

European Issue

n°187

29th november 2010

The Crisis over the 2011 Budget: "le choc des intransigeances" (the clash of the intransigent)

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SUMMARY If the European Parliament and the Council do not come to an agreement over the 2011 budget the European Union will be run according to a system of provisional "12^{ths}"; the 2010 budget be renewed and applied on a month to month, twelve part basis. This has not happened since 1988. Since the Lisbon Treaty entered into force the budget has to be adopted in co-decision and this is giving rise to tension. "There is no budgetary crisis," says however the Belgian Minister who is undertaking the presidency of the budgetary meetings. So what is it then? The crisis over the 2011 budget is just another episode in the battle for power between two complementary legitimacies which are working according to opposite approaches. But what if the real battle lay elsewhere - such as in the preparation for the next financial framework for example?

INTRODUCTION If the European Parliament and the Council do not come to an agreement over the 2011 budget the European Union will be run according to a system of provisional "12^{ths}"; the 2010 budget be renewed and applied on a month to month, twelve part basis. This has not happened since 1988. Since the Lisbon Treaty entered into force the budget has to be adopted in co-decision and this is giving rise to tension. "There is no budgetary crisis," says however the Belgian Minister who is undertaking the presidency of the budgetary meetings. So what is it then? The crisis over the 2011 budget is just another episode in the battle for power between two complementary legitimacies which are working according to opposite approaches. But what if the real battle lay elsewhere - such as in the preparation for the next financial framework for example?

Differences over the spending totals to grant to one area or another abound. The term crisis has to be reserved for times when the budgetary authority has not succeeded in adopting a budget that is acceptable to both sides. Until 1988 budgetary crises were quite frequent [1]. There are three categories of these.

The first is when the budget has been decided upon by the European Parliament but the Council believes that the Parliament has gone beyond its remit i.e. it has not respected its competences or has gone beyond the authorised limit [2]. The budget has been decided upon but is challenged, with some States refusing to pay their contribution (1981 budget), with the Council even launching proceedings at the Court of Justice (1986 budget).

The second case is the rejection of the budget by the European Parliament (1980 and 1985 budgets).

The third case is when the Council does not approve the (1988 budget).

Even though there is conflict the term of budgetary crisis is a slight exaggeration in the event of the rejection of the budget by the European Parliament in that it is only a question of expressing a right it has expressly enjoyed since 1975. If there is no vote or any formal act to approve the budget – a competence of the President of the Parliament – this is obviously a clear sign of

I. THE BUDGETARY CRISIS

A. Past Budgetary Crises

1. Inter-Institutional Crises at the time of the annual budget.

The vote on the community budget has for a long time and often still is one of tension between the two branches of the budgetary authority, the European Parlia-

1. See details in Daniel Strasser, *les finances de l'Europe, LGDJ, 1990, pp 185-188*

2. The amount of NCE has to fall in line with a maximum rate of increase (MRI) calculated by the Commission according to the development of the community GNP and the average development in the budgets of the Member States. Since 1988 the ceiling of expenditure set by the multi-annual financial framework (MFF) have rendered this measure obsolete.

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high tension. In any event the situation of stalemate is included in the treaty by means of an emergency solution in the shape of the provisional "12ths". If no agreement is reached on a budget in year X it is the budget of year X-1 which is applied in 12ths each month. The provisional 12ths system has been used on three occasions: 1980, 1986 and 1988.

2. Inter-State Crises during the Negotiation of the Multi-Annual Financial Framework.

There has not been an acute crisis over the annual budget in over twenty years, i.e. since the creation of the financial perspective in 1988, a budgetary innovation that specifically aimed to avoid repeated periods of tension.

The financial perspective, renamed multi-annual financial framework (MFF) in the Lisbon Treaty, sets expenditure ceilings according to major categories each year for the time of the programme [3]. Expenditure from the annual budget must respect these ceilings. To a certain degree the MFF is a budgetary peace treaty. Crises are postponed until the time of the MFF negotiation, every seven years, giving rise to extremely high tension. But this occurs between the Member States when they are setting a general limit to the budget, or are arbitrating between the major categories or are trying to avoid increases in the net contributors' balances.

The budget's total determines the gross contributions to be made by each State – since the payment appropriations determine how much the Member States contribute to the European budget.

The division of expenditures into categories determines their net contribution – for a total given budget, one State will receive more for agricultural expenditure, another for structural spending thereby improving their net balance in terms of the community budget.

Negotiations are long – 18 months and they are bitter. They close with a European Council meeting that is devoted to the final rounds of mediation. The agreement is adopted via a consensus, i.e. unanimously without a vote. This political agreement between Heads of State and Government is used as a base – and in fact it is almost a reference – for the final inter-institutional agreement concluded between the Parliament, the Council and the Commission.

Although budgetary tension remains between the Parliament and the Council when the annual budget is

being voted on or when the choice of funding of extremely big programmes is being decided [4], and although Parliament has sometimes shown its displeasure with regard to the European Commission [5], there has not been an acute crisis between the two branches of the budgetary authority in more than twenty years. In 1998 an observer even spoke of "an inter-institutional idyll" between Parliament and the Council [6]. The present crisis puts an end to this period of stability.

B. The Specific Features of the Budgetary Crisis 2011

This episode of budget fever has occurred because of two phenomena.

1. The Changes made to the Budgetary Procedure.

Until the Lisbon Treaty the community budget was approved by the budgetary authority – Parliament and Council – according to a procedure based on the distribution of spending into Compulsory Expenditure (CE), mainly comprising administrative spending and expenditure in the first pillar of the Common Agricultural Policy and Non-Compulsory Expenditure (NCE), i.e. other expenditures. To put it simply the CE's were approved by the Council whilst the Parliament had the "final say" – according to the accepted expression, over NCE's – it is a 45/55 split. The President of Parliament adopts the budget.

The Lisbon Treaty changed this procedure greatly. It put an end to the distinction between CE/NCE's and put the Parliament on an equal footing with the Council. The budget forms a whole and is adopted according to a specific procedure but which amounts to a Parliament/Council co-decision [7]. In the event of disagreement between the two branches of the budgetary authority, the President of Parliament in agreement with the president of the Council convenes a Conciliation Committee that is responsible for drawing up a joint draft (art. 314 § 5) The Commission takes part in the work of the Conciliation Committee. If there is no agreement over a joint draft the Commission puts a new draft budget forward (art. 314 § 8). If no budget has been adopted before the start of the budgetary year, the "provisional 12ths" procedure is then applied to the budget [8].

3. The five year programme 1988-1992, the seven year programmes 1993-1999, 2000-2006, 2007-2013.

4. In 2007/2008 when funding for Galileo had to be found.

5. By delaying the release of the budget which sanctions the execution of the previous year's budget in 1998, 2008 and 2009.

6. Dominique Discors, "La procédure budgétaire pour 1998, une idylle interinstitutionnelle", *Revue du marché commun et de l'Union européenne*, n° 423, Nov-Dec 1998.

7. The budgetary procedure is set by article 314 by the Treaty on the Functioning of the European Union (TFEU).

8. Art.315 of the TFEU: If at the start of the budgetary year this still has not been finally adopted, expenditure can be undertaken monthly per category according to measures in the regulation taken together with article 322, limited to a 12th of the payment appropriations opened in the category concerned of the budget of the previous budgetary year, without going over the 12th of the payments planned for in the same category of the draft budget.

2010 is the first year of application of this new procedure. The Conciliation Committee did not succeed in drawing up a new joint draft. The Commission has to present another draft budget. As long as there is no decision for 2011 next year's budget will be frozen, month by month, at its 2010 level.

The dispute is over 4 billion € in payment appropriations [9], i.e. the difference between the budget of 126.5 billion adopted by the Council and that adopted by the Parliament – 130.6 billion, i.e. 4 billion in relation to the ceiling allowed by the financial framework.

A Comparative Table of Budget Estimates 2011 in payment appropriations (in billion of €)

Categories	2010 Budget	Commission Draft Budget	Budget adopted by the Council	Budget adopted by the Parliament	Ceiling
Competitiveness	11.3	12.1	11.2	12.1	
Cohesion	36.4	42.5	41.5	42.5	
Natural Resources	58.1	58.1	57.3	58.5	
Other internal expenditure	1,4	1,5	1,4	1,5	
External Action	7.8	7.6	7	7.6	
Administration	7.9	8.25	8.1	8.2	
Total	122.9	130.1	126.5	130.6	134.3

2. Two crises juxtaposed

In reality two crises overlap. The first is between the Member States. It is very rare for the Council not to stand together on the budget negotiation. However this is what has happened this year because three camps faced each other:

- the camp of the net contributors – except for Germany and France – which support an almost flat European budget with as little increase as possible – at most one which is limited to inflation – they even want to freeze spending at the 2010 level;
- the camp of the new Member States – except the Czech Republic – which want to ensure that the structural funds are adequately financed;
- France and Germany defend a middle position. Both countries first supported the position adopted by the net contributors before coming to a compromise. Without rejecting the spirit of conciliation that has to motivate the two main contributors to the European budget we cannot deny that they were also sensitive to the 300 million € increase in appropriations to the Common Agricultural Policy (CAP) approved on the initiative of the European Parliament's Budgets Committee and which were designed for the dairy industry. The Belgian Presidency therefore succeeded – with

great difficulty – to have the compromise approved by the Council to a total 126.5 billion € in payments [10]. The tension between States is obviously linked to the general budgetary context in Europe. The Council believes that the Union has to show moderation during a time when Member States are experiencing serious budgetary difficulties and that the Parliament must abandon the idea of an increase of nearly 6%, which is also higher than the Commission's draft (5.8%); this would be an unprecedented increase in the Member States which on the contrary are trying to reduce their public spending. The Council is therefore suggesting an increase reduced by half to 2.9% [11].

The crisis over the 2011 budget is however just a minor episode in a wider latent battle between the two European institutions.

II. THE POLITICAL CRISIS

A. The budgetary crisis: “le choc des intransigeances” (the clash of the intransigent) [12]

The budgetary conflict is simply the expression of a deeper political crisis comprising the confrontation between two legitimate, complementary entities which

9. The quarrel between the Council and the Parliament focuses more on payment appropriations which have a direct effect on the Member States budgets than on commitment appropriations which are more political.

10. Several Member States voted against this proposal: UK, Sweden, the Netherlands, Finland, Denmark, Austria and Czech Republic, all net contributors except for the Czech Republic.

11. Opposition focuses more specifically on the following points: the Council supports more limited arguments than those put forward by the Commission and the Parliament over research and development funds, cohesion expenditure (+14% against + 16,9%) and administrative spending. On this subject the Council is against the increase requested by the Commission (+4.6%) and most of the new job appointments. Parliament also asked for an increase in aid for the Palestinian territories (+100 million €) and for the programme to counter violence against women.

12. The expression comes from Daniel Strasser, on the 1980 budgetary crisis, *Les finances de l'Europe*, op. cit., p.186.

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adopt two very different budgetary approaches.

1- Two legitimacies

It is useful to note that with every increase in the European Parliament's power tension of this kind occurs.

The first major institutional budgetary crisis took place in 1979 immediately after the election of MEPs by universal suffrage. This election gave legitimacy that was incomparable with the previous system of representatives dispatched by their national parliaments. This was legitimacy and therefore power that the new MEPs were quick to claim as they adopted a resolution that targeted the control of agricultural spending. Opposition to this led to the first implementation of the provisional 12th system.

Likewise a major confidence crisis between the Parliament and the Commission came in 1999 after further power was given to the Parliament after the Maastricht and Amsterdam Treaties [13] It is not surprising then that this year the crisis has arisen; it is the first year of the Parliament exercising its new powers which result from the Lisbon Treaty.

The implementation of this treaty is not going as smoothly as anticipated. A year after its entry into force, power struggles between the institutions are now appearing. The European Parliament does not want to submit to the Council's budgetary diktats, whilst the Council does not want to give in to the Parliament's requests under the pretext that there are new, urgent requirements to be met. This year it involves supporting economic recovery, the European External Action Service but next year it will be something else. And there will always be something else. There will always be legitimate, urgent needs. No one is prepared – initially in any case – to give in.

2 –The budgetary approaches

The institutional crisis brings two visions of the community budget into opposition. The Parliament speaks of the European Union's tasks and its approach is oriented towards spending. This has undeniable advantages: it plays on European sentiment, it uses opinion as its support. Who would challenge economic recovery or a programme to counter violence against women? The ritual argument is now familiar: the Union's budget is derisory. "Europe's budget is less than the French bud-

getary deficit alone," recalls Alain Lamassoure, chair of the European Parliament's Budgets Committee. In addition to this Parliament shows its responsibility in putting forward a level of spending which respects the expenditure ceiling planned for in the MFF which has not always been the case in the past. But whilst new spending would be possible the Council opposes something it approved itself!

In all Parliament reduces the States' to their position as "selfish skinflints".

The Council speaks of constraints and is oriented towards funding – since the European budget is in fact funded by Member States' contributions.

The European Budget's two main resources, the so-called GNI and VAT resources are in fact two means of calculating participation which leads to a levy on Member States' fiscal revenues.

Hence each citizen finances the community budget without realising it (292€ per Frenchman on average for the last three years). So, in substance the Council says that it is easy for the Parliament to increase the budget since it would make the Member States bear the burden. The present budgetary effort made by contributors also has to be taken into account. In 2009 Germany and France's net balance with regard to the community budget represented 12 billion €. Each additional billion in the European budget means an additional levy of 165 million € for France. It is not abnormal then that the main net contributors are the most reticent with regard to an increase in the community budget [14].

In addition to this the impasse does not displease all of the Member States. It is not the least of paradoxes but the present stalemate that will lead to the provisional 12th in fact pleases those who have the most extreme position. Parliament is granting them what they did not dare to ask!

B- The reality: A latent battle of power that will emerge in the future

"There is no crisis over the 2011 budget," maintained Melchior Wathelet, Belgian Secretary of State for the Budget, who is responsible for chairing the Council's budgetary meetings [15]. Just several days ago observers were examining the budgetary crisis and the

13. On this point, Stéphanie Chémery, "Le Parlement européen, une institution aux pouvoirs renforcés", Summary n°136, Robert Schuman Foundation, 31st MAY 2004. http://www.robert-schuman.eu/question_europe.php?num=sy-136

14. The camp against an increase in the community budget also includes a net beneficiary State: the Czech Republic

15. Belgian radio programme RTBF, 16th November 2010.

minister responsible for the budgetary negotiations maintains quite plainly that there is no crisis!

In fact the European Parliament is perfectly prepared to join the Council's position ie 126.5 billion €.

But this would be on two conditions: one would be for the Council to accept the idea of creating new own resources; the other would be for Parliament to be included in the MFF.

1- The tactical renewal of the debate over resources

During the summer the Commission and the Parliament took up the debate over the European budget's own resources once more – and this was supported by common sense: since the Member States which have been drained from a budgetary point of view – are not prepared to increase their participation in the community budget plans have to be made for the creation of new own resources which would feed the community budget without having to interfere with the Member States' own budgets.

This proposal has been commented on a great deal. The proposal is rational [16]. However it has to be agreed that the chances of seeing the emergence of a new own resource are still feeble. If we just look at the legal aspects, funding depends on the Council's decisions which have to be adopted unanimously by the Member States, then they have to be ratified, which means the approval of the national parliaments. A new resource in the shape of a tax in addition to the existing tax, the base and rate of which would be decided on by the European Parliament would imply a new treaty. It might as well be said that the project for a European tax seems both attractive and legitimate to those who believe in Europe, but politically difficult to achieve.

The argument is put forward simply as a means to lay the foundations for the future or as a means to highlight the Parliament's second request: to be associated with the grand budgetary negotiation on the Multi-Annual Financial Framework (MFF).

2 – The Strategic Goal: participating in the grand budgetary negotiation on the multi-annual financial framework

Although the annual budget is taken in co-decision the financial framework is mainly decided upon by the

States after a European Council. Parliament is only involved in the final stages of approval. "The political agreement between Heads of State and Government in the shape of Council conclusions is used as the base for a legal agreement between the Parliament, the Council and the Commission. However it has to be admitted that this final agreement only brings minor adjustments to the previous political agreement." [17]. The financial framework, the keystone in the system, lies in the hands of the Member States. They are not about to give this up.

In requesting participation or rather "total involvement by Parliament" in the drawing up of the next MFF, according to German MEP, Martin Schulz, Parliament notably relies on an ambiguity that appears in a measure included in the treaty with regard to the functioning of the European Union. Article 312 § 5 declares that "throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption". This measure which is specific to the MFF completes article 13 of the Treaty on European Union thereby establishing the principles of loyal cooperation between the institutions. What can these measures actually achieve? Would the presence of observers be enough? The Council will in all evidence be very careful and will have to juggle between controlling budgetary negotiation, pragmatism and loyalty which it owes to the European Parliament.

But since the present stalemate over the 2011 budget had a diametrically opposite effect to the demands made by Parliament leading to an even lower budget in relation to the Council proposal – the present position is also quite dangerous for the Parliament. The Council understands that Parliament will systematically request for the sum to be brought closer to the expenditure ceiling set by the MFF. And since it has had its fingers burnt this year and just as the negotiations on the next financial framework are beginning it will try and set ceilings at a minimum. In both cases the result will be exactly opposite to the goal set by the European Parliament.

How far is not too far? It is in the interest of both sides to agree. Without a new draft budget on the part

16. See notably Alain Lamassoure, "Budgetary Crisis, How can we protect the future of Europe" European Issues n° 181, Robert Schuman Foundation, 4th October 2010 - http://www.robert-schuman.eu/doc/questions_europe/qe-181-fr.pdf

17. Nicolas-Jean Brehon, "Le budget européen : quelle négociation pour le prochain cadre financier de l'UE?", Questions d'Europe, n° 170 and 171, Robert Schuman Foundation, May 2010 - <http://www.robert-schuman.eu/doc/actualites/qe-170-171-fr.pdf>. During the last budgetary negotiation there was a difference of 2 billion € between the Council conclusions at 862.4 billion, and the final agreement at 864.3 billion.

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of the Commission, the next European Council on 16th and 17th December should lead to an agreement that is acceptable to both parties. It is also certain that they

will succeed. European integration has functioned like this for the last 60 years.

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