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WRITTEN OBSERVATIONS

submitted to

THE COURT OF JUSTICE

pursuant to Article 23 of the Statute of the Court of Justice of the European Union

BY THE SLOVAK REPUBLIC

represented by Beatrix Ricziová, authorised representative of the Slovak Republic

in Case C-370/12 *Pringle*

REFERENCE FOR A PRELIMINARY RULING

submitted by the Supreme Court, Ireland

I – Introduction

- 1 The Slovak Republic was notified on 20 August 2012 of the reference for a preliminary ruling in Case C-370/12 *Pringle*. That order for reference was submitted by the Irish Supreme Court (‘the referring national court’). The Slovak Republic hereby submits the following observations in the above case:

II – Questions referred for a preliminary ruling

- 2 The referring national court submitted the following questions for a preliminary ruling:

‘(1) Whether European Council Decision 2011/199/EU of 25 March 2011 is valid:

- Having regard to the use of the simplified revision procedure pursuant to Article 48(6) TEU and, in particular, whether the proposed amendment to Article 136 TFEU involved an increase in the competences conferred on the Union in the Treaties;*
- Having regard to the content of the proposed amendment, in particular whether it involves any violation of the Treaties or of the general principles of law of the Union.*

(2) Having regard to

- Articles 2 and 3 TEU and the provisions of Part Three, Title VIII TFEU, and in particular Articles 119, 120, 121, 122, 123, 125, 126, and 127 TFEU;*
- the exclusive competence of the Union in monetary policy as set out in Article 3(1)(c) TFEU and in concluding international agreements falling within the scope of Article 3(2) TFEU;*
- the competence of the Union in coordinating economic policy, in accordance with Article 2(3) TFEU and Part Three, Title VIII TFEU;*
- the powers and functions of Union Institutions pursuant to principles set out in Article 13 TEU;*
- the principle of sincere cooperation laid down in Article 4(3) TEU;*
- the general principles of Union law including in particular the general principle of effective judicial protection and the right to an effective remedy as provided under Article 47 of the Charter of Fundamental Rights of the European Union and the general principle of legal certainty;*

is a Member State of the European Union whose currency is the euro entitled to enter into and ratify an international agreement such as the ESM Treaty?

(3) If the European Council Decision is held valid, is the entitlement of a Member State to enter into and ratify an international agreement such as the ESM Treaty subject to the entry into force of that Decision?’

- 3 The Slovak Republic expresses its views on the above questions in the following sections of its observations. In doing so, it nevertheless points out that the

applicant's statements and arguments as set out by the referring national court in the order for reference are often very general and brief, and therefore they may only be discussed in very general terms. Furthermore, on account of the complete absence of justification for the objections in the order for reference, the Slovak Republic will not discuss the objections concerning Articles 2, 3 and 13 TEU and Articles 119 and 120 TFEU.

III – The first question referred

- 4 By its first question, the referring national court inquires as to 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 ('the contested decision') in the light of, on the one hand, the use of the simplified revision procedure set out in Article 48(6) TEU and, on the other hand, the content of the proposed amendment and the possible violation of the Treaties¹ or of general principles of EU law.

(a) Jurisdiction of the Court of Justice of the European Union in the present proceedings

- 5 In the opinion of the Slovak Republic, first and foremost it is necessary to point out that the proceedings in this case are historically the first proceedings where the validity of a European Council decision adopted under Article 48(6) TEU has been called into question. Attention must be drawn to the fact that the aim of the contested decision is an amendment to primary EU law. It is generally the case that the Court of Justice does not have jurisdiction to adjudicate on the validity of primary EU law.² Furthermore, that amendment to the primary law is to become effective on exactly the date when the contested decision comes into force. However, in accordance with Article 48(6) TEU, that cannot take place until the contested decision is approved by the EU Member States in accordance with their respective [constitutional] requirements.³ That only confirms the role of the EU Member States as the 'principal parties to the Treaties'.
- 6 On the other hand, it is true that, since the entry into force of the Lisbon Treaty, the European Council is an EU institution,⁴ and thus its decisions should in

¹ – By 'Treaties' the Slovak Republic is here referring to the founding Treaties, that is, the Treaty on European Union ('TEU') and the Treaty on the Functioning of the European Union ('TFEU').

² – So far as concerns the specific case of references for a preliminary ruling, Article 267(1)(a) TFEU confers on the Court of Justice jurisdiction to comment on the interpretation of the Treaties, but not on their validity.

³ – See the second subparagraph of Article 48(6) TEU *in fine*. Even if the contested decision were to be approved today by all Member States of the EU, the wording of that decision provides that it is not to become effective before 1 January 2013.

⁴ – See Article 13 TEU.

principle fall within the jurisdiction of the Court of Justice under Article 267(1)(b) [TFEU].⁵ Nevertheless, having regard to the particular nature and aim of the contested decision, the Slovak Republic submits that the Court of Justice's jurisdiction to adjudicate on the validity of that decision should be limited.

- 7 Here it is necessary, first of all, to take into consideration Article 48(6) TEU itself and the conditions laid down in that provision. An amendment to primary law must be made by an act of the European Council, and the conditions under which such an act can be adopted are clearly defined in that article, that is to say, directly in primary EU law. The review of whether those conditions have been observed therefore clearly falls fully within the jurisdiction of the Court of Justice.
- 8 So far as concerns the actual content of the proposed amendments to primary EU law, the Slovak Republic submits that it is necessary to take into account the broad discretion which the EU constitutional legislator has in determining the further development of the constitutional framework for the functioning of the EU. It is also necessary to take into account the competences and the roles granted to the EU institutions in Article 48(6) TEU. Therefore, according to the Slovak Republic, in principle the Court of Justice should not have jurisdiction to evaluate whether the actual content of the proposed amendment to primary law is in accordance with existing primary EU law. On the other hand, the Slovak Republic concedes that the Court of Justice could and should have jurisdiction to intervene in the case of decisions under Article 48(6) TEU where the proposed amendment, for example, manifestly and directly conflicts with other existing provisions of primary EU law which continue to be effective and this cannot be overcome by a coherent interpretation of both provisions. Such a situation would infringe the principle of legal certainty, which is one of the fundamental principles of EU law, and the jurisdiction of the Court of Justice could be established on account of its role to ensure that in the interpretation and application of the Treaties the law is observed.⁶ However, as the Slovak Republic explains in points 16 to 30 of these observations, the amendment to Article 136 TFEU by the European Council's contested decision does not give rise to that type of conflict in any case.

(b) Observance of the requirements for the use of the simplified revision procedure

- 9 The Slovak Republic will now concentrate in these observations on whether the requirements for the application of the simplified revision procedure under Article 48(6) TEU were observed in the adoption of the contested decision.
- 10 It is apparent from the order for reference that the applicant is not calling into question whether the procedural requirements of the simplified revision

⁵ – According to that provision, the Court of Justice of the EU shall have jurisdiction to give preliminary rulings concerning ‘the validity and interpretation of acts of the institutions ... of the Union’.

⁶ – Article 19(1) TEU.

procedure, as set out in Article 48(6) TEU, were observed. It is therefore sufficient to state that in the adoption of the contested decision those requirements were observed. Moreover, the order for reference does not contain objections on the part of the applicant on the grounds that the contested decision entailed the revision of primary EU law outside Part Three of the TFEU. Such an argument by the applicant could not succeed in any case either, since Article 136 TFEU, to which a new paragraph is to be added pursuant to the contested decision, is found in Part Three of the TFEU.

- 11 The applicant's objections are directed against failure to observe the requirements set out in the third subparagraph of Article 48(6) TEU in so far as the decision adopted under that provision '*shall not increase the competences conferred on the [EU] in the Treaties*'.
- 12 So far as concerns the aim of the requirement in Article 48(6) TEU not to increase the competences of the EU, it is evident that that provision is intended to prevent the use of the simplified revision procedure for amendments to primary law which would entail a transfer of competences from the Member States to the EU. The Slovak Republic is convinced that that requirement was observed, that is, that the contested decision clearly does not have the effect of increasing the competences conferred upon the EU. The arguments of the applicant, included in the order for reference as support for the assertion that the use of the simplified revision procedure for the adoption of the contested decision was unlawful, cannot in any way alter that fact. The Slovak Republic, in this section, expresses its view only in relation to two arguments, which are relevant to the assessment of the legality of the use of the simplified revision procedure.⁷
- 13 First, according to the national court, the applicant objects that '*the proposed amendment increases and/or reduces the competences of the [EU]*'.⁸ Second, the national court states that, in the applicant's opinion, the establishment of the mechanism referred to in the new Article 136(3) TFEU '*entails the creation of new competences in connection with such a closer Union*'.⁹

⁷ – On the other hand, in this section of its observations the Slovak Republic does not express its view on arguments 1, 3, 5, 6, 7, 8 and 9 in Part IV(a) of the order for reference – 'Use of the simplified revision procedure'. Those arguments are based on the objection concerning the reduction in the competences of the EU rather than on that concerning their increase, and/or they concern the content of the Treaty establishing the European Stability Mechanism ('the ESM Treaty') rather than the contested decision as such.

⁸ – Part IV (a) of the order for reference – 'Use of the simplified revision procedure', point 2. Inasmuch as the applicant states that the proposed amendment '*increases and/or reduces*' the competences of the EU, it is necessary to point out that the argument on the reduction of competences is irrelevant for the purposes of the assessment of the legality of the use of the simplified revision procedure, since Article 48(6) TEU only expressly prohibits increasing the competences of the EU. The Slovak Republic otherwise notes here that it is not completely clear what grounds the applicant has for alleging the concurrent increase and reduction of the competences of the EU.

⁹ – Part IV(a) of the order for reference – 'Use of the simplified revision procedure', point 4.

- 14 The applicant does not, however, specify what new competence the new Article 136(3) TFEU confers on the EU or its institutions or forms the legal basis for. It is therefore, in the opinion of the Slovak Republic, sufficient to state in response to both arguments that it follows neither from the new Article 136(3) TFEU nor from any other provision of the contested decision that the competences conferred on the EU in the Treaties could be increased on the basis of that decision. The new Article 136(3) TFEU refers only to Member States whose currency is the euro, and that provision does not contain any wording from which it would be possible to infer that competences have been granted to the EU and/or any of its institutions. It is therefore not possible to argue that the contested decision has increased the competences conferred on the EU in the Treaties.
- 15 It follows from the above that it was permissible for the contested decision to have been adopted by the simplified revision procedure and that in its adoption all the requirements set out in Article 48(6) TEU were observed.

(c) Alleged conflict between the content of the decision and existing EU law

- 16 In addition, further to the delimitation of the jurisdiction of the Court of Justice described above,¹⁰ it is necessary to discuss the issue of the alleged conflict between the content of the contested decision and some provisions of the Treaties or principles of EU law, as claimed by the applicant in the national proceedings. The considerations of the Slovak Republic in this respect can, having regard to the brevity of the order for reference,¹¹ provide no more than a relatively general outline. Nevertheless, it cannot be claimed, on any view, that the decision at issue would give rise to inconsistencies within primary EU law which would infringe the principle of legal certainty and thereby justify declaring the contested decision invalid.
- 17 First, although the applicant in the national proceedings objects that the contested decision conflicts with general principles of EU law,¹² it is not possible to express a view on this objection since he does not in any way specify in what the conflict concerned consists and on what grounds this objection is based.¹³ In any case, the Slovak Republic is of the opinion that there is no such conflict. Moreover, there is no clear reason why the contested decision introducing the new provision Article 136(3) TFEU should conflict with the principle of sincere cooperation enshrined in Article 4(3) TEU.¹⁴ On the contrary, the creation and functioning of the stability mechanism, provision for which will be made in primary law, will be

¹⁰ – See points 5 to 8 of these observations.

¹¹ – See point 3 of these observations.

¹² – Part IV(a) of the order for reference – ‘Arguments that the European Council Decision is contrary to the existing treaties and primary norms of Union law’, point 1.

¹³ – The Slovak Republic discusses the alleged conflict between the ESM Treaty and the principles of effective judicial protection and legal certainty in point 35 of these observations.

¹⁴ – Part IV(a) of the order for reference – ‘Arguments that the European Council Decision is contrary to the existing treaties and the primary norms of Union law’, point 2(a).

an example of the sincere cooperation of the Member States with the aim of securing the stability of the eurozone as a whole.

- 18 Second, according to the referring national court, the applicant in the national proceedings claims that the contested decision conflicts with Article 3 TFEU on the grounds that it grants the Member States competence in the monetary policy of the Member States whose currency is the euro or that the matter of granting financial assistance falls within exclusive EU competences for other reasons.¹⁵ The Slovak Republic notes in this connection that primary EU law does not contain a definition of what constitutes monetary policy. It is, however, possible to characterise it in general terms as the goal-orientated influencing of the amount of currency in circulation and its primary objective in the European System of Central Banks ('ESCB') is to maintain price stability.¹⁶ Otherwise, neither the roles of the ESCB nor the monetary policy instruments of the European Central Bank (which, together with the national banks of the Member States whose currency is the euro, conducts the monetary policy of the EU)¹⁷ include the establishment of a mechanism serving to secure the stability of the eurozone as a whole.
- 19 It is evident from the above that the newly-created Article 136(3) TFEU, allowing for the establishment of a stability mechanism which could grant financial assistance on terms of strict conditionality, does not fall within the field of monetary policy. That article must be interpreted in the sense that it does not seek to influence the amount of currency in circulation or to maintain price stability. That provision in actual fact concerns emergency measures, which are to be activated if indispensable and which are needed to secure the financial stability of the Member States in the event of serious problems with the financing of their government debt. Nor does it follow from any other provision of EU law that granting such exceptional financial assistance would in any way encroach upon the existing exclusive competences of the EU.
- 20 Furthermore, so far as concerns the alleged conflict with Article 127 TFEU, as incorrectly claimed by the applicant in the context of the provisions on economic policy,¹⁸ the Slovak Republic takes the view, for the same reasons as set out in the previous two paragraphs, that there is no infringement of the exclusive competences of the EU in that case either. Accordingly, the argument that Article 136(3) encroaches upon the exclusive competences of the EU is incorrect.

¹⁵ – Part IV(a) of the order for reference – 'Use of the simplified revision procedure', points 1, 5 and 8, and, concerning Article 127 TFEU, 'Arguments that the European Council Decision is contrary to the existing treaties and primary norms of Union law', point 2.

¹⁶ – Article 127(1) TFEU.

¹⁷ – See Article 282 TFEU.

¹⁸ – Part IV(a) of the order for reference – 'Arguments that the European Council Decision is contrary to the existing treaties and primary norms of Union law', point 2.

- 21 Third, the applicant in the national proceedings further argues that the contested decision should also be declared invalid because the proposed Article 136(3) TFEU confers a new competence on the stability mechanism not at present provided by primary EU law, consisting in the granting of financial assistance subject to strict conditionality.¹⁹ This seems a peculiar argument, since it is not clear why competences which are not even granted to the EU (according to the applicant) should be problematic. The Slovak Republic also points out that, in its view, the proposed Article 136(3) TFEU in actual fact does not confer competences, but supports the competences which the Member States already have at present. The relevant competence of the Member States, connected with their economic policy, was never transferred to the EU in the Treaties. The Member States whose currency is the euro may join together and entrust a collective entity outside the framework of the EU with granting financial assistance subject to strict conditionality such that their obligations under EU law are observed at the same time. Such an approach does not, in the opinion of the Slovak Republic, infringe EU law in any way.
- 22 Fourth, it is necessary to take into account the contravention by the contested decision, as claimed by the applicant, of the provisions of Chapter I, Title VIII of the TFEU on Economic Policy, specifically Articles 121(2), 122(2), 123, 125 and 126 TFEU, including the object and spirit underlying such provisions as a whole.²⁰ So far as concerns the alleged inconsistency with Article 121(2) TFEU,²¹ as the Slovak Republic has stated in point 21 of these observations, the newly-created Article 136(3) TFEU is connected with the economic policy of the Member States. Nevertheless, it also concerns the autonomous field of fiscal stability, which forms the background for the implementation of economic and other government policies. Therefore, there cannot be any conflict, even hypothetical, with the competences of the European Council to coordinate the economic policy of the Member States by means of the adoption of basic European Council guidelines through the procedure set out in Article 121(2) TFEU.
- 23 Furthermore, concerning the alleged inconsistency with Article 122(2) TFEU, the Slovak Republic does not see in the future Article 136(3) TFEU any restriction of the competence of the European Council to decide on financial assistance by the EU in cases where it is provided for by Article 122(2) TFEU. The Slovak Republic also does not consider that that provision would prevent Member States in exceptional circumstances from accepting assistance from providers other than the European Council. Otherwise, it must be stated that Article 122(2) TFEU regulates the issue, falling within the competences of the EU, of, specifically, the competence of the European Council to grant financial assistance on the proposal of the European Commission. On the other hand, the stability mechanism

¹⁹ – Part IV(a) of the order for reference – ‘Use of the simplified revision procedure’, point 6.

²⁰ – Part IV(a) of the order for reference – ‘Arguments that the European Council Decision is contrary to the existing treaties and primary norms of Union law’, point 2.

²¹ – This issue also relates to Article 2(3) TFEU.

established by the Member States in accordance with Article 136(3) TFEU will be an independent mechanism, which will grant assistance on its own behalf and on the basis of its own decisions, that is to say, outside the competences of the EU institutions, albeit with their certain involvement. As the Slovak Republic has stated in point 21 of these observations, in its opinion the Member States independently also have such a competence at present. The establishment of the stability mechanism neither leads to the loss by the Member States of that competence nor to its transfer to the EU institutions, but to the authorisation of an independent entity outside the institutional framework of the EU which will be able to grant assistance more effectively than if it were granted by the Member States individually. Therefore, those provisions will in the future complement each other, in the same way as Article 122(2) TFEU at present complements Articles 143 and 144 TFEU.

- 24 In addition, in relation to the alleged conflict between the contested decision and Article 123 TFEU, the Slovak Republic draws attention to the fact that the terms used in that provision, like those used in Article 125 TFEU, are explained in more detail in Regulation No 3603/93.²² Article 123 TFEU prohibits overdraft facilities or any other type of credit facility with the ECB or with the central banks of the Member States. As provided for in Article 3 of Regulation No 3603/93, ‘national central banks’ are the central banks of the Member States and the Luxembourg Monetary Institute. On any view, it is evident that the stability mechanism provided for in Article 136(3) TFEU does not mean any of those institutions. Therefore, without it being necessary to analyse in more detail terms such as ‘overdraft facilities’ or ‘debit balance’,²³ it is possible to exclude any kind of material overlapping or conflict between those provisions.
- 25 As regards the clause excluding liability for commitments, contained in Article 125 TFEU, the Slovak Republic considers that it is possible to interpret the future Article 136(3) TFEU consistently with this provision also. It submits that Article 125 TFEU neither prohibits the Member States whose currency is the euro from granting financial assistance subject to strict conditionality nor the establishment and financing of an independent stability mechanism which, on its own behalf and if indispensable, would grant such assistance. The Member States whose currency is the euro and the mechanism established by them will not assume the commitments of the State in financial difficulties but will merely grant it assistance subject to strict conditionality, intended to enable it to overcome a difficult period during which it will not be able to return to the international credit markets under market conditions. The State in financial difficulties will remain liable for its commitments. Therefore, in the opinion of the Slovak Republic, the action of the Member States whose currency is the euro, which participate in that form of assistance by establishing and guaranteeing the financing of such a

²² – Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty, OJ 1993 L 332, p. 1 (‘Regulation No 3603/93’).

²³ – Article 1(1)(a) of Regulation No 3603/93.

stability mechanism, does not infringe Article 125 TFEU and the future Article 136(3) TFEU is fully compatible with that provision.

- 26 As regards the alleged inconsistency between the contested decision and Article 126 TFEU, the Slovak Republic points out that it is not specified in any way in the order for reference what that inconsistency is supposed to consist in. It submits that, in any event, it will not be possible to interpret and apply the future Article 136(3) TFEU so as to violate or circumvent the enforcement of the prohibition on excessive government deficits. This is guaranteed primarily by the wording which provides that the stability mechanism is to be activated only ‘*if indispensable*’ and that the granting of any required financial assistance is to be made subject to ‘*strict conditionality*’.
- 27 To summarise, having regard to points 22 to 26 of these observations, the contested decision does not conflict with Articles 121(2), 122(2), 123, 125 and 126 TFEU in Chapter I, Title VIII of the TFEU on Economic Policy. In addition, neither the above considerations nor the considerations of the referring national court have revealed any reason why the contested decision should conflict with the object and spirit underlying those provisions as a whole.
- 28 Fifth and lastly, the Slovak Republic will express its view on the alleged infringement of the Treaties in accordance with the principle laid down in the judgment in Case C-540/03 *Parliament v Council*.²⁴ According to the explanation given by the referring national court, the applicant argues that the contested decision provides a vague and open-ended amendment to primary law which enables the granting of financial assistance without the restrictions which are provided for in the Treaties.²⁵ In this respect, the Slovak Republic essentially agrees with the applicant that EU law does not allow secondary law to authorise the Member States to infringe primary law. However, it does not agree that that principle follows specifically from the judgment in Case C-540/03. In any case, the applicant applies that principle on an erroneous assumption when he submits that Article 136(3) TFEU enables the Member States to grant assistance infringing other provisions of EU law. The Slovak Republic does not agree with that assumption by the applicant and takes the view that Article 136(3) TFEU will not in any event enable Member States to grant financial assistance which would not be compatible with EU law.²⁶
- 29 The Slovak Republic would like to state, in particular, that it regards the applicant’s argument on the formation of a closer economic union and the alleged conflict for that reason with EU law²⁷ as rather opaque. It nevertheless submits

²⁴ – See judgment in Case C-540/03 *European Parliament v Council of the European Union* [2006] ECR I-5769.

²⁵ – Part IV(a) of the order for reference – ‘Arguments that the European Council Decision is contrary to the existing treaties and primary norms of Union law’, point 3.

²⁶ – See judgment in Case 235/87 *Matteucci* [1988] ECR 5589, paragraph 19.

²⁷ – Part IV(a) of the order for reference – ‘Use of the simplified revision procedure’, point 3.

that the present approach, directed at the establishment of the European stability mechanism, might in the future be seen as a further desirable step towards integration of the European States, and is currently fully compatible with the existing rules of EU law.

- 30 Having regard to the above, the Slovak Republic takes the view that there is no conflict between the content of the contested decision and the provisions of the Treaties or the principles of EU law, as claimed by the applicant in the national proceedings.

(d) Summary

- 31 Having regard to the reasons set out above, the Slovak Republic takes the view that, in the adoption of the contested decision, all the requirements for the use of the simplified revision procedure provided for in Article 48(6) TEU were observed. Furthermore, there is no conflict between Article 136(3) TFEU, introduced by the contested decision, and the other provisions of primary EU law, or the general principles of EU law, which could justify declaring the contested decision invalid. For that reason the Slovak Republic proposes that the Court of Justice state in response to the first question referred that the contested decision is valid with regard to the objections of the applicant as set out by the referring national court.

IV – Second question referred

- 32 By its second question, the referring national court essentially asks whether the provisions of primary EU law and the general principles of EU law are to be interpreted as precluding a Member State whose currency is the euro from entering into and ratifying an international treaty such as the ESM Treaty. The grounds on which the applicant, in the national proceedings, claims that the ESM Treaty is incompatible with EU law are largely identical to the grounds on which he claims that the contested decision is invalid. In the opinion of the Slovak Republic, the ESM Treaty specifically regulates the rules on the establishment and the functioning of the stability mechanism, as provided for in Article 136(3) TFEU. It is also fully compatible with this provision and does not go beyond it. The Slovak Republic therefore draws attention to points 9 to 31 of these observations, in which it has explained why the contested decision complies with primary EU law and the general principles of EU law. On the same grounds, the ESM Treaty also complies with primary EU law and the general principles of EU law.
- 33 The objections made by the applicant in the national proceedings to the ESM Treaty, which go beyond his objections to the contested decision and the future Article 136(3) TFEU, are based, on the one hand, on the contention that the functions which must be performed by the European Commission and the European Central Bank in the context of the ESM Treaty have no legal basis in

the Treaties and are liable to be incompatible with the Treaties²⁸ and, on the other hand, on the contention that the ESM Treaty infringes the general principles of effective judicial protection and legal certainty.²⁹

- 34 So far as concerns the first contention, the Slovak Republic considers that the roles which may be performed by the European Commission and the European Central Bank under the ESM Treaty do not represent new competences for those institutions in the EU system. That Treaty allows those institutions influence over the functioning of the European stability mechanism ('ESM') while respecting their existing competences and roles under the Treaties. The objective of allowing them that influence is to ensure that the ESM will also operate in accordance with the interests and the policies of the economic and monetary union for which those institutions are responsible. Moreover, those institutions will not in the context of their activity as envisaged in the ESM Treaty issue measures of secondary EU legislation. Therefore, it is not possible to argue that the roles which the European Commission and the European Central Bank can perform under the ESM Treaty would be incompatible with the Treaties.
- 35 So far as concerns, also, the alleged infringement of the general principles of effective judicial protection and legal certainty, it is apparent from the preceding point in these observations that, in the context of the functioning of the ESM, there will be no measures of secondary EU legislation issued. Thus it will not directly affect the interests of private individuals, protected under EU law, but the macroeconomic functioning of the individual Member States. The consideration relating to the need for judicial protection and the safeguarding of legal certainty is therefore narrowed down to the issue of the protection of the Member States in their disputes with the ESM, or their disputes with each other in the context of the functioning of the ESM, including where there is doubt as to the conformity of decisions of the ESM with the ESM Treaty itself. The Slovak Republic is convinced that that issue is satisfactorily dealt with in Article 37 of the ESM Treaty, which provides for a mechanism for the resolution of such disputes before the Court of Justice in accordance with Article 273 TFEU. Consequently, the ESM Treaty does not infringe the general principles of effective judicial protection and legal certainty.
- 36 For those reasons, the Slovak Republic proposes that the Court of Justice state in response to the second question referred that EU law does not preclude a Member State whose currency is the euro from entering into and ratifying an international agreement such as the ESM Treaty.

²⁸ – Part IV(a) of the order for reference – 'Use of the simplified revision procedure', point 9.

²⁹ – Part IV(b) of the order for reference – 'The ESM Treaty', point 5. The applicant's argument here is evidently related to the question of the referring national court concerning Article 47 of the EU Charter of Fundamental Rights.

V – Third question referred

- 37 By its third question, the referring national court essentially asks whether the entitlement of a Member State to enter into and ratify the ESM Treaty is subject to the entry into force of the contested decision. The Slovak Republic is of the opinion that the EU Member States are at present, irrespective of the entry into force of the contested decision, entitled to enter into and ratify the ESM Treaty. In this connection, the Slovak Republic refers to point 21 of these observations in which it submits that, under the Treaties in their current form, the Member States are already competent to provide, individually or collectively, conditional financial assistance to other Member States in financial difficulties. They are thus also competent to enter into and ratify the EMS Treaty, and so to establish a mechanism for the purposes of securing the financial stability of the eurozone as a whole. The amendment to Article 136 TFEU does no more than make explicit that division of competences with the objective of clarifying the current legal situation and, as has been mentioned, does not lead to any increase in the competences of the EU. The Slovak Republic therefore considers that the amendment to Article 136 TFEU by the contested decision does not constitute an essential legal basis for the adoption of an international treaty such as the ESM Treaty. Accordingly, it is not necessary for the contested decision to have entered into force in order to enter into and ratify that Treaty.
- 38 Having regard to the above, the Slovak Republic proposes that the answer to the third question should be that the entitlement of a Member State whose currency is the euro to enter into and ratify an international treaty such as the ESM Treaty is not subject to the entry into force of the contested decision.

VI – Conclusion

- 39 For the reasons set out above in these observations, the Slovak Republic proposes that the Court of Justice should answer as follows:
1. **European Council Decision 2011/199/EU of 25th 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 is valid;**
 2. **A European Union Member State whose currency is the euro is entitled to enter into and ratify an international treaty such as the Treaty establishing the European Stability Mechanism;**
 3. **The entitlement of a Member State whose currency is the euro to enter into and ratify an international treaty such as the Treaty establishing the European Stability Mechanism is not subject to the entry into force of European Council Decision 2011/199/EU of 25th 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.

Beatrix Ricziová