

COUNCIL DECISION**of 19 December 2011****concerning the Commission's proposal for a Council Regulation adjusting with the 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**

(2011/866/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union laid down by Regulation (EEC, Euratom, ECSC) No 259/68, and in particular Article 65 of the Staff Regulations and Annexes VII, XI and XIII thereto, and Article 20 of the Conditions of Employment of Other Servants,

Having regard to the proposal from the Commission for a Council Regulation adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the Union and the correction coefficients applied thereto,

Whereas:

- (1) In light of a serious and sudden deterioration in the economic and social situation within the Union, on 17 December 2010, the Council requested the Commission to implement Article 10 of Annex XI to the Staff Regulations by presenting an appropriate proposal for the annual adjustment 2011. The Commission, on 13 July 2011, submitted to the Council the report on the exception clause (Article 10 of Annex XI to the Staff Regulations) — ('the report') covering the period from 1 July 2010 to mid-May 2011. On the basis of the report, the Commission concluded that the conditions for applying the exception clause were not met.
- (2) The Council did not share the Commission's conclusions as they, in the Council's view, did not reflect the economic and social situation within the Union.
- (3) Consequently and in view of the financial and economic crisis currently taking place within the Union and resulting in substantial fiscal adjustments in a great number of Member States, on 4 November 2011, the Council repeated its request to the Commission to implement Article 10 of Annex XI to the Staff Regulations on the basis of data reflecting the economic and social situation in autumn 2011 and to submit an appropriate remuneration adjustment proposal in good time to allow the European Parliament and the Council to examine and adopt it before the end of 2011.

(4) The Commission, on 25 November 2011, presented to the Council supplementary information on the Commission report on the exception clause of 13 July 2011 ('the supplementary information'). The conclusions drawn by the Commission remained that the conditions for triggering the exception clause were not met.

(5) In effect, the Commission's proposal for a Council Regulation adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the Union and the correction coefficients applied thereto follows the method set out in Annex XI to the Staff Regulations. The figure for the annual adjustment 2011 proposed by the Commission is 1,7 %.

(6) The Council considers that neither of the documents submitted by the Commission, namely, the 'report' 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.

(9) Moreover, in the Council's opinion, this serious and sudden deterioration of the economic and social situation could not be reflected quickly enough in the officials' remunerations through the application of the method.

(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 European Court of Justice held in Case C-40/10 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) of the Treaty on European Union, 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,

DECIDES NOT TO ADOPT THE COMMISSION'S PROPOSAL for a Council Regulation adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the Union and the correction coefficients applied thereto.

Done at Brussels, 19 December 2011.

For the Council

The President

M. KOROLEC