

Cercle 2
Working document 02

NOTE

from :	Secretariat
to :	Discussion circle on the budgetary procedure
Subject :	Note on incorporating the financial perspective in the Constitution

The discussion circle began its work by examining issues arising from the possible incorporation of the financial perspective in the Constitution. This note takes account of the opinions expressed by the members of the circle at their meeting on 18 March, and presents some options which might help define the content of the measures in the Constitution.

The financial perspective is currently the subject of the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure. The perspective provides a framework for the annual budgetary procedure by establishing annual ceilings by heading for commitment appropriations and annual ceilings for payment appropriations in the limit of the ceiling for own resources established by the Decision on Own Resources¹ (1,27% of the Union GDP)². The Interinstitutional Agreement also contains provisions on the special features of appropriations entered under the various headings, on a flexibility mechanism to make it possible to react during the period covered without needing to amend the perspective, on procedural arrangements, etc.³

¹ Council Decision of 29 September 2000, OJ n° L 253 7.10.2000, p.42

² In practice, the ceiling for own resources is also discussed in the context of financial perspective negotiation.

³ The latest agreement of 6 May 1999 codified several other previous agreements, in particular on legal instruments and the budget, the classification of expenditure and procedural arrangements for interinstitutional cooperation (OJ n° C 172 of 18.6.1999, p 1).

In its deliberations, the discussion circle took as its starting point two ideas which had already been put forward by the Convention Working Group on Simplification ⁴ :

- A link must be established between incorporating the financial perspective, which would thus become legally binding, in the Constitution, and simplifying the budgetary procedure, in particular by abolishing the differences in procedures between compulsory and non-compulsory expenditure.
- The Council must play the decisive but not the only role as regards revenue – i.e. as regards the financial perspective as a binding framework setting the ceiling for payment appropriations – and the Parliament must play the decisive but not the only role as regards expenditure – i.e. the annual budgetary procedure.

The discussion circle first addressed the question of how to incorporate the financial perspective in the Treaty. The question of what to call it was also considered. The term "multiannual financial framework" appeared to satisfy most members.

Discussions within the circle brought to light the existence of three levels which must be taken into account when the practical arrangements for incorporating the "financial framework" in the Constitution are addressed. In other words, which measures on this "multiannual financial perspective" should be included in Part One of the Constitution, which should be included in Part Two, and which should be left to secondary legislation in the form of legal instruments to be adopted on the basis of the Constitution?

Part One of the Constitution

Pending the outcome of the circle's proceedings, the Praesidium has already presented the Convention with a draft of Article 40 which is limited to establishing the binding nature of the financial perspective for the annual budget, but which leaves Part Two of the Constitution to settle any other aspect of the perspective, including the decision-making procedure.

⁴ CONV 424/02

During the circle's first discussions, an opinion seemed to emerge in favour of adding other elements of substance to Article 40. These could include the following:

- Article 40 could specify that the "financial framework" must necessarily lay down the amount of the **annual ceiling for payments in the limit of own resources** of the Union. Including this measure in Part One would give it a highly constitutional character and would make it impossible to overlook.
- Article 40 could also contain **the procedure for adopting the legal instrument** containing the "financial framework" itself. In the context of ensuring that the Council had the decisive role in defining revenue, the Working Group on Simplification proposed that it should be the Council which adopted the perspective following the assent of the Parliament. Several questions remain open.

Firstly, what should the **Council's procedure** be? Currently the perspective is adopted by the European Council by common accord (it is subsequently the subject of an Interinstitutional Agreement). Once the perspective has been incorporated in the Constitution, it will be for the Council – possibly meeting in the composition of Heads of State or Government – to adopt it. If the current balance were to be maintained, this would have to be done unanimously. In an enlarged Europe, unanimity means a serious risk of paralysis. Two options might be envisaged. One would be to replace unanimity with a superqualified majority; the second would be to establish differing procedures depending on the matter in hand: unanimity could remain the rule for setting the ceiling for payment appropriations (as it is the case for own resources), while an ordinary qualified majority could be applied for the other elements of the "financial framework".

The second question which arises is that of the **role of the Parliament**. As mentioned above, currently, once the heads of State or Government have taken a decision, the perspective is the subject of an Interinstitutional Agreement and is thus "negotiated" between the institutions. It would be possible to envisage, for example, that the Council consult [ask the assent of] the Parliament before the adoption of the act.

Possible wording might be: "The Council [meeting in the composition of the Heads of State or Government], on a proposal from the Commission and after consulting [the assent of] the

European Parliament, shall adopt a law on the multiannual financial framework [by unanimity/by a qualified majority]".⁵

Part Two of the Constitution

In its discussions, the circle identified several aspects which might be included in the provisions on the "financial framework" in Part Two.

1. The Articles could stipulate that the financial framework must establish:
 - the amount of the **annual ceilings for commitment appropriations by heading.**
and/or
 - the amount of the **annual ceilings for payment appropriations** [another possibility would be to set not the amount of the ceilings, but rather the percentage margin for manoeuvre between the overall ceiling for own resources and the annual ceilings for payment appropriations]
2. If the suggestions in paragraph 1 were followed, the measures in of Part Two could also lay down the principle of a **flexibility mechanism** designed to allow adjustments to the "financial framework" during the period covered. This flexibility mechanism could be described in the Constitution, or the details could be left to the "financial framework" itself.

This mechanism might for example consist of setting an amount (of whatever size, or a percentage) which could be transferred between headings, as decided either by the annual budgetary procedure or by a simplified procedure to amend the "financial framework". A margin for flexibility could also be laid down allowing the ceilings for payment appropriations to be exceeded in clearly defined circumstances, in accordance with one of the two procedures referred to.

Another type of flexibility which does not directly concern the amounts might consist of a provision allowing specific features of the use of appropriations under certain headings to be laid down in the "financial framework".

⁵ If it were to be decided to introduce two decision-making procedures as suggested above, it would also be possible to envisage two separate legal instruments, one concerning only the ceiling for resources and the other the remainder of the content of the "financial framework".

3. The Council could also directly set **the duration of the period covered by the "financial framework"**, or could establish a range or leave the decision to be made on a case by case basis. If a set duration were to be established in the measures in Part Two, several members of the circle believed that it should be at least five years and should tie in with the term of office of the European Parliament and of the Commission.

From another, not greatly different, point of view, some argued for a "framework" which would be a financial reflection of a policy over several years. In fact, practice confirms this approach since the three financial perspectives to date have been accompanied by a set of legislative measures ⁶ concerning those Union policies with the greatest financial implications. However, it would be technically and legally very complex to provide for regular legislative reform linked to the adoption of the "multiannual financial framework".

4. Since the "multiannual financial framework" would become the binding framework for the annual budgetary procedure, a **mechanism** would have to be laid down to **remedy any failure of the procedure to adopt it**. This mechanism, as some members of the Group suggested, could consist in extending the last year of the preceding framework, or, taking inspiration from the system of "provisional twelfths", in applying average values from the preceding period.
5. An article in Part Two could establish the general principle whereby the "financial framework" could contain **any other measure required** for the annual budgetary procedure to run smoothly. Such a measure would make it possible for example to include special features of the appropriations for various headings, procedural arrangements, measures concerning budgetary discipline, etc., in the legal instrument relating to the framework..
6. The budgetary authority should ensure that the necessary financial resources are available in order to allow the Union to fulfil its legal obligations with regard to third parties.

⁶ The packets of measures known as Delors I, Delors II and Agenda 2000.

7. A provision should be made in the second part of the Treaty to allow for a modification of the multiannual financial framework in the event of unforeseen circumstances, according to the same procedure as that foreseen for its adoption, and within the limits of the Union's own resources.

The legal instrument on the "multiannual financial framework"

In accordance with the drafts of Articles 24 and following presented by the Praesidium, the legal instrument would be **a law** which would be an exception to the general rule on the legislative procedure, and to which provisions relating to transparency and subsidiarity would have to be applied.

Its contents would be more or less flexible depending on the contents of the provisions of Part One and Part Two of the Constitution.

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