

CONV 679/03

CERCLE II 6

**REPORT**

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from : Chairman of the discussion circle on the budgetary procedure

to : Members of the Convention

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Subject : **Final report of the discussion circle on the budgetary procedure**

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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"*<sup>1</sup>

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<sup>2</sup>:

- 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<sup>3</sup>.

#### **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.

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<sup>1</sup> CONV 612/03.

<sup>2</sup> CONV 424/02.

<sup>3</sup> Several members indicated that their final position would depend on the institutional balance emerging from all the procedures relating to the system of own resources, the financial framework and the annual budget.

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 <sup>4</sup>. 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. <sup>5</sup>

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 framework" 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?

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<sup>4</sup> 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).

<sup>5</sup> 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).

## **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 <sup>6</sup> to adopt the "multiannual financial framework".

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. A conciliation mechanism should also be provided for, to facilitate negotiation and agreement between the Council and the Parliament.

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<sup>6</sup> 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.

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.<sup>7</sup>

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]".

- Furthermore, the circle believes that the "financial framework" should be mentioned in Article 39(5)<sup>8</sup> as a reference framework for budgetary discipline, together with the ceiling for own resources.

## **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.

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<sup>7</sup> Currently referred to in Article 250 TEC.

<sup>8</sup> CONV 602/03

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 ceiling 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 the latter 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. It could also consist of the creation of one or more reserves.

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.<sup>9</sup>

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.

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<sup>9</sup> 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.



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 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 law<sup>10</sup> 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.

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<sup>10</sup> 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.

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 stage <sup>11</sup>. Furthermore, if time limits for procedures are shortened then there would be less need to amend the initial draft.

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, from the Commission's initiative. <sup>12</sup>

The circle considered it convenient 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.

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<sup>11</sup> For the modalities of the conciliation procedure, see below.

<sup>12</sup> Currently referred to in Article 250 TEC.

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 agreement subject to recognition of the principle whereby appropriations needed to meet financial obligations resulting from international agreements and legislative acts are entered in the budget, to maintenance of the current decision-making procedures in certain Union policies and to preservation of the institutional balance.

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 triologue 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 led to the identification of the fundamental elements of a simpler and shorter budgetary procedure:

The budgetary procedure would formally begin on 1 September, with a proposal by the Commission addressed to the Council and to the Parliament. It would take account of spending forecasts by each of the institutions, and the outcome of a "trialogue" on the budgetary priorities which would have taken place at the end of July.

The members of the circle believe that one reading of the Commission proposal by each institution is sufficient. Differences of view emerged about the order in which those readings should take place. Some preferred that the Council should determine its position first by a qualified majority, and forward it to the Parliament. It would then be followed by the first reading by the Parliament, which would act by a majority of its constituent members. There would then be three possibilities:

- No action: the budget is deemed adopted.
- It accepts the Council's position: the budget is deemed adopted.
- It tables amendments to the Council's position: a conciliation committee is convened.

Others would prefer the first reading by the Parliament to precede that by the Council, then continuing in accordance with the procedural arrangements outlined above.

The conciliation committee would be composed along the lines of the current codecision procedure: all Council members and an equal number of representatives of the Parliament would sit on it. It could:

- (a) adopt a joint draft;
- (b) not succeed in adopting a joint draft.

If the conciliation committee managed to adopt a joint draft, that draft would be submitted en bloc to the two institutions, which would have to approve or reject it within a set time-limit (respectively by a qualified majority and by a majority of members). If both institutions approved the draft, the budget would be deemed adopted.

Members of the circle are divided between two differing opinions on the mechanism to resolve the case where one of the institutions rejects the joint draft and the case where the committee does not succeed in adopting a joint draft:

- Some propose drawing on the current procedure for non-compulsory expenditure: the Parliament would decide on the Council's amendments regarding each budget heading on which there was no agreement. As in the current procedure for non-compulsory expenditure, it could only reject the Council's amendments by a majority of members and three fifths of the votes cast <sup>13</sup>. If such a majority could not be achieved, the Council's amendment would be deemed adopted. The Parliament would hold a final vote by a majority of its constituent members.

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<sup>13</sup> The members of the circle who support this option believe that the majority required to reject the Council amendments should in no case be lower than the majority currently required in the case of non-compulsory expenditure: a majority of members of the Parliament representing three-fifths of the votes cast.

- Others would prefer a system in which the Parliament would adopt a budget which would provide, for those budget headings on which there was no agreement, the lowest amount proposed by the Council or the Parliament, or the previous year's amount, if higher <sup>14</sup>. In this case there would be no final vote by the Parliament.

The budgetary procedure would end in mid-December, with the signature of the President of the Parliament.

### **Financial management**

Another idea was brought up in the discussion circle which is somewhat marginal to the circle's terms of reference, since it concerns financial management. The members of the circle recommend to the Praesidium and the Convention that the principle of sound financial management should be strengthened. They also believe that democratic control over the results actually achieved through expenditure, in relation to previously set objectives, should be increased. 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 <sup>15</sup>.

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<sup>14</sup> Some members proposed entering the amount of the budget for the previous year. Other members noted that this option contradicts the principle whereby the budget should provide the necessary financial resources for the Union to fulfil its legal obligations to third parties.

<sup>15</sup> See CONV 653 and Working document 23 of the Working Group on Simplification.