



Legal Service

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INFORMATION NOTE

JUDGMENT OF THE COURT OF JUSTICE - FULL COURT

of 27 November 2012 in Case C-370/12

**Reference for a preliminary ruling from Supreme Court (Ireland),
Thomas Pringle v Government of Ireland, Ireland and the Attorney General**

Subject: Validity of European Council Decision 2011/199/EU and compatibility of the ESM Treaty with the EU Treaties

Language: English

Operative part: " 1. Examination of the first question referred has disclosed nothing capable of affecting the validity of European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro.

2. Articles 4(3) TEU and 13 TEU, Articles 2(3) TFEU, 3(1)(c) and (2) TFEU, 119 TFEU to 123 TFEU and 125 TFEU to 127 TFEU, and the general principle of effective judicial protection do not preclude the conclusion between the Member States whose currency is the euro of an agreement such as the Treaty establishing the European stability mechanism [...], concluded at Brussels on 2 February 2012, or the ratification of that treaty by those Member States.

3. The right of a Member State to conclude and ratify that Treaty is not subject to the entry into force of Decision 2011/199. "

Observations:

1. The Irish Supreme Court's **first question** concerns the **validity of Decision 2011/199/EU**. The key issue is whether the European Council was justified in using the simplified revision procedure of Article 48(6) TEU to introduce a new Article 136(3) into the TFEU. Article 136(3) TFEU allows for the establishment by the Member States whose currency is the euro of a stability mechanism.

2. Article 48(6) TEU requires that an amendment introduced by simplified revision procedure must concern Part Three of the TFEU and it must not increase the competences of the Union. Mr Pringle argued that the Decision 2011/199 increases the Union's competences and encroaches on its exclusive competence in monetary policy and its competence in the coordination of Member States' economic policies.
3. The Court begins by noting that the stability mechanism "*serves to complement the new regulatory framework for strengthened economic governance of the Union*".¹ The Court finds that the stability mechanism pursues the objective of stability of the euro area as a whole. This objective is distinct from the primary objective of monetary policy, which is price stability. The grant of financial assistance does not fall within monetary policy. The ESM is thus not capable of affecting the Union's exclusive competence in monetary policy.²
4. Nor does the ESM affect the Union's competence in the area of the coordination of the Member States' economic policies. The Court recalls that the role of the Union is restricted to coordinating measures and the Treaties do not confer any power on the Union to establish a mechanism of this kind (notably not in Articles 122 and 143 TFEU). The Court finds that Member States whose currency is the euro are entitled to conclude an agreement between themselves for the establishment of such a mechanism. However, they must respect Union law when exercising their competences in this area.
5. The Court therefore concludes that the the modification of Article 136 TFEU could be made by the simplified revision procedure of Article 48(6) TEU.
6. The Irish Supreme Court's **second question** concerns the **compatibility of the ESM Treaty with a whole series of articles of the EU Treaties**. The Court notes that the Member States are precluded from concluding an agreement between themselves which might affect common rules or alter their scope.³ It then engages in a detailed analysis of the compatibility of the ESM Treaty with the TFEU, with a particular focus on the economic policy provisions set out at Articles 121 to 126 of the TFEU.
7. In respect of Article 122 TFEU, which served as the legal basis for the establishment of the EFSM, the Court notes that the establishment of the ESM does not affect the power of the Union to grant financial assistance when the conditions of that article are fulfilled.⁴ Furthermore, nothing in that article "*indicates that the Union has exclusive competence to grant financial assistance to a Member State.*"⁵ The Member States remain free to establish a mechanism such as the ESM, provided that, in its operation, it complies with Union law and with measures adopted by the Union in the area of coordination of Member States' economic policies.
8. Regarding the 'no bail-out clause' in Article 125 TFEU, the Court rules that "*that article is not intended to prohibit either the Union or the Member States from granting any form of financial assistance whatever to another Member State.*"⁶ The objective of Article 125 TFEU is to ensure that Member States remain subject to the logic of the market in order to maintain budgetary discipline. Activation of the financial assistance is therefore compatible with Article 125 TFEU only if it is indispensable for the

¹ Point 58.
² Points 52 to 57.
³ Point 100.
⁴ Point 104.
⁵ Point 120.
⁶ Point 130.

safeguarding of the financial stability of the euro area as a whole and subject to strict conditions.

9. The Court further notes that *"the ESM will not act as guarantor of the debts of the recipient Member State. The latter will remain responsible to its creditors for its financial commitments."*⁷ The Member States who participate in the ESM *"are not liable for the commitments of a Member State which receives stability support and nor do they assume those commitments, within the meaning of Article 125 TFEU."*⁸
10. The Court also notes that the conditions established in the Treaties and in the earlier case-law concerning the use of the EU institutions outside the Union framework are satisfied. The Member States may confer tasks on the institutions outside the framework of the Union in areas which do not fall within the Union's exclusive competence, provided that those tasks do not alter the essential character of the powers conferred on the institutions by the TEU and TFEU. Regarding its own role, the Court accepts that a dispute to which the ESM is a party may be considered to be a dispute between Member States for the purposes of Article 273 TFEU. The use of EU institutions by the ESM is therefore compatible with the EU Treaties.⁹
11. Finally, in response to the Irish Supreme Court's **third question**, the Court rules that, since the proposed amendment of Article 136 TFEU merely confirms the existence of a power already possessed by the Member States, **a Member State may conclude and ratify the ESM Treaty prior to the entry into force of Decision 2011/199.**¹⁰

(signed)

(signed)

(signed)

Christian PENNERA

Anders NEERGAARD

Richard CROWE

Agents of the European Parliament

Addressees :

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⁷ Point 138.

⁸ Point 146.

⁹ Points 158 to 165 and 171 to 175.

¹⁰ Furthermore the judgment contains an interpretation of a range of Treaty provisions, notably Articles 4(3), 13 and 20 TEU and of Articles 2(3), 3(2), 119, to 121, 123 and 126 TFEU as well as of Article 267 TFEU in respect of a simplified revision of the Treaty under Article 48(6) TEU.

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