

CERCLE II

Working document 05

"Discussion circle" on budgetary procedure

Subject : Proposal of M. David O'Sullivan, alternate member of the Convention

Members of the "Discussion circle" on the budgetary procedure will find hereafter a proposal of M. David O'Sullivan, alternate member of the Convention.



EUROPEAN COMMISSION

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Contribution to the Discussion Circle of the European Convention
on the budgetary procedure

Contribution from David O'Sullivan

1. Key Issues

Although the Discussion Circle is requested to concentrate its reflections on the budgetary procedure, one cannot separate completely the issue of revenues and expenditure of the Union. In this contribution, a comprehensive view of all issues is presented, with draft articles (in Annex).

- 1.1. On the revenue side, the key issue is to change the current procedure for adopting (by unanimity in the Council as well as ratification by all national parliaments) the own resources decision. It is heavy and creates too much delay between the setting of political orientations and the entry into force of technical measures. In an enlarged Union, this will simply not work.

It would be consistent with other reforms to give the European Parliament a more prominent role in determining the composition of revenue sources (assent instead of consultation) and to allow the decision adopted by the Council, acting by a reinforced qualify majority.

National parliaments must be associated with this procedure, although not necessarily through the present ratification procedure. It is difficult, however, to define precisely at this moment of the Convention how they should be associated, but it should be in a way coherent with the decisions which will be taken to associate national parliaments to modifications of the Constitution, approval of accession agreements and other decisions of the same fundamental nature as the Own Resources Decision.

Another key issue is the composition of the Union's revenue sources. This concerns the questions of what the choice of sources shall be as well as of who shall make that choice, with a view to reinforcing the financial autonomy of the Union.

Presently, the Union's revenues stem primarily from so-called "own resources": agricultural duties and sugar levies, custom duties, VAT resource and GNP resource¹. However, the most important source, i.e., the GNP resource², is often not perceived as an "own" resource of the Union but rather as a transfer made by the Member States. Several Convention members have argued that – for reasons of increased transparency and awareness of citizens – the importance of such transfer payments should be reduced to the benefit of tax-like own resources. New revenue sources could be introduced for this purpose, without however increasing the overall tax burden or creating new distortions between overall Member States contributions and providing the Union with an adequate level of resources.

- 1.2. On the expenditure side, the main idea is to henceforth have the budget adopted by an agreement between the European Parliament and the Council, on a proposal of the Commission. At present, the Parliament only decides on non-compulsory expenditure while the Council has the final say over compulsory expenditure (most notably agriculture). In addition, a "maximum rate of increase", calculated annually by the

¹ On the other hand, the so-called "other revenues", like fines in the competition area, interest on late payments or staff contributions constitute only a very marginal portion of the overall revenues.

² In 2006, the GNP resource will finance 70%-75% of the Union's budget.

Commission, applies to non-compulsory expenditure to be incurred during any given year.

For this idea to become reality, the current distinction between compulsory and non-compulsory expenditure would have to be abolished and the current budgetary procedure would have to be changed. Further, the procedure has to provide for a mechanism which allows the budget to be adopted even if Parliament and Council cannot agree. It is proposed to give the European Parliament the final word over the budget.

- 1.3. This, however, will only be acceptable if expenditure is capped by binding ceilings. For this purpose, the so-called “Financial Perspective” – that shows the maximum amount and the composition of foreseeable expenditure - should be included in the Constitution and thus become legally binding. A further constraint could be to keep a variant of the current annual maximum rate of increase, as proposed by Parliament (Resolution of 11 March 2003 - Wynn Report), and a draft article is included to that effect. Obviously, the question of who decides on the Financial Perspectives (see below under 2.2) and a possible maximum rate of increase is crucial.

2. Draft articles

Articles 1-4 are designed to be included in Part I of the Constitution whereas Articles A-F are supposed to be included in Part II.

It is proposed to change the order of the articles in Part I of the Constitution, as proposed by the Presidium (CONV 602/03), to have a more logic sequence:

- budgetary principles (Article 1 - see Article 39 of the Presidium’s proposal),
- financial perspective (Article 2 - new - but see Article 40 paragraph 2 of the Presidium’s proposal)
- own resources (Article 3 - see Article 38 of the Presidium’s proposal)
- budgetary procedure (Article 4 - see Article 40 of the Presidium’s proposal)

Part I of the Constitution

2.1 Budgetary principles.

Article 1 differs from Article 39 of the Presidium’s proposal in that it does not include the principles of sound financial management, legal base, fight against fraud and the constraint of the own resource ceilings. In the proposal in Annex, those principles are mentioned in Part II (except for the legal base requirement). It is felt indeed that the Presidium’s proposal is too long, certainly in comparison with the other financial provisions in Part I; however, there is no opposition in principle to insert more budgetary principles into Part I of the Constitution.

2.2. Multiannual financial framework.

It is important that the Constitution should recognise, by a separate article, here Article 2, that the Financial Perspective is a key element of the Finances of the Union.

The proposed provision refers to the “multiannual financial framework” which would include both the actual Financial Perspective and the principles and rules governing them (contained in the Inter-institutional agreement on budgetary discipline). The

proposed article consolidates the practice introduced with the first Financial Perspective in 1988.

It is proposed that the multiannual financial framework be adopted by a joint decision of the Council acting by reinforced qualified majority and the European Parliament acting by the majority of its component members. As a consequence, both arms of the budgetary authority would be fully committed to respect it during the budgetary procedure.

2.3. Own resources.

Article 3 proposes three major changes compared to the current article 269 EC. First, it underlines that own resources guarantee the financial autonomy of the Union. Second, it re-defines the concept of “own resources”¹. In this context, it should be noted that with regard to “taxes” forming part of own resources the proposed wording reflects the *status quo* (e.g. with regard to customs duties) while at the same time leaving the door open for reform. And third, Article 3 proposes a less rigid and more democratic procedure of adoption for the own resources Decision.

2.4. Adoption of the budget.

Article 4 establishes the compliance of the budget with the multiannual financial framework as a general principle. It also states that the budget is adopted by the European Parliament while referring to Part II for a detailed description of the budgetary procedure (see below under 2.5 and 2.6).

¹ The proposed definition includes both what presently is referred to as “own resources” and the so-called “other revenues” (see footnote 1 above). Such a re-definition is necessary because of the proposed deletion of the words “without prejudice to other revenue” in present Article 269 EC. Indeed, only a very small group of insiders understand what that reference actually means.

Part II

- 2.5. The wording proposed in Article A merges Articles 272 and 273 EC and follows the Commission's line taken in its Communication of 4 December 2002: there is no first reading of the Council, the distinction between compulsory and non-compulsory expenditure is abolished and the time-table of the budgetary procedure is more closely aligned to the practice developed over recent years.
- 2.6. The budgetary procedure has been designed as to give incentive for both arms of the budgetary authority to reach an agreement and to come to a decision by the end of the year. In case of disagreement, the EP has the last word but is subject to tight constraints (the threshold of three fifths of component Members applies in this case).

The main constraint on the budget is the existence of the multiannual financial framework, which is binding for the annual budgetary procedure. One further constraint is provided for by the maximum rate of increase, which would apply only in the case when European Parliament and Council cannot reach an agreement or when the European Parliament rejects the agreement, in order to limit the increase of expenditure.

Finally, the modalities concerning the provisional twelfths, which exist in current Treaty provisions, has been maintained as a last resort solution.

- 2.6. Article B reformulates concepts contained in Article 270 EC. It complements draft Article [2] in Part I by defining more precisely the constraints of budgetary discipline, in particular concerning the availability of sufficient appropriations in the budget and within the agreed financial framework.
- 2.8. Article C on the implementation of the budget simplifies and clarifies Article 274 EC, in particular concerning the obligations of Member States when it comes to the execution of the budget. Articles D, E and F largely reflect the Articles 275, 276 and 279 EC, respectively.

Budgetary and financial provisions

PART ONE: CONSTITUTIONAL STRUCTURE

TITLE VII: UNION FINANCES

Article [1]: Budgetary principles

1. The Union shall have a budget to finance its policies and institutions. The budget shall comply with the principles of unity, annuality, and specification.
2. The revenue and expenditure shown in the budget shall be in balance.
3. The Union's budget shall be financed through revenue from own resources.

Article [2]: Multiannual financial framework

1. The multiannual financial framework shall constitute the reference framework for budgetary discipline.

The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and shall not exceed the maximum amount of the Union's own resources as defined in [Article 3].

2. The multiannual financial framework shall be adopted, on a proposal from the Commission, by a joint decision of the Council, acting by a reinforced qualified majority, and of the European Parliament, acting by the majority of its component members.

Article [3]: Own resources

1. The expenditure of the Union shall be financed from own resources, guaranteeing its financial autonomy.

Own resources may include one or more taxes or levies assigned fully or in part to the Union, payments from Member States and other revenues stemming from the functioning of the Union.

The Member States shall ensure that adequate own resources are made available to finance the Union's functions.

2. The provisions governing own resources shall be laid down in a decision, proposed by the Commission, and adopted by the Council by reinforced qualified majority with the assent of the European Parliament. National parliaments shall be associated with this procedure.

Article [4]: Adoption of the budget

1. The budget shall comply with the multiannual financial framework and respect legal obligations of the Union towards third parties.
2. The budget shall be adopted by the European Parliament in accordance with the budgetary procedure provided for by Part°II [Art. A], defining the respective roles of the European Parliament, the Council and the Commission in the adoption procedure.

PART TWO: UNION POLICIES AND THEIR IMPLEMENTATION

D. THE FUNCTIONING OF THE UNION

[BUDGETARY PROCEDURE]

Article [A]: Budgetary procedure

1. The financial year shall run from 1 January to 31 December.
2. Each institution of the Union shall draw up an estimate of its expenditure. The Commission shall consolidate these estimates in a draft budget. It may attach thereto an opinion which may include different estimates.

The Commission shall transmit the draft budget at the latest by 1 September of the year preceding the budget year concerned.

The draft budget shall be drawn up in compliance with the financial framework referred to in Article [2] of the Constitution and of the own resources Decision referred to in Article [3] of the Constitution.

The draft budget shall respect existing legal obligations.

3. At every stage of the procedure, the Council and the European Parliament shall vote on both the statement of expenditure and the statement of revenue.

4. The draft budget shall be submitted to the European Parliament. Parliament shall take a decision on it by 25 October at the latest.

It shall act by a majority of its component Members when it takes a decision on proposals for amendments opposed by the Commission. The Commission shall give reasons for its position.

5. The draft budget, in the version voted on by the European Parliament, shall be forwarded to the Council. If the European Parliament fails to take a decision within the time limit laid down in paragraph 4, the initial version of the draft budget shall be forwarded to the Council. The Council shall take a decision on the draft budget by qualified majority by 20 November at the latest.

6. When the Council does not, within the specified time limit, adopt any amendment to the draft budget that has been forwarded to it, this draft budget shall stand approved.

7. When the Council votes on amendments to be adopted by qualified majority, it shall open without delay a concertation procedure. The concertation shall take place within a concertation committee made up of the members of the Council or their representatives and an equal number of representatives of the European Parliament, in the work of which the Commission takes part. The task of the committee is to reach agreement on a draft joint budget by 5 December at the latest.

8. If the concertation committee approves a joint draft and if the European Parliament approves it by simple majority of the votes, the joint draft budget shall stand adopted.

9. If the concertation committee fails to reach an agreement, or if the European Parliament rejects the joint draft, the European Parliament shall take a decision on the draft budget voted on by the Council. It may either adopt the draft budget or amend it by a positive vote of three fifths of its component members. In this case the European Parliament may modify only the budget items it amended in its first reading pursuant to paragraph 4 or amended by the Council pursuant to paragraph 5.

In this case, the resulting increase of the total volume of payments will be limited to the annual rate of increase of nominal gross national income foreseen by the Commission for the budget year concerned, if this rate is lower than that set by the financial framework. The timetable according to which the Commission declares the maximum rate of increase and communicates it to the other institutions shall be laid down in the law referred to in Article [F].

10. If the European Parliament does not take a decision in time for meeting the deadline set in paragraph 11, the draft budget voted on by the Council shall stand adopted.

11. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare the budget finally adopted. The budget shall be adopted by December 20 at the latest.

12. If the budget has not been adopted by that date, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget, according to modalities to be laid down in the law; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget transmitted by the Commission.

13. The modalities of application of the timetable for the budgetary procedure shall be laid down by the law referred to in [Article F].

Article [B]: Financial planning and budgetary discipline

1. Failing a decision on a new multiannual financial framework, the framework applicable for the preceding year shall apply for the following year.
2. With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Union act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Union's own resources.

Article [C]: Implementation of the budget

The Commission shall implement the budget in cooperation with the Member States, in accordance with the Law referred to in Article [F], on its own responsibility and within the limits of the appropriations.

Member States and the Union shall cooperate to ensure that the appropriations are used in accordance with the principles of sound financial management, which apply both to the institutions of the Union and to the Member States.

The control and audit obligations of Member States in the execution of the budget and the responsibilities which result from it shall be laid down in the Law referred to in Article [F].

The responsibilities and the detailed rules for each institution concerning its part in effecting its own expenditure shall be laid down in the Law referred to in Article [F].

Article [D]: Accounts

The Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Union.

Article [E]: Discharge

1. The European Parliament, on a recommendation from the Council and after obtaining the latter's consent, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, it shall examine, after the Council has done so, the accounts and the financial statement referred to in Article [D], the annual report by the Court of Auditors together with the replies of the institutions and Member States under audit to the observations of the Court of Auditors, the statements of assurance referred to in Article [X] of the Constitution ¹, and any relevant special reports by the Court of Auditors.
2. The European Parliament may ask to hear the Commission and the Member States give evidence with regard to the execution of expenditure or the operation of financial control systems, according to their respective obligations as defined in application of Article [C], before giving a discharge to the Commission. The Commission shall submit any necessary information to the European Parliament at the latter's request.
3. The Commission and, as the case may be, the Member States shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments. These reports shall also be forwarded to the Court of Auditors.

Article [F]: Financial regulations

The European Parliament and the Council, in accordance with the legislative procedure after the Court of Auditors gives its opinion, shall adopt laws to:

- a) provide rules specifying in particular the criteria and procedure to be adopted for establishing and implementing the budget, management and control systems, and for establishing and presenting accounts;
- b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- c) lay down rules and supervisory procedures concerning the functions and responsibilities of authorising officers and accounting officers.

¹ The reference to the statements (plural) proposed in paragraph 1 above will also have to be reflected in Article [X] of the Constitution, dealing with the Court of Auditors.