
EUROPEAN PARLIAMENT

Working Documents

1979 - 1980

12 February 1980

DOCUMENT 1-756/79

REPORT

drawn up on behalf of the
Committee on Budgets

in application of Article 204 of the EEC
Treaty and Article 8 of the Financial
Regulation authorizing further provisional
twelfths for Section III - COMMISSION -
of the General Budget of the European
Communities (Docs. 1-741/79 and 1-742/79)

Rapporteur : Mr Pieter DANKERT

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This report is submitted pursuant to Article 204 of the Treaty and Article 8 of the Financial Regulation, and embodies the proposed decision of the European Parliament for the granting of extra provisional twelfths, under Section III 'Commission' of the general budget of the European Communities.

At its meeting of 11 February the Committee on Budgets examined the draft submitted to it by Mr Pieter Dankert, rapporteur for Section III of the draft general budget.

It approved the proposal to grant extra twelfths by 28 votes to 0 with 4 abstentions as regards appropriations under Chapter 95 'Exceptional measures to assist developing countries and non-member countries'. It also approved the granting of extra provisional twelfths for appropriations under Chapter 21 'Rental of buildings and associated expenditure' by 29 votes to 0 with 4 abstentions.

Present : Mr Lange, Chairman; Mr Notenboom, first Vice-Chairman; Mr Spinelli, second Vice-Chairman; Mr Rossi, third Vice-Chairman; Mr Dankert, rapporteur; Mr Adonnino, Mr Aigner, Mr Arndt, Mr Baillot, Mr Balfe, Mr Barbi, Mr Bonde, Mrs Boserup, Mr Colla, Mrs Cresson (deputizing for Mr Motchane), Mr Cronin (deputizing for Mr Flanagan), Mr Fich, Mr Forth, Mr Gouthier, Mr Griffiths (deputizing for Mrs Gaspard), Mrs Gredal (deputizing for Mr O'Leary), Mrs Hoff, Mr Hord, Mr Jackson, Mr Henckens (deputizing for Mr Ryan), Lord O'Hagan, Mr Klepsch (deputizing for Mr Pfennig), Mr Langes, Mr Lega, Mr Nord, Mr Orlandi, Mr K. Schon, Mrs Scrivener, Mr Simonet and Mr J. M. Taylor.

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A

The Committee on Budgets hereby submits to the European Parliament the following motion for a resolution together with explanatory statement :

MOTION FOR A RESOLUTION

in application of Article 204 of the EEC Treaty and Article 8 of the Financial Regulation authorizing further provisional twelfths for Section III - Commission -

The European Parliament,

- having regard to Article 204 of the EEC Treaty,
 - having regard to Article 8 of the Financial Regulation of 21 December 1977,
 - having regard to the rejection of the draft 1980 budget in its entirety on 13 December 1979,
 - having regard to the requests of the Commission for further provisional twelfths¹,
 - having regard to the opinions of Council²
 - having regard to the report of the Committee on Budgets (Doc. 1-756/79),
1. Recognizes the Commission's contractual obligations resulting from the rental of its premises and the insurance of the institution;
 2. Therefore approves the request to make available four additional one-twelfths in commitment appropriations and six additional one-twelfths in payment appropriations for Item 2100 'Rent' and eight additional one-twelfths in commitment appropriations and ten additional one-twelfths in payment appropriations for Article 211 'Insurance';

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3. Recognizes the urgency of providing aid to Afghanistan refugees in Pakistan;
4. Hereby authorizes an expenditure for an amount of 10.5m EUA under Chapter 95 'Exceptional measures to assist developing countries and non-member countries', equivalent to three-twelfths of the appropriations entered under that Chapter for the 1979 financial year.

¹ PE 62.417

² Docs. 1-741/79 and 1-742/79



EXPLANATORY STATEMENTIntroduction

1. Following the rejection of the draft budget for 1980 by Parliament on 13 December 1979, it was clear that the activities of the European Community would have to be financed in conformity with Article 204 of the EEC Treaty and Article 8 of the Financial Regulation for some time.

It is appropriate, at this stage, that the Committee on Budgets and the European Parliament should establish guidelines for the application of these Articles and should resolve certain questions which have given rise to different interpretations in the other institutions.

The legal texts

2. Article 204 of the Treaty and Article 8 of the Financial Regulation make it clear that the institutions should have available to them the right to make payments "up to one-twelfth of the appropriations in respect of the relevant chapter for the preceding financial year". For commitments the amount should be "up to one-quarter of the total appropriations in respect of the relevant chapter for the preceding financial year increased by one-twelfth for each completed month".

3. A second restriction resides, for payments, where it is stated that they may not exceed "one-twelfth of those provided for in the draft budget in the course of preparation" (Article 204): the Financial Regulation amplifies this stating that they may not exceed "one-twelfth of the sum provided for in the draft budget or in the absence thereof in the preliminary draft budget".

4. In this context it is worth pointing out that this second condition is a limitation - but it is a limitation which will apply relatively infrequently because of the general tendency for the preliminary draft and draft budgets for the subsequent year to exceed the outturn of the previous year.

At present, in the view of the Committee on Budgets, this second limitation does not apply because there is no draft budget for 1980, at the time of drafting this report.

5. The rejection by the European Parliament of the draft as modified by Council means that the draft no longer exists and is not the basis for the budgetary discussions to come. That basis will be provided by the Commission's new budgetary proposals, to be presented in mid-February, and which will then give rise to an intense budgetary dialogue between Parliament and Council.

6. Article 204 in fact covers two eventualities:

- (i) the rejection of the draft budget;
- (ii) the non-adoption of that budget at the end of the financial year.

This second contingency can arise where, for example, the Budgetary Authority fails to agree on a change in the maximum rate of increase for non-compulsory appropriations. In such a case, the draft budget continues to exist into the new calendar year. Rejection, however, consigns that draft to oblivion. It is not until a new budgetary proposal is drawn up that this second limitation can apply.

Management of the one-twelfth system

7. The Financial Regulation does not provide much detail as to the management of the one-twelfth system. In the view of your rapporteur, this is a deliberate omission because the terms of Article 8 are sufficiently clear, as is the purpose behind it and behind Article 204 of the Treaty. In fact, the aim of the one-twelfth system, parallel to the aim of similar systems in the financial arrangements of the Member States, is to provide not a new or different budget for the Community's spending authority, but to make available to that authority fixed sums of money, to continue financing essential activities, to prohibit new policies, to avoid a total disruption of Community activity. It is not a flexible arrangement, and for this reason the amount made available is broken down by chapters so that an effective chapter by chapter freeze is imposed. This is to prevent the spending (or Budgetary) Authorities from reshaping the financial activities of the Community under the one-twelfth arrangement: such a reshaping should only take place during the course of the procedure leading to the adoption of the annual budget. Neither the Treaty nor the Financial Regulation refer to any possibility of transferring funds between chapters or to carrying forward unspent appropriations from 1979 to increase the one-twelfths available.

In your rapporteur's view, as mentioned earlier, these omissions are deliberate.

Carry-forwards

8. The Committee on Budgets believes that there can be no carry forward of appropriations from the past financial year until such a time as a budget is approved to which such appropriations could be carried forward.

Transfers

9. Secondly, and more importantly, the Committee on Budgets believes that it is not possible to effect any transfers between chapters or between Chapter 100 and the operational chapters of the budget, in any of the sections of the Community budget. The reasons that have led the Committee on Budgets to this view are the following:

- (i) the one-twelfth system as such cannot be confused with a budget. It is not an extension of the past budget but the exceptional granting of funds to permit existing Community activities to function in a financially "neutral" fashion;
- (ii) the absence of any reference to the possibility of effecting transfers under the one-twelfth system, in either the Treaty or the Financial Regulation, indicates that such a possibility was not intended;
- (iii) the purpose of the chapter by chapter freeze on appropriations, as indicated by the Financial Regulation, is contrary to the whole idea of flexibility as between these chapters;
- (iv) transferring from one chapter to another or from Chapter 100 is not a budgetary neutral decision but an act of political authorisation. It would be inappropriate for such acts to be taken in this context.

10. There are two overriding political reasons which sustain and supplement these considerations. The absence of a Community budget must not become a way of life for the Community. The Community needs a budget in order to sustain its development. If the arrangements operating in the absence of a budget do not confront all the institutions with certain financial difficulties there might be a tendency to postpone the reaching of an agreement on a new budget, since a soft option chosen in the management of the one-twelfth arrangement would have the effect of removing any urgency from obtaining agreement.

11. Secondly, the Committee on Budgets does not believe that the time is appropriate for legal experiment as regards interpretation of the Financial Regulation. The absence of clearly defined possibilities indicates to the Committee on Budgets that it would be wrong to invent new procedures, without any legal basis, simply to make life easier for the institutions. It is therefore proposed to adhere strictly to the letter of the Treaty and of the Financial Regulation.

Further provisional twelfths

12. The only degree of flexibility contained within the Treaty and the Financial Regulation is the authorisation of "simultaneous expenditure of two or more provisional twelfths". Here again, strict respect for the terms of the Financial Regulation should be ensured.

13. First, there is no reference to parts of one-twelfths. The Committee on Budgets believes that the Budgetary Authority can only authorise a full one-twelfth or several full one-twelfths, not parts of one-twelfths.

14. Secondly, the maximum number of one-twelfths available to the Budgetary Authority during the coming financial year would be twelve. The Committee on Budgets firmly rejects the view, advanced in some quarters, that following the twelfth one-twelfth recourse could be had to thirteenth, fourteenth or fifteenth one-twelfths. If that had been the intention behind the Treaty or the Financial Regulation, then the one-twelfth of the preceding year's budget would not have been the unit of measurement. Furthermore, such a possibility would postpone still further the possibility of agreement on a new budget and would represent a nonsensical departure from the notion of this exceptional financing of the Community's activities.

15. Finally, on a point of interpretation, the Committee on Budgets concludes that the basis of the one-twelfths at present is one-twelfth of the budgetary appropriations in the definitive budget for the preceding year i.e. the 1979 budget, as adopted by Parliament, as altered by supplementary and amending budgets during the financial year, as increased by carry forwards of appropriations from 1978 to 1979 and as changed by transfers of appropriations during the course of 1979.

The requests for two or more provisional twelfths

16. The Financial Regulation lays down that requests for two or more provisional twelfths may be made, "as dictated by administrative requirements". Here again the use of this instrument must not become a soft option permitting the institutions to undermine the constraints which the system was intended to impose. It seems appropriate at this stage that Parliament should define its doctrine in this matter, laying down the conditions on which it would be prepared to agree to the according of extra one-twelfths.

17. It seems to the Committee on Budgets that two conditions alone justify recourse to this exceptional measure:

- (i) where legal obligations to third parties have to be met e.g. rent, insurance and payments to third parties;
- (ii) where urgent humanitarian reasons arise (e.g. disasters in Third World countries requiring urgent Community action).

For the rest, and even for policies which could be considered as Parliamentary priorities, such as the Regional and Social Funds, an extension or reinforcement of their activities must await the conclusion of the 1980 budgetary procedure.

Procedure following a request for two or more twelfths

18. The Financial Regulation lays down the procedure under which extra one-twelfths can be granted. All requests must originate in the Commission and require Council, acting by a qualified majority, to reach a decision, which is made after consultation with Parliament where compulsory expenditure is concerned. Where non-compulsory expenditure is involved Parliament awaits Council's opinion and exercises its right of last word. The third sub-paragraph of Article 204 of the Treaty lays down the time limits in which the Parliament must act. It is clear that Parliament is empowered to take a "different decision" from Council on non-compulsory expenditure. This decision could theoretically relate to the provision of a smaller or greater number of twelfths. In general it is hoped that through this period Council and Parliament may act together, attempting co-decision on each item and avoiding disputes over classification of expenditure.⁽¹⁾

(1) Parliament considers as non-compulsory expenditure both Chapter 92 "Food aid" and Chapter 95 "Emergency aid".

19 In order to save time, your rapporteur has drafted this report in such a way as to permit Parliament to react, without waiting for Council's definitive deliberations and thus the Parliamentary decisions referred to in the resolution are subject to Council's opinion being delivered in the requisite manner.

20. As regards Parliamentary internal procedure the Committee on Budgets believes that it would be inappropriate to proceed by analogy with the transfers procedure which involves the delegation of responsibilities to the Committee on Budgets without the necessity of reporting each time to the plenary. The Treaty states that Parliament "acting by a majority of its members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to".⁽¹⁾ Given the great interest aroused in the management of the Community's financial affairs during this difficult period and in view of the need to ensure the utmost transparency in Parliamentary decision making, it is proposed that the Committee should report each time that a request is made for more than one-twelfth. Where necessary the appropriate Parliamentary spending committees should be consulted for opinion, provided time permits.

The Commission's requests for further twelfths

21. The Commission submitted to the European Parliament by letter of 14 January 1980⁽²⁾ a request for further twelfths for rent and insurance (Chapter 21, respectively Item 2100 and Article 211).

The Commission's request and the accompanying annex makes it clear that contractual obligations oblige it to have recourse to the procedure under Article 204 of the Treaty and Article 8 of the Financial Regulation, requesting the Budgetary Authority to authorise several twelfths. Under its obligations as a tenant, the Commission has to make available to its landlord a payment equivalent to six months' rent in January.

For this reason the Commission requests, for Item 2100, "Rent", four extra twelfths in commitment appropriations and six extra twelfths in payment appropriations.

22. As regards insurance, the obligations at the beginning of the financial year are even heavier, with the Commission obliged to pay to its insurers nearly the totality of the annual payments envisaged. The Commission therefore requests an extra eight twelfths in commitments and ten twelfths in payments.

(1) Article 204 of the Treaty as amended by the Treaty of 22 July 1975
(2) PE 62.417

23. On the point of substance, given the overall approach of the Committee on Budgets to the problem of the twelfths, namely that the procedure under Article 204 should only be invoked where contractual obligations have manifested themselves, it would seem appropriate to accede to the Commission's requests, because obligations to third parties are in question and present inescapable commitments. Council has now indicated its agreement to this proposal, so the European Parliament may now decide upon it.

Aid for Afghanistan refugees

24. Mr Cheysson, Member of the Commission responsible, announced to the European Parliament at its January plenary session that the Commission would be requesting extra provisional twelfths relating to emergency aid for Afghanistan.

The Committee on Budgets received notice of a request, not for extra twelfths, but for a transfer of appropriations from Chapter 92 "Food aid" to Article 950 to provide the extra 10 mEUA (necessary to permit an effective Community contribution to the United Nations' effort to help Afghanistan refugees in Pakistan).

25. The Commission's communication⁽¹⁾ explains how these figures have been arrived at and why the Commission is proposing a transfer.

According to the Commission's view, although sufficient appropriations exist in the 1979 budget, under Article 950 (42 mEUA) to make a request for further provisional twelfths feasible, this amount is limited further by the fact that appropriations in Article 950 under the 1980 draft budget only amounted to 3 mEUA for the whole year. In the Commission's view the second limitation applies and therefore it is necessary to seek appropriations elsewhere, (under Chapter 92) by way of a transfer.

26. After lengthy deliberations, the Committee on Budgets elaborated the doctrine indicated above. It rejected the Commission's interpretation, that the second limitation of the 1980 draft budget applied, because the 1980 draft budget had been rejected by Parliament. The Committee on Budgets also rejected the possibility of a transfer.

⁽¹⁾ COM (80) 24 of 21 January 1980.

27. With sufficient appropriations being available under the 1979 definitive budget (after all the transfers that had taken place during the course of 1979), recourse could be had to the further twelfths procedure.

28. At the time of drafting, the Commission has still not drawn the consequences of this approach by the Committee on Budgets, an approach shared by Council in its decision to authorise, for its part, the spending of three-twelfths from Chapter 95, using 1979 appropriations as the base. It should withdraw its proposed transfer and introduce a request to the Budget Authority for further provisional twelfths under Chapter 95.

29. In view of the overriding urgency of this question and given that Parliament should not in any way hold up a decision, it is proposed, in the attached motion for a resolution, to provide a blanket approval for this request, so that further recourse to a subsequent plenary session will not be necessary. Council has indicated its agreement with the procedure suggested by the Committee on Budgets excluding the possibility of a transfer.

Conclusions

(i) The Committee on Budgets believes that the interests of the Community are best served by strict adherence to Article 204 of the Treaty and Article 8 of the Financial Regulation, in dealing with the financial problems caused by the rejection of the 1980 draft budget.

(ii) The rejection of this draft means that until a new preliminary draft is presented, the second limitation on amounts available under the different chapters does not apply.

(iii) No transfers of appropriations between chapters or carrying forward of appropriations from 1979 are possible prior to the adoption of the 1980 draft budget.

(iv) The only way of increasing expenditure beyond the one-twelfths automatically available is by recourse to the procedure for further provisional twelfths up to, but in no circumstances beyond, the limit of the twelfth one-twelfth. As regards Parliamentary deliberation the Committee on Budgets will report to plenary directly on each request for further provisional twelfths received.

(v) The Committee on Budgets proposes to the European Parliament that it should accede to the request for further one-twelfths to cover insurance and rent commitments under Chapter 21.

(vi) It urges that the Commission should introduce a formal request for extra provisional twelfths for Chapter 95 to aid urgently the Afghanistan refugees in Pakistan. It gives now its approval in advance of such a request.

