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# The European Stability Mechanism Before the Court of Justice of the European Union

Comments on the Pringle Case

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# Abbreviations

CDE	Cahiers de droit européen
CFCMLR/RTDF	Corporate Finance and Capital Law Review/Revue Trimestrielle de Droit Financier
CJEL	Columbia Journal of European Law
CJEU/ ECJ	Court of Justice of the European Union/European Court of Justice
CMLRev	Common Market Law Review
DCDSI	Diritto comunitario e degli scambi internazionali
DVBI	Deutsches Verwaltungsblatt
EC	European Communities
ECB	European Central Bank
ECFLR	European Company and Financial Law Review
ECR	European Court Report
EFSF	European Financial Stabilization Facility
EFSM	European Financial Stabilization Mechanism
ELR	European Law Review
EMU	Economic and Monetary Union
ESCB	European System of Central Banks
ESM	European Stability Mechanism
EU	European Union
EuR	Europarecht
Europe	Revue Europe
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EWS	Europäisches Wirtschafts- und Steuerrecht
GCEU/CFI	General Court of the European Union/Court of First Instance
GDAmM	Giornale di Diritto amministrativo
GLJ	German Law Journal
ICLQ	International and Comparative Law Quarterly
JCP	Jurisclasser périodique (Semaine juridique)
JDI (Clunet)	Journal du droit International
JRP	Journal für Rechtspolitik
MJ	Maastricht Journal
NCB	National Central Bank
NVwZ	Neue Zeitschrift für Verwaltungsrecht

Nyr	Decisions of the European Union judicature not yet reported
OJ	Official Journal of the European Communities/European Union
ÖJZ	Österreichische Juristen-Zeitung
OMT	Outright Monetary Transactions
Para(s)	Paragraph(s) of the judgment of the CJEU or of the Articles of the Treaty on the European Union and the Treaty on the Functioning of the European Union
RAE/LEA	Revue des affaires européennes/Law and European affairs
RCGI	Rivista della cooperazione giuridica internazionale
RDUE	Revue du droit de l'Union européenne
RGDIP	Revue Générale de droit international public
RMCUE	Revue du Marché commun et de l'Union européenne
RTDE	Revue trimestrielle de droit européen
SGP	Stability and Growth Pact
SMP	Securities Market Program
STACOG Treaty	Stability Coordination and Governance Treaty
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
ZEuS	Zeitschrift für Europarechtliche Studien
ZWBR	Zeitschrift für Wirtschafts- und Bankrecht

# Chapter 1

## Introduction: Background

The Pringle case is to be welcomed, the Court of Justice of the European Union (CJEU or the Court), in its full composition, thoroughly examined the core provisions of the European Monetary Union (EMU) (Articles 121–127 Treaty on the Functioning of the European Union or TFEU).

In the past the CJEU had the opportunity to interpret exclusively the provisions of the economic pillar of the EMU. In 2004, the Court took position on the first Stability and Growth Pact (SGP)<sup>1</sup> in the case *Commission v Council*<sup>2</sup> regarding the particular procedure of excessive deficits (now Article 126 TFEU) vis-à-vis some Member States (Germany and France). The CJEU pointed out the peculiarities of this procedure and put in evidence the weaknesses of the mechanisms provided for in the Treaties. The issues of this litigation were the scope of application of Article 126 TFEU and the interpretation of the main rules of the SGP. The assessment and conclusions developed in such occasion were limited<sup>3</sup> and a debate started concerning the need to reinforce the legal framework of the rules regarding the budgetary discipline of the Member States and the necessity to adapt the SGP.

The first reaction in that respect was the amendment of the SGP in 2005<sup>4</sup> shortly after the judgment *Commission v Council*, mentioned above. Despite the strengthening of the legal framework of the SGP in its preventive and corrective arms as

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<sup>1</sup> Council Regulation (EC) n°1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209, p. 1) and Council Regulation (EC) n°1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, p. 6).

<sup>2</sup> Case C-27/04, *Commission v Council*, [2004] ECR I-6649.

<sup>3</sup> See Bandilla (2005), pp. 538–549 sp. 541; Chaltiel (2004), pp. 509–514, sp. 512; Häde (2004), pp. 750–764, sp. 752; Henseler (2004), pp. 541–558, sp. 554; Maher (2004), pp. 831–841, sp. 833; Presutti (2005), pp. 65–81, sp. 77–78.

<sup>4</sup> Council Regulation (EC) n°1055/2005 of 27 June 2005 amending Regulation (EC) n°1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, (OJ L 174, p. 1) and Council Regulation (EC) n°1056/2005 of 27 June 2005 amending Regulation (EC) n°1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 174, p. 5).