

## Adjustment of remuneration and pensions: sidetracking the institutional setup

The Council's refusal to approve the adjustment of remuneration and pensions is worrying not only because it violates a right of the staff enshrined in the StaffRegs, but also because it highlights the fact that political 'appropriateness' increasingly prevails over the rule of law.

Indeed, from a legal point of view, the Council's formal [Decision](#) « *not* to adopt the Commission's proposal » creates an original and indeed anomalous situation.

The Council:

- o Failed to act on the basis of the [Commission's proposal for a Regulation](#) adjusting remuneration and pensions;
- o Adopted a « Decision » which is not founded on any Commission proposal;
- o Applied *de facto* the exception clause outside the strict framework fixed by Article 10 of Annex XI of the Staff Regs, in violation of the case-law of the Court of Justice ([Case C-40/10](#), para. 77);

"For the period of application of [Annex XI], the procedure laid down in Article 10 thereof constitutes the **only means** of taking account of an economic crisis in the adjustment of remuneration and therefore of disapplying the criteria laid down in Article 3(2) of that Annex".

- o Unilaterally decided to apply the exception clause, whereas under the Lisbon Treaty, the co-decision procedure involving the Parliament applies.
- o Omitted, in its haste, to take any decision on adjusting correction coefficients, which for most duty stations would entail savings to the budget ...

The Council, which in fact is expecting of the Commission a 'political gesture' rather than complying with the law, has no grounds for taking legal action. Whether it would bring an action for annulment (against which 'act'?) or against the Commission's failure to act (when the Commission has 'defined its position' in [its reports](#)), it is bound to fail on the admissibility.

For the Commission, defending legality and, at the same time, its institutional role as opposed to the inter-governmental method is becoming mandatory.

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