

COVER NOTE

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| from : | Secretariat |
| to : | Convention |
| Subject : | Reactions to draft Articles 38 to 40 of the Constitutional Treaty (Union finances) – Analysis |

The Convention members will find attached analyses of proposed amendments to Articles 38 to 40 of the Constitutional Treaty (CONV 602/03).

ANALYSIS OF ALL THE AMENDMENTS

1. The Convention members have presented 69 amendments to draft Articles 38 to 40. The amendments presented cover a wide variety of subjects which makes it difficult to order them logically.
2. Nevertheless, two very clear conclusions may be drawn:
 - There seems to be broad consensus on the idea of formally establishing the financial perspective in the Constitution as a binding framework for the annual budget.
 - The budgetary principles proposed by the Praesidium in draft Article 39 have generally been well received by the Convention members.
3. Certain subjects caught the attention of the Convention members more than others. This was especially true of decision-making procedures for which there was a very large number of amendments relating to the system of own resources, the financial perspective and the annual budget.
4. As regards **own resources**, the procedural amendments frequently diverged widely. While some amendments support maintaining the procedure currently laid down in the EC Treaty, others advocated intervention by the Parliament by means of the legislative procedure or assent. Views also diverged on the proposals for majorities within both the Council and the Parliament.

Different positions were also expressed in the amendments on the requirement for national ratification.

It should be noted that in relation to own resources, a large number of amendments propose leaving open the possibility of creating European taxes.

5. Draft Article 39, which contains the **budgetary principles**, seems to have been well-received. Many amendments propose the addition, either in this article or in Article 38, of the principle of necessary means which is currently the subject of Article 6(4) of the Treaty on European Union. Moreover, some amendments propose defining the principle of budgetary discipline not only in relation to own resources but also in relation to the financial perspective.
6. Some amendments advocate devoting a separate article to the **financial perspective**. A large number of Convention members believed that the financial perspective should set binding ceilings per category of expenditure. There are, however, deep divisions over the adoption procedure: while some members proposed adoption by the Council following consultation of the European Parliament, others wanted the legislative procedure or ad hoc procedures for joint adoption by the European Parliament on the Council to apply.
7. The **annual budgetary procedure** also met with contradictory reactions, especially with regard to the solution to be provided where the Parliament and the Council fail to reach agreement.
8. Lastly, it should be mentioned that some amendments propose, with various wordings, retaining the concept of compulsory expenditure.

9. SUMMARY SHEET OF THE AMENDMENTS TO ARTICLES 38 TO 40 AS A WHOLE

Horizontal amendments

The aim of certain amendments is to adapt Articles 38 to 40 to other amendments previously presented to draft Articles 24 to 33.

This is the case for amendments 3 Michel and others, 4 de Villepin, 26 and 48 Duff and others, who would like to use the "organic law" instrument.

Amendments 19, 20, 28 and 60 Kirkhope replace the term "Union" by "Community", and "Constitution" by "simplified treaty".

Other amendments refer to instruments not included in draft articles 24 to 33 or defined differently by that draft: 40 Stockton (on the recommendation), 41, 60 and 61 Kirkhope and 56 Stockton (on the initiative of the EP) and 39 Farnleitner (on the directive).

Principle of necessary means

Some amendments propose introducing this principle which is currently the subject of Article 6(4) TEU. These are amendments 21 Palacio and 22 Lopes and Lobo Antunes who wish to include it in Article 38, and amendments 30 Brok and others, 31 Wittbrodt and others and 37 Einem and Berger who wish to include it in Article 39.

Legally compulsory expenditure

This concept and the need to preserve it in some manner or another gave rise to several amendments:

- Amendment 36 de Villepin proposes adding a new principle whereby provision should be made for means for honouring the financial obligations arising from international agreements and legislative acts.
- According to amendments 44 Schluter and 54 Lopes and Lobo Antunes, provision should be made for financial means to meet legal obligations towards third parties.
- Amendment 53 Roche recalls the current definition of compulsory expenditure in the framework of the annual budgetary procedure.

Other amendments

Amendment 1 Azevedo and Nazaré Pereira proposes postponing the discussion of these draft articles.

Amendment 68 O'Sullivan presents an overall alternative proposal to the draft submitted to the Convention by the Præsidium.

SUMMARY SHEET OF THE AMENDMENTS TO ARTICLE 38

Procedure

A large number of amendments concern the procedure for adopting the system of own resources.

The positions vary widely:

- Maintain the current procedure: 23 Teufel and 24 Wuermeling;
- Legislative procedure: 7 Duhamel and others and 8 Borrell and others;
- Joint decision by the EP and the Council: 9 Voggenhuber and, with super-qualified majorities, 11 Kohout;
- Assent of the EP: 12 Chabert and others, 13 Kaufmann and 14 Figel; with a qualified majority in the Council: 15 Wittbrodt and others and with a super-qualified majority in the Council: 16 Brok and others;
- Abolition of the requirement for national ratification: 3 Michel and others, 7 Duhamel and others, 8 Borrell and others, 9 Voggenhuber, 12 Chabert and others and 26 Duff and others;
- Proposal by the EP: 17 Stockton and 20 Kirkhope;

Amendment 4 de Villepin proposes two procedures: using the existing procedure to determine the ceiling and to create resources and another procedure with qualified majority in the Council and the assent of the EP for the remainder of the system of resources.

European tax

Certain amendments propose authorising the creation of European taxes: amendments 3 Michel and others, 4 de Villepin, 5 Lequiller, 6 Brok and others, 7 Duhamel and others, 8 Borrell and others, 18 Farnleitner and 26 Duff and others.

Other amendments

Some amendments propose modifying the nature of own resources and replacing them by governmental contributions: amendment 2 Heathcoat-Amory, or by "revenues": amendment 10 Hjelm-Wallén and others.

Amendment 3 Michel and others proposes an enumeration of resources.

SUMMARY SHEET OF THE AMENDMENTS TO ARTICLE 39

Annuality

Amendments 32 Hübner and 33 de Vries and de Bruijn set the period covered: 1 January to 31 December.

Unity

Some amendments appear to want to eliminate any exception to this principle: amendments 30 Brok and others, 31 Wittbrodt and others, 34 Borrell and others and 35 Duhamel and others.

Amendment 27 Duff and others proposes that the CFSP should be an exception to the principle.

Balance

Amendments 30 Brok and others and 31 Wittbrodt and others want to state explicitly that deficits are prohibited.

Discipline

Some amendments want to add the financial perspective as a reference framework for budgetary discipline: amendments 33 de Vries, 34 Borrell and others, 35 Duhamel and others, 41 Hain, 43 Hjelm-Wallén and others.

Amendment 42 Roche puts discipline in an annual context.

Implementation

Amendment 33 de Vries and de Bruijn adds a specific reference to the Commission's responsibility in the implementation of the budget. Amendment 41 Hain strengthens the drafting of the principle.

Others

Amendment 26 Duff and others proposes a new principle of financial autonomy.

Amendment 33 de Vries and de Bruijn proposes that the Commission should present the European Parliament and the Council with a report on the implementation of the budget.

Amendment 45 Heathcoat-Amory proposes that expenditure of a propagandist nature should be banned.

SUMMARY SHEET OF THE AMENDMENTS TO ARTICLE 40

A. FINANCIAL PERSPECTIVE

New Article on the financial perspective

Some amendments ask for a separate article for the financial perspective: amendements 25 de Vries and de Bruijn (after Article 38) and amendements 46 de Villepin, 47 Lopes and Lobo Antunes, 48 Duff and others (after Article 39).

Contents of the perspective

Amendment 48 Duff and others states that Article 40 should lay down the principle whereby the financial perspective sets ceilings for expenditure. According to amendments 25 de Vries, 47 Lopes and Lobo Antunes, 50 Duhamel and others and 51 Michel and others, these ceilings should be set by category of expenditure.

Procedure

Numerous amendments addressed the procedure for the adoption of the perspective:

- The system of "unanimity within the Council with consultation of the EP on a proposal from the Commission" is proposed by amendments 25 de Vries, 47 Lopes and Lobo Antunes (the Council meeting in the composition of Heads of State or Government) and 43 Hjelm-Wallén and others (who do not mention the Commission proposal).
- A joint decision by the Council and the European Parliament by qualified majority is proposed by amendments 50 Duhamel and others and 51 Michel and others. Amendment 58 Voggenhuber proposes the same procedure without mentioning the majorities.
- The legislative procedure is proposed by amendment 52 Borrell and others and, with an augmented qualified majority in the Council, by amendments 65 Brok and others and 67 Wittbrodt and Fogler.

According to amendment 60 Hain, it should be a decision of the European Council.

Other amendments

Amendment 47 Lopes and Lobo Antunes proposes the extension of the last year of the preceding perspective if the adoption procedure fails.

Amendment 49 Hjelm-Wallén and others stresses the need to respect the own resources ceiling ("revenue").

Amendment 65 Brok and others proposes that the perspective should correspond to the length of the mandate of the European Parliament.

B. BUDGET

Procedure

Amendments 50 Duhamel and others and 52 Borrell and others propose that the legislative procedure should be applied, whereas amendments 65 Brok and others and 67 Wittbrodt and Fogler propose a special "budgetary codecision procedure".

Amendment 54 Lopes and Lobo Antunes proposes that a conciliation mechanism should be formalised.

Regarding the Commission proposal, amendment 59 Fischer clarifies that the Commission is here not using its traditional right of initiative (it would have to present a recommendation and not a proposal) and amendment 60 Hain believes that the Commission should present a "preliminary draft" as at present.

The amendments presented proposed various solutions for cases where the Parliament and the Council do not manage to agree:

- Final say for the European Parliament in the framework of a maximum rate of increase declared by the Commission: amendment 55 Duff and others;
- Final say for the European Parliament: 58 Voggenhuber
- Provisional twelfths: amendment 57 de Vries and de Bruijn
- Final say for the Council as regards revenue and the Parliament as regards expenditure, within certain limits: 66 Brok and others.

Amendment 63 Figel and others is confined to calling for the subject to be addressed in Article 40.

Other amendments

Amendment 62 de Villepin deals with the special nature of the budget procedure for the common foreign and security policy.

Amendment 55 Duff and others concerns the discharge for the budget.

Amendment 64 Teufel would like to examine Article 40 with the provisions of Part Two of the Constitution.

Amendment 69 Kaufmann is of an editorial nature.

List of amendments and observations:

Article 38

1. *Eduarda Azevedo, Nazaré-Pereira*
2. *Heathcoat-Amory*
3. *Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy*
4. *Dominique de Villepin*
5. *Lequiller*
6. *Brok, Giannakou, Santer, van der Linden*
7. *Duhamel, Einem, Floch, Marinho, Van Lancker, Berès, Berger, Carnero, Paciotti, Thorning-Schmidt*
8. *Borrell, Carnero, López Garrido*
9. *Voggenhuber*
10. *Hjelm-Wallén, Petersson, Lekberg, Kvist*
11. *Kohout*
12. *Chabert, Dammayer, du Granrut, Martini, Valcarcel Siso*
13. *Kaufmann*
14. *Figel*
15. *Wittbrodt, Fogler*
16. *Brok; Santer; Stylianidis; Szajer; Tusek; Van Der Linden; Altmaier; Azevedo; Basile; Brejc; Cushnahan; Demetriou; Figel; Fogler; Frendo; Kauppi; Kelam; Kelemen; Korhonen; Krasts; Kroupa; Kutzkova; Lequiller; Lopes; Maij-Weggen; Mladenov; Nazaré-Pereira; Paks; Rack; Van Dijk; Wittbrodt; Zieleniec; Zile*
17. *Stockton*
18. *Farnleitner*
19. *Kirkhope*
20. *Kirkhope*
21. *Palacio*
22. *Ernâni Lopes, Lobo Antunes*
23. *Teufel*
24. *Wurmeling*
25. *de Vries, de Bruijn*
26. *Duff, Helminger, Kreitzberg, Hasotti, Akçam, Maldeikis, MacLennan of Rogart, Uzun, Matsakis*

Article 39

27. *Duff, Dini, Helming, Kreitzberg, Gricius, Hasotti, Akçam, Maldeikis, MacLennan of Rogart, Uzun, Matsakis, Vassiliou, Szent-Ivanyi, Eckstein-Kovacs, Ozal, Sivickas*
28. *Kirkhope*
29. *Kaufmann*
30. *Brok; Santer; Stylianidis; Szajer; Tusek; Van Der Linden; Almeida Garrett; Giannakou; Altmair; Azevedo; Basile; Brejc; Cushnahan; Demetriou; Fogler; Frendo; Kauppi; Kelam; Kelemen; Korhonen; Krasts; Kroupa; Kutzkova; Maij-Weggen; Mladenov; Nazaré-Pereira; Piks; Rack; Van Dijk; Wittbrodt; Zieleniec; Zile*
31. *Fogler*
32. *Hübner*
33. *de Vries, de Bruijn*
34. *Borrell, Carnero, Lopez Garrido*
35. *Duhamel, Einem, McAvan, Marinho, Van Lancker, Berès, Berger, Carnero, Paciotti, Thorning-Schmidt*
36. *de Villepin*
37. *Einem, Berger*
38. *Wuermeling*
39. *Farnleitner*
40. *Stockton*
41. *Hain*
42. *Roche*
43. *Hjelm-Wallén, Petersson, Lekberg, Lennmarker, Kvist, Svensson*
44. *Schlüter*
45. *Heathcoat-Amory*
46. *de Villepin*
47. *Ernâni Lopes, Lobo Antunes*
48. *Duff, Dini, Helming, Kreitzberg, Gricius, Hasotti, Akçam, Maldeikis, MacLennan of Rogart, Uzun, Matsakis, Vassiliou, Szent-Ivanyi, Eckstein-Kovacs, Ozal, Sivickas*

Article 40

49. *Hjelm-Wallén, Petersson, Lekberg, Lennmarker, Kvist, Svensson*
50. *Duhamel, Einem, McAvan, Marinho, Van Lancker, Berès, Berger, Carnero, Paciotti, Thorning-Schmidt*
51. *Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy*
52. *Borrell, Carnero, López Garrido*
53. *Roche*
54. *Ernâni Lopes, Lobo Antunes*
55. *Duff, Dini, Helminger, Kreitzberg, Hasotti, Akçam, Maldeikis, MacLennan of Rogart, Uzun, Matsakis, Vassiliou, Szent-Ivanyi, Eckstein-Kovacs, Ozal*
56. *Stockton*
57. *de Vries, de Bruijn*
58. *Voggenhuber*
59. *Fischer*
60. *Hain*
61. *Kirkhope*
62. *de Villepin*
63. *Figel, Belohorská, Zala*
64. *Teufel*
65. *Brok; Santer; Stylianidis; Szajer; Tusek; Van Der Linden; Almeida Garrett; Giannakou; Altmaier; Azevedo; Basile; Brejc; Cushnahan; Demetriou; Fogler; Frendo; Kauppi; Kelam; Kelemen; Korhonen; Krasts; Kroupa; Kutzkova; Maij-Weggen; Mladenov; Nazaré-Pereira; Piks; Rack; Van Dijk; Wittbrodt; Zile*
66. *Brok; Santer; Stylianidis; Szajer; Tusek; Van Der Linden; Almeida Garrett; Giannakou; Altmaier; Azevedo; Basile; Brejc; Cushnahan; Demetriou; Figel; Fogler; Frendo; Kauppi; Kelam; Kelemen; Korhonen; Krasts; Kroupa; Kutzkova; Maij-Weggen; Mladenov; Nazare-Pereira; Piks; Rack; Van Dijk; Wittbrodt; Zielieniec; Zile*
67. *Fogler*
68. *O'Sullivan*
69. *Kaufmann*
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