Staff Regulations.

37 The Commission claims that what the Council in fact did was to apply Article 10, by freezing, by means of the contested decision, European Union salaries, although the Commission did not submit any proposal based on that article. In the absence of such a proposal, the conditions for applying Article 10 were not met and the Council was obliged to adopt the proposal for a regulation based on Article 3 of Annex XI to the Staff Regulations, which leaves no margin of discretion to the Council. The Commission alone is empowered to analyse the criteria of Article 10 of that annex and to determine whether or not measures should be proposed and if so what form those measures should take.

38 At the same time, the Council usurped the powers of the European Parliament by taking the view alone that the conditions stated in Article 10 of Annex XI to the Staff Regulations were satisfied, although Article 10 refers to Article 336 TFEU and therefore to the ordinary legislative procedure.

39 The Council's only means of obtaining the application of the exception clause was to challenge before the Court, on the grounds of a manifest error of assessment, either the Commission's decision to reject its request for the implementation of that clause or the Commission's failure to submit an appropriate proposal under Article 10, if necessary requesting at the same time provisional measures for the period at issue until the date of delivery of the judgment on the substance.

40 Alternatively, the Commission submits that, even if the Council had the power to adopt the contested decision, it committed an error in law by infringing the conditions for the application of Article 10 of Annex XI to the Staff Regulations. The Commission considers that the contested decision is vitiated by a statement of reasons which is 'insufficient and erroneous', since those conditions for the application of Article 10 were not met in 2011.

41 Recalling that, in accordance with the case-law, the Commission enjoys a wide discretion in areas where an assessment of a complex economic and/or social situation is necessary, it argues that it chose 15 indicators which related to both the economic and the social situation and which were not criticised by the Member States in the course of discussion of the report of 13 July 2011 and the supplementary information. The reasons put forward by the Council in recitals 7, 8 and 10 to 12 in the preamble to the contested decision cannot call into question the conclusion reached by the Commission in that report and supplementary information.

42 The European Parliament endorses the Commission's arguments and adds that, if the Council, for reasons of policy due to the financial crisis, had wanted to alter the method for the adjustment of remuneration and pensions laid down in the Staff Regulations, it should have followed the ordinary legislative procedure in which the choice of policy is made by the two co-legislators, the Parliament and the Council.

43 The Council contends that the contested decision is not based on Article 10 of Annex XI to the Staff Regulations. In the absence of a proposal from the Commission on the basis of that provision, it was not able to apply that provision and it did not do so.

44 According to the Council, the assessment of the economic and social situation within the Union and the determination of any serious and sudden deterioration in that situation within the meaning of Article 10 of Annex XI is not exclusively the task of the Commission, rather the Council and the Parliament have their own power of assessment in that regard. Under Article 10 and the obligation of sincere cooperation laid down in the second sentence of Article 13(2) TEU, the Commission should supply objective data to the European Parliament and to the Council in order to put them in a position to undertake their own assessment of the situation.

45 If, in exercising that power of assessment, the Council came, unlike the Commission, to the conclusion that the conditions for the application of the exception clause were met, its sole option was not to adopt the Commission's proposal based on the 'normal' method laid down in Article 3 of Annex XI to the Staff Regulations and at the same time to bring an action before the Court seeking a declaration that the Commission's conclusion was unfounded. In any event, even if the assessment of the conditions governing the triggering of the exception clause fell exclusively within the powers of the Commission, the Commission's use of such a prerogative cannot be immune to judicial review. The Council should proceed in such a way where it considers that the Commission's analysis is vitiated by a manifest error of assessment.

46 That is the position in this case. The sole effect of the contested decision was to maintain the Council's legal position pending a judgment from the Court resolving the question whether, in this case, the conditions for the application of the exception clause were met, and consequently whether the Commission was obliged to submit a proposal on that basis. A request to the Court for provisional measures for the period at issue until the date of delivery of the judgment on the substance is not appropriate in that situation.

47 Further, the statement of reasons for that decision was neither insufficient, since the 16 recitals in the preamble to that decision are such as to support the Council's position, nor manifestly erroneous.

48 In that regard, the Council considers that it has a discretion of its own as regards the assessment of the economic and social situation and that judicial review of the exercise of that discretion must be subject to the same limits as apply to that exercised by the Commission. The Commission should therefore have demonstrated that the Council committed a manifest error of assessment.

49 Further, as regards the concept of 'serious and sudden deterioration in the economic and social situation' within the meaning of Article 10 of Annex XI to the Staff Regulations, the Council shares, in principle, the opinion of the Commission that the word 'deterioration' describes a worsening of the economic and social situation, the qualification 'serious' must be assessed in the light of the scale but also the duration of the economic and social effects identified and the qualification 'sudden' must be assessed in the light of how rapid and how foreseeable such effects are. However, the Commission's application of those criteria was manifestly erroneous and its analysis revealed a number of gaps, methodological errors and errors of assessment which distorted the results of its analysis.

50 The Czech Republic considers that, as regards procedural matters, the Council could have acted in no other way in order to achieve an effective review of the lawfulness of the Commission's exercise of the powers conferred on it by Article 10 of Annex XI to the Staff Regulations. However, the validity of that procedure is subject to the requirement that the Council has correctly assessed whether the conditions for the application of that article are met, which is the essential question.

51 The Kingdom of Denmark refers to factors in the economic situation in Denmark and, in particular, to a substantial and sudden fall in the growth of the real remuneration of Danish civil servants in 2011, by way of illustration that, during the period in question, there was indeed a serious and sudden deterioration in the economic and social situation within the Union.

52 The Federal Republic of Germany considers that the conclusions reached by the Commission in the report of 13 July 2011 and the supplementary information are erroneous. It identifies a number of factors which, in its opinion, demonstrate that the economic and social situation suddenly worsened during 2011, such as the need for three Member States to have recourse to financial assistance and the decline in GDP and exports within the Union in the fourth quarter of 2011. Further, the Federal Republic of Germany considers that the explanations provided by the Commission in its report of 13 July 2011 on the 'principle of parallelism' between the change in the purchasing power of civil servants of eight reference Member States and the change in the purchasing power of European Union officials are ineffective in the context of assessing the conditions for the application of Article 10 of Annex XI to the Staff Regulations, given that the 'normal' method for the annual adjustment of remuneration and pensions laid down in the Staff Regulations does not reflect all the factors which might affect the purchasing power of the remuneration of national civil servants.

53 The Kingdom of Spain also considers that, at the time when the Commission submitted the proposal for a regulation, there was sufficient evidence of the existence of a serious and exceptional crisis which made the application of Article 10 essential, as was apparent from, inter alia, the Commission's economic forecasts in the autumn of 2011, published on 10 November 2011, and measures relating to public sector workers adopted in Spain in 2010 and 2011.

54 The Kingdom of the Netherlands contends that, while the Commission is to supply the objective data relating to the economic and social situation, the Commission does not have the exclusive power to undertake the assessment of that situation. The Council retains, in the exception clause, a discretionary power in respect of the assessment of the economic and social situation within the Union. The Kingdom of the Netherlands adds that the President of the Commission, Mr Barroso, stated, in November 2011, when presenting the 2012 annual growth survey, that the current crisis

demanded emergency measures. Further, the terminology of Article 10 of Annex XI to the Staff Regulations does not indicate that only economic and social deterioration caused by external events justifies the application of the exception clause.

55 According to the United Kingdom, the Council may determine, in the light of the objective data supplied by the Commission, that a serious and sudden deterioration in the economic and social situation has occurred and, in that case, decide not to accept the Commission's proposal submitted pursuant to Article 3 of Annex XI to the Staff Regulations. Further, in this case, the Commission based its analysis of the question whether Article 10 of Annex XI applied on the erroneous premiss that the 'principle of parallelism' as given expression in Article 3 of Annex XI should be preserved. However, there is nothing in either the text or the purpose of Article 10 which suggests that the only relevant test of economic or social deterioration is whether there has been an event which has caused a change in the purchasing power of national civil servants and which has not been or could not be taken into consideration by the method laid down in Article 3 of Annex XI to the Staff Regulations.

Findings of the Court

56 The first ground of complaint relied on by the Commission, alleging that the Council misused its powers and infringed Article 65 of the Staff Regulations and Articles 3 and 10 of Annex XI to the Staff Regulations, concerns, in essence, the division of roles of the European Union institutions in relation to the annual adjustment of remuneration and pensions.

57 First, as regards the rules for implementing Article 65 to the Staff Regulations to be found in Annex XI thereto, it must be recalled that Article 3 of Annex XI, which sets out the 'normal' procedure for the annual adjustment of remuneration and pensions, prescribes both a mathematical calculation of the adjustment and the date when that adjustment is to take effect and does not, accordingly, leave, to either the Commission or the Council, any margin of discretion in relation to the content of the proposal or the act to be adopted.

58 As regards the exception clause in Article 10 of Annex XI to the Staff Regulations, that article grants to the institutions a wide margin of discretion as to the content of the measures to be adopted and provides that the Parliament and the Council are to decide together in accordance with the procedure laid down in Article 336 TFEU, in other words the ordinary legislative procedure which is the subject of Article 294 TFEU.

59 In that regard, it should be added that, for the period of application of Annex XI to the Staff Regulations, the procedure laid down in Article 10 of that annex constitutes the only means of taking account of an economic crisis in the adjustment of remuneration and of disapplying the criteria laid down in Article 3(2) of that annex (Case C-40/10 *Commission* v *Council*, paragraph 77).

60 It follows that the institutions are obliged to decide each year on the adjustment of remuneration, either by undertaking a 'mathematical' adjustment according to the method laid down in Article 3 of Annex XI to the Staff Regulations, or by setting aside that mathematical calculation in accordance with Article 10 thereof.

61 Further, because there are fundamental differences between those two procedures as regards how they are to be pursued, in particular in relation to the determination of the content of the decision to be adopted and in relation to the institutions involved, a procedure initiated by a proposal from the Commission on the basis of Article 3 of Annex XI to the Staff Regulations cannot be converted by the Council, on the basis of that proposal, into a procedure based on Article 10 of that annex (see, to that effect, Case C-40/10 *Commission* v *Council*, paragraph 83). Given that a proposal submitted on the

basis of Article 3 does not involve the European Parliament, contrary to the position of a proposal based on Article 10 of Annex XI to the Staff Regulations, there can be no such conversion even if the Parliament and the Council were to agree on it.

62 The fact that it is impossible for the Parliament and the Council to alter the legal basis on which the Commission has submitted a proposal constitutes an essential difference between, on the one hand, the procedures for the annual adjustment of remuneration and pensions laid down in Annex XI to the Staff Regulations and, on the other, the rules in the FEU Treaty governing the legislative activity of the European Union institutions. Under the latter rules, the Parliament and the Council, acting together, have, inter alia pursuant to Article 294(7)(a) and (13) TFEU, the option of altering, in the course of the legislative procedure, the legal basis chosen by the Commission.

63 In those circumstances, the division of roles of the institutions at the stage of initiating the procedure whereby the annual adjustment of remuneration and pensions is to take place must be assessed with regard to the specific provisions governing the procedures laid down in Annex XI to the Staff Regulations.

64 Secondly, it must be observed that the concept of '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 constitutes an objective concept.

65 Although Article 10 provides for several phases in the procedure and prescribes explicitly that the Commission alone is to supply the objective data and to submit appropriate proposals to the European Parliament and the Council, who are to decide on those proposals, Article 10 does not however specify which institution(s) has or have the task of assessing the data supplied by the Commission in order to determine whether there is or is not a deterioration within the meaning of that provision, in particular where the conclusions defended by the Commission and the Council are in conflict.

66 In order to determine, in those circumstances, which institution or institutions is competent in that regard, the context of Article 10 of Annex XI must be taken into consideration. The purpose of the annex to the Staff Regulations which contains Article 10 is to establish the rules for implementing Article 65 of the Staff Regulations.

67 Article 65(1) of the Staff Regulations provides that it is the Council which each year is to undertake a review of the remuneration of officials and other servants of the Union and to consider whether it is appropriate, as part of the economic and social policy of the Union, that remuneration should be adjusted. It follows from the wording of that provision that it confers discretion on the Council in the annual review of remuneration (see, to that effect, Case 81/72 *Commission* v *Council* [1973] ECR 575, paragraphs 7 and 11; Case 59/81 *Commission* v *Council* [1982] ECR 3329, paragraphs 20 to 22 and 32; and Case C-40/10 *Commission* v *Council*, paragraph 55).

68 Having regard to the role allocated to the Council by Article 65(1) of the Staff Regulations, the interpretation required by the scheme of Article 10 of Annex XI to the Staff Regulations is that the determination of whether there is a serious and sudden deterioration in the economic and social situation within the meaning of Article 10, in order to trigger the procedure laid down in that article, is the task, at that stage of the procedure, of the Council.

69 Moreover, taking into consideration the specific features of the procedures laid down in Articles 3 and 10 of Annex XI to the Staff Regulations, described in paragraphs 60 to 62 of this judgment, the purpose of Article 10, and in particular respect for the role which Article 10 allocates to the European Parliament, requires that the procedure laid down in Article 10 may also be triggered where the Commission and the Council are in dispute over whether there is a serious and sudden deterioration in the economic and social situation within the Union and, consequently, whether it is appropriate to

implement the procedure set out in Article 10 of Annex XI to the Staff Regulations. Where there is such disagreement, only the triggering of the Article 10 procedure makes it possible for the Parliament to be involved in the decision-making process.

70 That procedure would not necessarily be triggered and the effectiveness of Article 10 might be reduced if the Commission were alone invested with the power to decide on the existence of a serious and sudden deterioration in the economic and social situation within the Union.

71 In that regard, the Court has already held that, in the light of the clear wording of Article 10 of Annex XI to the Staff Regulations, it cannot be considered that the exercise of the power conferred on the Commission by Article 10 to submit appropriate proposals constitutes a mere option for that institution (Case C-40/10 *Commission* v *Council*, paragraph 79).

72 Accordingly, it is the task of the Council to assess the objective data supplied by the Commission, in order to determine whether there is or is not such a serious and sudden deterioration as to permit the setting aside of the 'normal' method for the annual adjustment of remuneration and pensions laid down in Article 3 of Annex XI to the Staff Regulations and to trigger the procedure laid down in Article 10 thereof, so that the Council can decide together with the Parliament on the appropriate measures proposed by the Commission in such a situation of crisis.

73 That interpretation, it may be added, cannot, contrary to what is claimed by the Commission and the Parliament, affect either the principle of institutional balance or the division of powers in this area between the European Union institutions, given that that determination by the Council represents only an intermediate phase in the procedure laid down in Article 10 of Annex XI to the Staff Regulations.

74 It must be emphasised that where the Council determines, on the basis of objective data supplied by the Commission, that there is a serious and sudden deterioration in the economic and financial situation within the Union within the meaning of Article 10 of Annex XI, the Commission is obliged to submit to the European Parliament and to the Council appropriate proposals on the basis of that article. In that situation, the Commission has, however, a margin of discretion of its own as regards the content of those proposals, namely which measures it deems to be appropriate, taking into account the given economic and social situation and, where necessary, other factors to be taken into consideration, such as those relating to management of human resources, and in particular the needs of recruitment.

75 In this case, the Council asked the Commission to supply to it objective data so that it might undertake the assessment provided for in Article 10 of Annex XI to the Staff Regulations and the Commission supplied such data to the Council, accompanied by its own assessment.

76 The respective assessments made by the two institutions came to opposing conclusions, and the Commission did not submit proposals on the basis of the Council's assessment enabling the European Parliament and the Council to decide, pursuant to Article 10 of Annex XI to the Staff Regulations according to the procedure laid down in Article 294 TFEU, on the appropriate measures in the light of the current economic and social situation within the Union.

77 In that situation, the Council was not obliged to adopt the proposal for a regulation submitted on the basis of Article 3 of Annex XI to the Staff Regulations, in other words the 'normal' method for the adjustment of remuneration, given that it was the Council's task, at that stage of the procedure, to determine whether there was a serious and sudden deterioration within the meaning of Article 10 of that annex, making it possible to trigger the procedure laid down in that article.

78 Consequently, by adopting the contested decision, the Council did not misuse its powers and did not infringe either Article 65 of the Staff Regulations or Articles 3 and 10 of Annex XI thereto.

79 As regards the argument put forward in the alternative by the Commission, that the Council infringed the conditions for the application of the exception clause laid down in Article 10 of Annex XI to the Staff Regulations, since those conditions were not met in 2011, it must be stated that, by that argument, the Commission claims that it enjoys a wide discretion in areas where an assessment of a complex economic and/or social situation is necessary and that the reasons stated in the contested decision cannot call into question the conclusion reached by the Commission in the report of 13 July 2011 and the supplementary information.

80 In the light of the conclusion in paragraph 77 of this judgment, that it is the task of the Council, at that stage of the procedure, to determine whether there is a deterioration within the meaning of Article 10 of Annex XI to the Staff Regulations, making it possible to trigger the procedure laid down in that article, the Commission cannot claim to have a discretion in relation to that determination which it is for the Council to make.

81 It follows that the Commission's argument in the alternative is ineffective.

82 In view of the foregoing considerations, the first ground of complaint must be rejected.

The second ground of complaint, relating to the refusal to adjust the correction coefficients applied to remuneration and pensions according to places of employment or residence

Arguments of the parties

83 By this ground of complaint, the Commission claims that the Council disregarded Article 64 of the Staff Regulations and Articles 1 and 3 of Annex XI to the Staff Regulations by refusing to adopt the proposal for a regulation in so far as it related to the adjustment of correction coefficients applicable to remuneration and pensions. Articles 1 and 3 are as binding on the Council with respect to coefficients as they are in respect of adjustment of salaries. In that regard, the Commission refers to its arguments set out in relation to the first ground of complaint, adding that, according to the wording and scheme of Articles 3 and 8 of Annex XI to the Staff Regulations, the adjustment of correction coefficients must take place before the end of each year, in the same way as the adjustment of the general level of remuneration and pensions.

84 The Council also infringed the principle of equal treatment since the purpose of the adjustment of correction coefficients is to maintain materially equal treatment of officials whatever their place of employment in the Union. That economic parity between Brussels and other places of employment should be ensured irrespective of the adjustment of the general level of remuneration and pensions.

85 Last, the Council infringed Article 296(2) TFEU by failing to state reasons in its decision in relation to the correction coefficients. The contested decision does not even mention Article 64 of the Staff Regulations. The assessment of the proposal for a regulation in respect of the correction coefficients is separable from the assessment in respect of the adjustment of remuneration. The purpose of those coefficients is to give effect to the principle of equal treatment whatever the general level of remuneration and they are therefore not linked to general economic and social changes within the Union. Accordingly, Article 10 of Annex XI to the Staff Regulations could not justify a refusal to adopt the correction coefficients proposed by the Commission.

86 According to the Council, the second ground of complaint is, like the first, based on the erroneous assumption that it had definitively rejected the proposal for a regulation. Further, contrary to Article 65 of the Staff Regulations, neither Article 64 thereof nor any other provision in Annex XI to the Staff Regulations provides that the Council is under an obligation to adopt a decision on the

adjustment of correction coefficients before the end of the year, even though those coefficients are, for practical reasons, regularly adjusted at the same time as the level of remuneration. In particular, Article 3 of Annex XI to the Staff Regulations makes no reference to Article 64.

87 As regards the alleged infringement of the principle of equal treatment, the Council considers that the differences there are between the correction coefficients applicable from 1 July 2010 and those proposed by the Commission in November 2011 remain overall within a margin which ensures a substantial and reasonable equivalence of treatment within the meaning of the case-law. As opposed to the adjustment of the general level of remunerations, Annex XI to the Staff Regulations does not lay down any binding mathematical method which makes it possible to identify that equivalence.

88 In relation to the alleged insufficiency of the statement of reasons, the Council repeats its argument that the contested decision is not a 'legal act' within the meaning of Article 296 TFEU and consequently the Council was not subject to the obligation imposed by that article to state reasons. In any event, the main subject-matter of the contested decision was the annual adjustment of remuneration and pensions and the application of the exception clause to that adjustment. Since the adjustment of correction coefficients is merely an ancillary matter, inter alia because of its budget impact, it should not be the subject of a specific statement of reasons, taking into consideration the case-law relating to Article 296 TFEU.

89 According to the United Kingdom, the appropriateness of any adjustment of the correction coefficients is directly dependent on any decision relating to the annual adjustment of remuneration and pensions. In the absence of any such decision, the Council was under no obligation to give a separate statement of reasons in respect of its decision not to adopt the proposal for a regulation in so far as it concerned correction coefficients.

Findings of the Court

90 In order to determine whether the second ground of complaint is well founded, the Court must examine whether the exception clause laid down in Article 10 of Annex XI to the Staff Regulations is solely applicable to the annual adjustment of the general level of remuneration or whether it also covers the annual adjustment of correction coefficients.

91 To that end, first, account must be taken of the wording of Article 10, which is drafted in general terms and makes no express reference to specific individual provisions of Annex XI to the Staff Regulations, to the adjustment of the general level of remunerations or to correction coefficients.

92 Secondly, the scheme of Annex XI to the Staff Regulations must be taken into consideration.

93 In that regard, it must be recalled that Article 10 of that annex is to be found in a separate chapter thereof, which follows the chapters containing the rules relating to the annual and intermediate adjustment of remuneration and to the creation and withdrawal of correction coefficients.

94 Further, in establishing the rules for implementing Articles 64 and 65 of the Staff Regulations, Annex XI to the Staff Regulations does not make any clear distinction between the rules concerning, first, correction coefficients and, secondly, the adjustment of the general level of remuneration, in other words the alteration of the basic salary tables. However, the rules for implementing Article 64 of the Staff Regulations are to be found in Chapter 4 of that annex and relate to the creation and withdrawal of correction coefficients, while the rules for implementing Article 65(1) of the Staff Regulations are to be found in Chapter 1 of that annex and relate to the annual review of remuneration and pensions. That review includes, under Article 3 of Annex XI, not only the adjustment of the general level of remuneration and pensions, in other words the basic salary tables, but also the adjustment of the applicable correction coefficients, as is apparent from Article 3(5).

95 It follows that the exception clause laid down in Article 10 of Annex XI to the Staff Regulations covers the annual adjustment of remuneration and pensions as a whole, including the adjustment of the applicable correction coefficients.

96 In the light of the foregoing and the Court's findings in respect of the first ground of complaint relied on by the Commission, the Council did not disregard Article 64 of the Staff Regulations or Articles 1 and 3 of Annex XI to the Staff Regulations when it decided not to adopt the proposal for a regulation submitted on the basis of Article 3, even in so far as that proposal concerned the adjustment of correction coefficients.

97 The Council also did not infringe the principle of equal treatment. By its refusal to adopt the proposal for a regulation, the Council pursued the objective of implementing the procedure laid down in Article 10 of Annex XI to the Staff Regulations. Article 10 establishes a particular procedure in the event of a serious and sudden deterioration in the economic and social situation within the Union, but does not prescribe the material outcome of that procedure. In those circumstances, it is entirely possible, and indeed necessary, to take into consideration the principle of equal treatment when deciding the content of the measures to be adopted, without that principle constituting an obstacle to the implementation of that procedure.

98 As regards the infringement of Article 296(2) TFEU claimed by the Commission, it must be recalled that, in accordance with settled case-law, although the statement of reasons required by that provision must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure, so as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to exercise its power of review, it is not required to go into every relevant point of fact and law (see, inter alia, Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 29; Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 133; and Case C-380/03 *Germany* v *Parliament and Council* [2006] ECR I-11573, paragraph 107).

99 The question whether the obligation to provide a statement of reasons has been satisfied must be assessed with reference not only to the wording of the measure but also to its context and the whole body of legal rules governing the matter in question (see, inter alia, Case C-122/94 *Commission* v *Council*, paragraph 29; *Alliance for Natural Health and Others*, paragraph 134; and *Germany* v *Parliament and Council*, paragraph 108). In particular, the reasons given for a measure are sufficient if that measure was adopted in a context which was known to the institution concerned, which enables it to understand the scope of the measure adopted (see, to that effect, inter alia, Case 125/80 *Arning* v *Commission* [1981] ECR 2539, paragraph 13; Case C-42/01 *Portugal* v *Commission* [2004] ECR I-6079, paragraphs 69 and 70; and Case C-417/11 P *Council* v *Bamba* [2012] ECR, paragraph 54).

100 In this case, the recitals in the preamble to the contested decision, in particular recitals (8), (15) and (16), clearly indicate that that decision was based on the ground that, in accordance with the Council's assessment of the economic and social situation within the Union, the material conditions for the application of Article 10 of Annex XI to the Staff Regulations were met and that, consequently, the Commission should have submitted a proposal on the basis of that article instead of submitting a proposal in accordance with Article 3 of that annex.

101 Further, the positions taken by the Commission and the Council, prior to the adoption of the contested decision, concerned the general question of whether, for 2011, it was appropriate to apply the 'normal' method laid down in Article 3 of Annex XI to the Staff Regulations or the exception clause, no distinction being made between the general level of remuneration and the correction coefficients.

102 Further, the second citation of the contested decision refers to Annex XI to the Staff Regulations as a whole.

103 In those circumstances, the statement of reasons in the contested decision covers the proposal for a regulation in its entirety and, consequently, both the adjustment of the general level of remuneration and pensions and the adjustment of correction coefficients.

104 It follows that the Council did not infringe Article 296(2) TFEU where, in the contested decision, it did not set out separately the reasons why it refused to adjust the correction coefficients in the way proposed by the Commission.

105 It follows from the foregoing that the second ground of complaint relied on by the Commission, alleging an infringement of Article 64 of the Staff Regulations, Articles 1 and 3 of Annex XI to the Staff Regulations, the principle of equal treatment and the obligation to state reasons, must be rejected as being unfounded.

106 Since neither of the grounds of complaint raised by the Commission in support of its action can be upheld, the action must be dismissed in its entirety.

Costs

107 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Council has applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay the costs. Under Article 140(1) of those rules, the Member States and the institutions which have intervened in the case must bear their own costs.

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

1. **Dismisses the action;**

2. **Orders the European Commission to pay the costs;**

3. **Orders the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.**

[Signatures]