

NOTE

from : Praesidium

to : Convention

Subject : Union finances: draft Articles 38 to 40

Title VII: Union finances

Draft Articles 38 and 39 are directly based on the conclusions of Working Group IX.

With regard to the annual budgetary procedure, the essential aspects of which should be covered by Article 40, it must be noted that the Group's proposals did not gain the support of the Convention. However, the discussion did not indicate any alternative solutions. Subsequent discussions should consequently be held in the appropriate forum, perhaps a restricted discussion circle, to enable the Praesidium and the Convention to put forward detailed proposals for Part II of the Treaty with regard to simplification of the annual procedure and the possibility of entering the financial perspective in the Constitution.

For the moment, Article 40 contains an outline of the procedure which reflects the lowest common denominator of the opinions expressed by the Convention members. It should be noted in this respect that including the financial perspective in the Constitution, and in particular the mechanism of binding multiannual expenditure ceilings, seems for many members of the Convention to be an absolute prerequisite for any simplification of the annual procedure.

UNION FINANCES

ARTICLES 38 TO 40

Article 38: The Union's resources

Without prejudice to other revenue, the Union's budget shall be financed wholly from own resources.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Union, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Comments

This article reproduces the existing Article 269 TEC:

"Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements."

The report of the Working Group on Simplification had clearly acknowledged the Council's dominant role as regards the definition of the system of the Union's resources insofar as it must subsequently be adopted by the Member States. This approach has not been denied by the Convention.

Faithful to the conclusions of the Working Group, the Praesidium presents the text of Article 269 TEC unchanged. It nevertheless wishes to draw the Convention's attention to the complex problems concealed behind this provision.

Article 269 TEC, in its present form, provides for the unanimous adoption of the provisions relating to the system of own resources of the Union. But these are not mandatory provisions, as the Council is merely recommending that the Member States ratify them. The Praesidium has therefore wondered whether this procedure was able to guarantee in the future the adoption of the measures required for the financing of Union policies, bearing in mind "the weight of numbers". It is necessary to answer the question whether, in an enlarged Union, it will always be possible to ensure funding via a decision which must be adopted unanimously and ratified by all the Member States.

The question may also be asked as to whether the existing procedure would allow the Union to establish "real" own resources.

Own resources are revenue which finances the Union's budget and is due to it as of right, within an annual ceiling fixed in terms of a percentage of the Union's gross national product by the financial perspective. Own resources currently fall into four categories:

- agricultural levies*
- duties in the common customs tariff*
- a percentage of the amount resulting from the application of a uniform rate to the VAT assessment base, determined according to Community rules*
- an amount resulting from the application of a rate, to be fixed under the annual budgetary procedure, to an assessment basis representing the sum of the gross national products (calculated uniformly according to Community rules).*

Whereas the first two categories have an increasingly small relative weight, certain Convention members consider that the latter two are not real own resources but rather national contributions. These Convention members¹ would like the Union to be able to rely on autonomous resources in the form of a European tax or participation in national taxes, without this leading to any increase in the tax burden on citizens. It would primarily be a question of the need for transparency: European citizens should know how and to what extent they are financing the Union.

Would the procedure currently set out in Article 269 TEC allow for this kind of development?

It should be noted that in any case a change in the procedure, involving abolition of the need for national ratifications, would entail the creation of a new Union competence, which should be taken into account in Title II of the Constitution.

The Praesidium wishes to draw the Convention's attention to these problems and hopes that the plenary debate will provide it with more precise details of the approach to follow. In the meantime, it has decided to present Article 269 TEC in its current version before suggesting any amendments.

Article 39: The budgetary and financial principles

1. All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget, in accordance with the provisions of Part II of the Constitution.
2. The revenue and expenditure shown in the budget shall be in balance.
3. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the law referred to in Article B (*Part II, ex-279: Financial Regulation*).

¹ *Several contributions have been submitted on the subject.*

4. The implementation of expenditure shown in the budget shall require the prior adoption of a binding legal act which provides a legal basis for Union action and for the implementation of the expenditure in accordance with the law referred to in Article B (*Part II, ex-279: Financial Regulation*). This act must take the form of a European law, a European framework law, a European regulation or a European decision.
5. 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.
6. The Union's budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with the principles of sound financial management.
7. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union in accordance with the provisions of Article Z (*Part II, ex-280 TEC*).

Comments

This article contains the principles governing Union finances as listed¹ in the report by Working Group IX:

- *Paragraph 1 reproduces the principle of unity of the budget contained in Article 268 TEC: "All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget."*

¹ *The principle of necessary means mentioned in the Group's report has not been mentioned here because it is covered by draft Article 3(5) (CONV 528/03).*

The reference to the European Social Fund, having become obsolete, has been deleted. The mention made of the provisions of Part II of the Constitution responds to the need to take into consideration the special financing arrangements for certain policies, pending the Convention's opinion. The policies primarily concerned are the common foreign and security policy and cooperation in the fields of justice and home affairs, which are currently the subject of the second paragraph of Article 268 and of Articles 28 and 41 TEU, and the European Development Fund.

- *Paragraph 2 contains the principle of budgetary balance which currently appears in the third paragraph of Article 268: "The revenue and expenditure shown in the budget shall be in balance".*
- *Paragraph 3 reproduces the principle of an annual budget which is currently incorporated in the first paragraph of Article 271 TEC: "The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise". The length of the financial year has been specified.*

The "regulations" adopted pursuant to Article 279 are the Financial Regulation which, inter alia, provides for the limited possibility of carrying over appropriations from one financial year to another. The Financial Regulation should become a law according to draft Article 24.

- *Paragraphs 4 and 5 constitute two aspects of the same principle: while, on the one hand, the entry of appropriations in the budget depends on the existence of a legally binding act, on the other, when the Commission proposes an act it must take into account the implications for the budget.*

Paragraph 4 takes up Working Group IX's proposal which is in turn based on Article 36 of the Interinstitutional Agreement of 9 May 1999 on budgetary discipline and improvement of the budgetary procedure: "Under the system of the Treaty, implementation of appropriations entered in the budget for any Community action requires the prior adoption of a basic act. A "basic act" is an act of secondary legislation which provides a legal basis for the Community action and for the implementation of the corresponding expenditure entered in the budget. Such an act must take the form of a Regulation, a Directive or a Decision. Recommendations and opinions do not constitute basic acts, nor do resolutions or declarations."

The Interinstitutional Agreement provides for very limited exceptions to this rule. Once the general principle is laid down in the Constitution, such exceptions must be the subject of the Financial Regulations referred to in Article 279 TEC.

Paragraph 5 re-states the terms of Article 270 TEC: "With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community 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 Community's own resources arising under provisions laid down by the Council pursuant to Article 269."

- *Paragraph 6 concerns the implementation of the budget and takes up the principle of sound financial management contained in Article 274 TEC in a wider context. That is why the reference which this Article makes to the Commission has been replaced with a reference to the Union. Indeed, it is not only the Commission which needs to concern itself with this principle. It applies to all institutions with partial responsibilities for managing the Union's finances. The European Parliament, for example, must take it into account when it gives a discharge to the Commission. The second paragraph of Article 274 TEC partly confirms this approach with regard to the other institutions' implementation of their section of the budget.*

Furthermore, paragraph 6 does not prejudice the Commission's responsibility for implementation of the budget. The respective responsibilities of the Institutions and Member States in the management of the budget will be the subject of the provisions in Part II of the Constitution.

Member States are affected by this principle insofar as they also intervene in the implementation of the budget.

The current Article 274 TEC states that: "The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure."

- *Paragraph 7 takes over the first part of Article 280(1) which states that: "The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States."*

Article 40: The Union's budgetary procedure

The European Parliament and the Council shall, on a proposal from the Commission ¹ and in accordance with the arrangements laid down in Article W (*ex-272 TEC, Part II of the Constitution*), jointly adopt the Union's annual budget.

The Union's budget shall be established in compliance with the multiannual financial perspective referred to in Article Y (*Part II of the Constitution*).

Comments

During its discussions on 5 and 6 December 2002, the Convention did not confirm Working Group IX's proposals concerning the detailed arrangements for the annual budgetary procedure. However, a degree of consensus emerged with regard to the principle of joint adoption of the budget by the two arms of the budgetary authority, the European Parliament and the Council, based on an adapted codecision procedure. It will subsequently be necessary to determine the detailed elements to be incorporated into Part II of the Constitution in order to simplify the current Article 272.

It should be noted that, in relation to the description of the "legislative procedure" in draft Article 25, the proposed wording for Article 40 does not include termination of the procedure in the event of disagreement. Indeed, as far as the budget is concerned, the procedure cannot be terminated as the Union has an imperative need for a budget. The difficulty of the detailed procedure lies precisely in finding the answer to the question of what to do in the event of disagreement between the European Parliament and the Council.

¹ This expression, "on a proposal from the Commission", does not prejudge the voting rules in the Council which will be the subject of the "arrangements laid down in Article W". This is not a matter of extending the consequences of the Commission's initiative to the budgetary procedure.

The Convention also received with interest the proposal to enshrine the financial perspective, currently the subject of an Interinstitutional Agreement, in the Constitution. A number of Convention members acknowledged the perspective's contribution to stability and regard for budgetary discipline since its establishment in 1988. It should in fact be pointed out that Working Group IX's report links the simplification of the annual budgetary procedure to the incorporation of the perspective in the Constitution, thereby making it legally binding.

If this principle was incorporated into Part I, the Convention would then need to decide on incorporating a legal basis into Part II of the Constitution as well as on elements of the perspective needing to be enshrined directly in the Constitution. The procedure for adopting the law on the financial perspective should also be established by the legal basis in Part II.

In conclusion, Article 40 contains an outline of the procedure reflecting the lowest common denominator of the opinions expressed by the Convention members. Since the plenary debate did not indicate any alternative solutions, subsequent discussions should be held in the forum of a restricted discussion circle, devoted to the annual budgetary procedure, the incorporation into Part II of the Constitution of a legal basis for the adoption of the financial perspective and to its scope.

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