

CERCLE II

Working document 11

Draft REPORT

from :	Chairman of the discussion circle on the budgetary procedure
to :	Praesidium
Subject :	Draft final report of the discussion circle on the budgetary procedure

The discussion circle on the budgetary procedure concluded its work at the meeting on 4 April 2003 when it examined the draft report submitted by its Chairman, Mr Henning Christophersen.

At its two previous meetings, the circle had examined matters arising from the mandate issued to it by the Praesidium based on the work conducted by the Working Group on Simplification. More specifically, this entailed answering the following questions:

- (a) *"How to incorporate the financial perspective into the Constitution. This means deciding how broad the scope of the provisions on the financial perspective should be and consequently how detailed they should be. The circle will also need to look at the procedure for adopting the multiannual perspective.*
- (b) *What the detailed arrangements for the simplified budgetary procedure should be. In particular, this means considering the distinction between compulsory and non-compulsory expenditure and its consequences" ¹.*

¹ CONV 612/03.

In its overall deliberations on simplification in the field of budgetary procedures, the discussion circle drew on two ideas already put forward by the Convention's Working Group on Simplification ²:

- 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.
- As well as making procedures more comprehensible, clearer and more transparent for citizens, the simplification of procedures needs to lend them greater legitimacy. With this in mind, institutional balance and the culture of cooperation between the two arms of the budgetary authority – the European Parliament and the Council – must be preserved for all budget-related procedures.

A. ENSHRINEMENT OF THE FINANCIAL PERSPECTIVE IN THE CONSTITUTION

The discussion circle began its work by examining the issues relating to the incorporation of the financial perspective 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 an annual ceiling for payment appropriations in compliance with the ceiling for own resources laid down in the Own Resources Decision ³. The Interinstitutional Agreement also contains provisions on the special features of appropriations entered under the various headings, and on a flexibility mechanism to make it possible to react during the period covered without needing to amend the ceilings of the perspective, procedural arrangements, the mechanisms for interinstitutional cooperation, etc. ⁴

² CONV 424/02.

³ Council Decision of 29 September 2000, OJ L 253, 7.10.2000, p. 42. This Decision sets the ceiling for own resources at 1,27% of the Union's GNP (1,24% according to the new auditing system).

⁴ The latest agreement of 6 May 1999 codified several other earlier agreements, in particular on legal instruments and the budget, the classification of expenditure and procedural arrangements for interinstitutional cooperation (OJ C 172, 18.6.1999, p. 1).

The question of name was addressed first of all. On the grounds that the term "financial perspective" did not clearly reflect the content of the act, the circle preferred the term "multiannual financial framework".

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 provisions on this "multiannual financial perspective" should be included in Part One of the Constitution, which should be included in Part Two, and, lastly, 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.

A majority of circle members feel that there should be a specific Article on the "multiannual financial framework". This Article, which could be numbered 39a, should come before the one on the annual budgetary procedure and should contain the following elements:

- Article 39a should specify that the "multiannual financial framework" constitutes a binding framework for the annual budget in order to ensure that Union expenditure follows an orderly progression.
- In particular, the Article in question should include the principle whereby the "financial framework" sets the binding amounts of the annual ceilings for commitment appropriations by heading within the limit of the Union's own resources.
- This Article should also contain the legal basis empowering the Institutions to adopt, for a given period, the legal act containing the "financial framework" itself and, consequently, the decision-making procedure.

The circle examined several matters relating to the role of the institutions and voting rules in the procedure for adopting the "financial framework".

Firstly, what should be the procedure within the Council? Currently the perspective is adopted by the European Council by common accord and is subsequently the subject of an Interinstitutional Agreement. Most members of the circle consider that once the perspective has been formalised in the Constitution, it will be for the Council ⁵ to adopt the "multiannual financial framework".

⁵ The circle also examined the matter of which Council configuration should be responsible for this procedure. Pending the conclusions of the Convention with regard to the duties and configurations of the Council, the circle feels that decisions relating to the "multiannual financial framework" should be adopted by the Council at the highest possible political level, either by the European Council if the power to adopt legal acts is conferred on it by the Constitution, or by the Council meeting at the level of Heads of State or Government.

Furthermore, if the current balance were to be maintained, the Council would have to act unanimously. The circle is aware of the serious risk of paralysis that unanimity would mean in an enlarged Europe, particularly in an area such as this where there is a need to guarantee that decisions are taken within the prescribed deadline in order to ensure the functioning of the Union and the financing of its policies. That is why most members of the circle feel that unanimity should be replaced at a general level in the Constitution, and particularly in this area, by a super-qualified majority to be defined by the Convention. Should the Convention fail to define a super-qualified majority, most members consider that the qualified majority rule should apply in this area.

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. Most members of the circle feel that the current role of the Parliament would be safeguarded if it intervenes in the procedure by giving its assent.

The legislative initiative should be for the Commission, but without prejudice to voting rules in the Council in the event that a decision is taken to replace unanimity by a super-qualified majority. In any case, provision needs to be made for an exception to the consequences of the Commission initiative with regard to voting in the Council.⁶

One possible wording might be: "The Council [meeting at the level of the Heads of State or Government – the European Council], on a proposal from the Commission and following the assent of the European Parliament, shall adopt a law on the multiannual financial framework [by a super-qualified majority/by a qualified majority]".

⁶ Currently referred to in Article 250 TEC.

Part Two of the Constitution

The discussion circle identified several aspects which might be included in the provisions on the "financial framework" in Part Two of the Constitution.

1. The Articles should stipulate in a more detailed way than in Part One that the "financial framework" establishes:
 - the amount of the annual ceilings for commitment appropriations for a limited number of headings
and
 - the amount of the annual ceilings for payment appropriations which must in any case respect the ceiling for own resources.

The orderly progression and the relationship between these concepts – ceilings for commitment appropriations, ceilings for payment appropriations in compliance with the own resources ceiling – must be established in the "financial framework" itself.

The circle feels that the expenditure headings should not be specified in the Constitution, but should instead stipulate that only a limited number of headings may be the subject of binding ceilings, as otherwise the annual budget would be devoid of content.

2. The provisions of Part Two should also lay down the principle of a flexibility mechanism designed to allow for needs not provided for in the "financial framework" to be met during the period covered. Once the principle is incorporated into the Constitution, the arrangements for implementing this flexibility mechanism could be left to the "financial framework" itself.

By way of example and as is the case in the Interinstitutional Agreement in force, this flexibility mechanism could consist of a limited amount intended to finance specific expenditure which could not be financed within the ceilings available for any of the headings.

3. The Constitution should explicitly set the duration of the period covered by the "financial framework". The duration should be at least five years.

The circle examined the question of linking the duration of the "financial framework" to the European elections and the Commission's term of office, and concluded that such a link should not be established in the Constitution. This does not prejudice the practice which might be established subsequently if the Institutions so decided.⁷

4. Since the "multiannual financial framework" would become the binding framework for the annual budgetary procedure, it is vital that a mechanism be established to remedy any failure of the procedure to adopt it. This mechanism would be described in the provisions of Part Two of the Constitution. The circle suggests that it could consist in extending the last year of the preceding "financial framework".
5. An Article in Part Two should establish the general principle whereby the "financial framework" could contain any other provision required for the annual budgetary procedure to run smoothly. This would only apply to provisions closely linked to the application of the "financial framework".
6. The provisions of Part Two should also establish that the budgetary authority and the Commission will ensure the availability of the financial means to cover the expenditure needed to allow the Union to fulfil its legal obligations in respect of third parties. This principle arises from the Union's legal personality and its capacity to assume legal obligations. It is ultimately a question of explicitly acknowledging the fact that certain expenditure is legally compulsory.
7. There should be a provision in Part Two making it possible to amend the multiannual financial framework if necessary during the period covered in the event of unexpected

⁷ Some members of the circle argued for a "framework" which would be a financial reflection of a policy over several years. Practice confirms this approach since the financial perspectives to date have always been accompanied by a set of legislative measures concerning those Union policies with significant financial implications. However, it would be technically and legally unfeasible for the Constitution to provide for regular legislative reform linked to the adoption of the "multiannual financial framework". This does not prejudice the practice which might be subsequently adopted.

circumstances. Any such amendment would be subject to the same procedure as for the adoption of the multiannual financial framework and be within the limits of the Union's own resources.

The legal act concerning "the multiannual financial framework"

In accordance with the draft of Articles 24 et seq. presented by the Praesidium, the legal act would be a law⁸ which would be an exception to the general rule in that it would not be subject to the legislative procedure, and to which the provisions on transparency and subsidiarity should apply.

It should implement the provisions of Parts One and Two of the Constitution, as set out above.

A. THE ANNUAL BUDGETARY PROCEDURE

The circle examined the arrangements for the annual budgetary procedure in the light of its own discussions on the "multiannual financial framework", taking account of the fact that its embodiment in the Constitution would make it legally binding for the Institutions – the European Parliament, the Council and the Commission – when they exercise their respective powers in the budgetary field.

The first stage of the budgetary procedure in its current form is the presentation of a preliminary draft budget by the Commission. It is the Council which establishes the draft budget. The circle feels that the Commission should be given the power to present the draft budget. This would mean in particular that the Commission could amend its proposal up to the conciliation stage⁹.

Furthermore, if time limits for procedures are shortened then there would be less need to amend the initial draft.

⁸ Some members of the circle argued for the "multiannual financial framework" to be the subject of an organic law, an instrument which is not currently provided for in the catalogue in the draft of Article 24 under discussion by the Convention.

⁹ For the modalities of the conciliation procedure, see below.

However, the circle feels that conferring the initiative upon the Commission must not prejudice voting rules in the Council. Here, as in the case of the "multiannual financial framework", there must be an exception to the consequences in terms of the majorities required in the Council, following the Commission's initiative.¹⁰

The circle considered it necessary to remove the distinction between compulsory and non-compulsory expenditure. On the grounds that such a distinction had become obsolete, devoid of clear criteria and largely responsible for the complexity of the budgetary procedure, members of the circle regarded it as no longer justified.

The removal of the distinction is conditional on the strengthening of budgetary discipline through formalisation of the "financial framework" in the Constitution and, most particularly and as already mentioned, the incorporation of the principle whereby the budgetary authority and the Commission ensure the availability of the financial means needed to allow the Union to fulfil its legal obligations in respect of third parties. It is ultimately a question of redefining legally compulsory expenditure.

However, it should be pointed out that a few members of the circle, while accepting the removal of the distinction between the procedures for compulsory and non-compulsory expenditure, made their position conditional upon recognition of the principle whereby appropriations needed to meet financial obligations resulting from international agreements and legislative acts are entered in the budget, upon maintenance of the current decision-making procedures in certain Union policies and upon preservation of the institutional balance¹¹.

¹⁰ Currently referred to in Article 250 TEC.

¹¹ A few members of the circle proposed having special procedural arrangements in the field of the common foreign and security policy.

The Institutions have built up negotiation and consultation practices, some of which were codified in the last Interinstitutional Agreement in 1999 and now form important components of the budgetary procedure. The circle thinks that this type of practice should be formalised in the new budgetary procedure, in order to preserve the collaborative culture developed between the Institutions over the last ten years.

Apart from the conciliation committee, which will be mentioned later, the trialogue mechanism bringing together representatives of the three Institutions, Parliament, Council and Commission, should be formalised, particularly during the preparatory phase of the budget, as a means of consulting on budgetary objectives for the forthcoming financial year.

Rules for the annual budgetary procedure

Nowadays adoption of the budget is the result of collaboration between the two arms of the budgetary authority, the European Parliament and the Council, each of which holds two readings. The Council has the last word on compulsory expenditure, and the Parliament has the final say on non-compulsory expenditure, achieved on the basis of an interplay of enhanced majorities when they cannot agree between themselves.

Removal of the distinction between compulsory and non-compulsory expenditure and the entry of the "multiannual financial framework" in the Constitution may make for a shorter, simplified procedure for adoption of the annual budget, and consolidation of the rules which have been necessitated by practical constraints outside the Treaty machinery.

Discussion in the circle showed that there were two lines of thought. These have produced two outline procedures with options, not too different from each other, on which the circle will need to decide, bearing in mind that some components are interchangeable.

Option 1 has been drawn up on the basis of views expressed in the circle. The broad thrust of option 2 is along the lines advocated by the Commission, and endorsed by other members of the circle; it is similar to the current procedure for non-compulsory expenditure, especially as regards the tie-break. If, despite the proposed mechanisms, the procedure were to end in failure, the system of provisional twelfths would continue to apply in both cases.

The question of time limits has not been broached. Both outlines would considerably shorten the present time scale. It would be possible to envisage a formal start to the procedure early in September and closure in mid-December.

OPTION 1	OPTION 2
<ol style="list-style-type: none"> 1. <u>Commission proposal</u> submitted to the Council and the Parliament. It takes account of spending forecasts from each of the institutions and the outcome of a trialogue on budgetary priorities. 2. <u>First reading in Council</u>, which would determine its position by a qualified majority and forward it to Parliament. 3. <u>First reading in Parliament</u> (acting by a majority of its constituent members): <ul style="list-style-type: none"> – No action: the budget is deemed adopted. – It accepts the Council position: the budget is deemed adopted. – It tables amendments to the Council position: a conciliation committee is convened. <p>[A second reading in Council to decide on Parliament's amendments could be envisaged. Only afterwards would the existence of a disagreement be ascertained and the conciliation phase opened]</p> 4. <u>The conciliation committee</u> (membership along the lines of the current codecision procedure: all Council members and an equal number of members of the European Parliament): <ol style="list-style-type: none"> a. adopts a joint draft b. does not succeed in adopting a joint draft. 5. <u>(Second reading)</u> In the first case, (a), 	<ol style="list-style-type: none"> 1. <u>Commission proposal</u> submitted to the Council and the Parliament. It takes account of spending forecasts from each of the institutions and the outcome of a trialogue on budgetary priorities. 2. <u>First reading in Parliament</u>, which would determine its position by a qualified majority of its members and forward it to the Council. 3. <u>First reading in Council</u> (acting by a qualified majority): <ul style="list-style-type: none"> – No action: the budget is deemed adopted. – It accepts the Parliament's position: the budget is deemed adopted. – It tables amendments to the Parliament's position: a conciliation committee is convened. <p>[A second reading in Parliament to decide on the Council's amendments could be envisaged. Only afterwards would the existence of a disagreement be ascertained and the conciliation phase opened]</p> 4. <u>The conciliation committee</u> (membership along the lines of the current codecision procedure: all Council members and an equal number of members of the European Parliament): <ol style="list-style-type: none"> a. adopts a joint draft b. does not succeed in adopting a joint draft. 5. <u>(Second reading)</u> In the first case, (a),

<p>the joint draft would be submitted to the two institutions en bloc; they would have to approve or reject it within a set time-limit (by a qualified majority and by a majority of members respectively). If both Institutions approve it, the budget is deemed adopted.</p> <p>6. If one of the Institutions rejects it or if the committee has not adopted the joint draft, (b), the Parliament would adopt a budget which would provide, for those items on which there was no agreement:</p> <p>[option 1: for each budget heading on which there was no agreement: the lowest amount proposed by the Council or the Parliament or the previous year's amount, if higher]</p> <p>[option 2: for each budget heading on which there was no agreement: the amount in the previous year's budget].</p>	<p>the joint draft would be submitted to the two Institutions en bloc; they would have to approve or reject it within a set time-limit (by a qualified majority and by a majority of members). If both Institutions approve the budget, it is deemed adopted.</p> <p>6. If one of the Institutions rejects it or if the committee has not adopted the joint draft, (b), the Parliament would decide on the Council's amendments regarding each budget heading on which there was no agreement:</p> <p>it may reject them only by a majority of three-fifths of its members [by a majority of members and three fifths of the votes cast]. If such a majority cannot be achieved, the Council amendment is deemed adopted.</p>
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Financial management

Another idea was brought up in the discussion circle; however, it is somewhat marginal to the circle's terms of reference, since it touches on the question of financial management. The idea would be to increase democratic control over the results actually achieved through expenditure, in relation to previously set objectives. A report on the subject could be prepared by the Commission, which would submit it to the European Parliament when it is giving its discharge in respect of the implementation of the budget. An assessment of this type would also be very useful to the budgetary authority when drawing up its annual budget ¹².

¹² See CONV 653 and Working document 23 of the Working Group on Simplification.