

CONV 730/03

CERCLE III 7

REPORT

from :	Chairman of the discussion circle on own resources
to :	Convention members
Subject :	Final report of the discussion circle on own resources

1. The discussion circle on own resources wound up its discussions at its meeting on 6 May 2003, at which it considered the draft report submitted by its Chairman, Mr Iñigo Méndez de Vigo. At its earlier meetings the circle had discussed the questions arising from the mandate received from the Praesidium.
2. The circle's debate showed that there were **three levels** that had to be taken into account when broaching the question of the Union's financial resources. The constitutional level, the level of the system of resources and the level of the annual budget.
3. The circle thought that an article should be devoted to own resources in Part One of the Constitution. Such an article should include the decision-making procedure.

4. The circle thought that the **name** "own resources" might be misleading. Some members suggested that, in the interests of transparency, it might be better to speak of the Union's resources or the Union's budgetary resources. Nevertheless, the concept "own resources", meaning resources belonging to the Union as of right, had to be kept. The idea that the Union was financed by resources that belonged to it by right should be enshrined in the relevant article of Part One of the Constitution
5. In terms of constitutional logic, the circle considered that question (c) of the mandate should precede the others:

"(c) Does the existing system of own resources meet public expectations in terms of fairness and transparency?"

6. The circle found that the answer to that question lay in **the principles** which should govern the system for financing the Union and that the Constitution should reflect in an appropriate way:
 - The principle of transparency in financing the Union: citizens should be able to ascertain the cost of the Union and should be able to understand how it is financed. The circle saw this as a general principle, which should inform the Union's action in all areas, in line with the key aim of the Laeken declaration of bringing the Union closer to its citizens, and it was especially important with regard to resources.

With the same aim of bringing the Union closer to its citizens, the circle stressed the importance in terms of transparency of increasing democratic control over the actual outturn of expenditure with reference to the objectives fixed in advance. Effectiveness also bestowed legitimacy.

- The principle of taxation by consent ¹: the system for financing the Union must be subject to approval and scrutiny by citizens' parliamentary representatives. This was an elementary democratic principle of the rule of law. It was essential that citizens' parliamentary representatives should play an effective part in decision-making on own resources, whether through national parliaments or through the European Parliament ².
 - The principle of adequacy of means: the financing system must enable the Union to attain its objectives. This is the budgetary aspect of the principle already enshrined in Article 6(4) of the TEU: "The Union shall provide itself with the means necessary to attain its objectives and carry through its policies". This principle must be preserved in the title dealing with finances in Part One of the Constitution with a slightly amended wording. "The Union shall provide itself with adequate means to attain its objectives and carry through its policies."
 - The principle of equity between Member States: the system for financing the Union must be based on the ability to contribute, derived from the relative wealth of the Member States expressed principally in terms of GNP. Some members of the circle pointed out in this connection that, under the Protocol on economic and social cohesion, degressive elements in the Union's financing system were to be gradually corrected. A few members said that the fairness of the budget system did not rest solely on the revenue side but also on the redistributive outcome of expenditure ³.
7. In the light of these principles, the circle went on to consider the questions of decision-making procedure arising from the first two points of its mandate, which it dealt with together:

"(a) Should Council decisions under the Article 269 procedure continue to be unanimous? What role should the European Parliament play?"

¹ One member of the circle did not agree with the content of this paragraph.

² Some circle members stressed the importance of regular participation by national parliaments in the Union's budgetary debate.

³ Some circle members considered it essential also to establish as a budgetary principle the link that ought to exist between the Union's economic policy guidelines and its budgetary priorities.

(b) *Should the Article 269 procedure uphold the requirement for adoption by the Member States in accordance with their respective constitutional requirements, or should financing be turned into a Union competence?*

8. The **decision-making procedure** is currently laid down in the second paragraph of Article 269 of the TEC:

"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."

9. This article provides for the unanimous adoption of provisions relating to the system of own resources of the Union. But these are not compulsory provisions, as the Council simply has to recommend that Member States ratify them. This is a very unwieldy decision-making procedure. The circle wondered whether such a procedure was conducive to guaranteeing future adoption of the measures necessary for financing the Union's policies, in view of "the weight of numbers".
10. The majority of members of the circle proposed that the article in Part One of the Constitution dealing with the system of resources should distinguish between two legal bases, each with its separate procedure:
- One for setting the ceiling of own resources and hence the size of the Union's budget and for creating new resources, which would be governed by the more cumbersome procedure under the Constitution, the procedure currently laid down in Article 269: unanimous adoption by the Council of the provisions which it recommends to the Member States for adoption, in accordance with their respective constitutional requirements ¹.

¹ Some circle members proposed stipulating that, by means of the same procedure, it should be possible to amend the decision-making procedure in the future.

- The other concerning the practical procedures for the Union's resources, which would be governed by a more streamlined procedure: adoption by the Council by a qualified majority [or superqualified majority if such a voting procedure were provided for in the Constitution] with the assent of the European Parliament. National ratification would fall by the wayside; parliamentary representation would be through the European Parliament ¹.

11. Most members of the circle felt that Part One of the Constitution should also address the issue of the **hierarchical relationship** to be established between **the Union's system of resources**, and in particular the ceiling for those resources, **and the multiannual financial framework**.
12. The discussion circle on the budgetary procedure has recommended that the financial perspective should be incorporated into the Constitution. It would thus become legally binding. In the circle's view, the Constitution should include the principle whereby the "financial framework" determines the binding amounts of the annual ceilings for commitment appropriations for each heading within the limit of Union own resources, and the amount of the annual ceiling for payment appropriations, which must in any event comply with the own resources ceiling. The legal relationship between those various ceilings and the relevant acts of secondary legislation (the law on the financial framework and the law on own resources) should thus be clearly established. In turn, the annual budget, which ensures that resources are actually delivered, should comply with the financial framework.
13. The circle thought that the Title dealing with the Union's finances in Part One of the Constitution should clearly establish the principle that the own resources ceiling was binding for the multiannual financial framework, which was in turn binding for the annual budget.

¹ Some circle members considered that the ceiling and the procedures for resources were indissociable, and that together they should remain subject to the procedure currently laid down in Article 269 TEC.

14. In considering the third question of its mandate:

"(d) Would the existing decision-making procedure allow substantial amendments to be made to these resources?"

The circle took into account that the Union's financing system itself, **the nature of the resources and the procedures relating to them** were matters for secondary legislation and would be governed by the law adopted pursuant to the legal basis laid down in the Constitution.

15. The members of the circle in any case addressed the question of developments in the system of resources. Differing views were expressed:

- (a) Some wished to see the Union system move towards tax revenues. In their view, the stability and transparency of the system would be best secured by European taxes, which should not, under any circumstances, mean an increase in the overall tax burden borne by taxpayers. Members of the circle who supported such a development were themselves split between:
 - those who considered that establishing resources of this kind fell within the sphere of secondary legislation, and that no change was necessary in order to create a European tax or participation in national taxes, provided that there was the political will to do so. They held that the Union already commanded this type of resource: the traditional resources were fiscal in nature, as was the VAT resource;
 - those members who would prefer to remove all uncertainty and to see the legal basis of the Constitution explicitly provide for the option of establishing tax-based resources.

- (b) Other members believed that the current system of resources was sufficiently fair and sound. Some of them would like the GNP resource, which was the fairest because based on Member States' relative wealth, to play an even greater role in the system. They were against the idea that the legal basis in Part One of the Constitution should explicitly allow for the creation of tax-based resources.

16. The circle concluded that, in any event, the current legal base allowed for the creation of new resources including fiscal resources ¹.

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¹ Some circle members believed, however, that a decision-making procedure as cumbersome as that laid down would not facilitate the creation of new resources.