

# When the Linkage of Issues is a Weapon: The EP and the New Financial Regulation



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The budget of the European Union is implemented according to the provisions of the Financial Regulation. The adoption of the latest Financial Regulation, in December 2006, has shown, once again, how the EP is able to reinforce its role in the decision making process by wielding its budgetary powers.

However, the negotiation of the EU financial framework for 2007-2013 has also shown that in budgetary politics the EP is not necessarily successful in imposing its view on the other institutions. The paper will demonstrate that the key for success for the EP resides indeed not just in the budgetary power it holds, but in linking wisely specific subjects of negotiation to the budgetary procedures where it has more discretion. The linkage of issues might then constitute a “weapon” for the EP to force the other institutions to accept its requests concerning matters that it negotiates with those institutions.

## Introduction

In the literature on EU inter-institutional relations, extensive analysis has been provided on the ability of the European Parliament (EP) to extend its powers beyond formal procedures.<sup>1</sup> This means that the EP occasionally manages to influence the decision making process more strongly than formal procedures would have normally allowed. In fact, the EP has shown to be able to influence the decision making process within the EU both by leading the other political actors to negotiate on the basis of “pre-cooked” choices,<sup>2</sup> or, in many cases by using its budgetary powers wisely.<sup>3</sup> The present article aims at continuing this latter line of interpretation, by exploring strategies and practices developed and used by the EP to increase its power through applying its rights as budgetary authority.

Then the powers of negotiation of the EP will be analysed focusing on procedures where it has only limited formal power to impose its views but where it can influence the decision making process by cleverly linking issues in the overall political process, using as a basis its powers as budgetary authority.<sup>4</sup> For this purpose, two case-studies will be presented, respectively the procedure for the adoption of the Financial Regulation and that of the Financial Perspectives.

Notably the former case will show a recent example of success for the EP in negotiating amendments to the Financial Regulation. It will be shown that the key element of success for the European Parliament in this case rested in its ability to link the adoption of the annual budget to the

discussions related to the recast of the Financial Regulation.

The second case, on the contrary, will show how the EP can conduct unsuccessful negotiations, even in budgetary politics such as the adoption of the Financial Perspectives, when it does not (or cannot) choose the way of the linkage of issues.

It will be demonstrated that it is mainly the ability of the EP to link certain items of negotiation to its budgetary powers and not simply its formal budgetary powers that enables EP to stretch its powers in the EU decision making process beyond formal procedures.

## The extent of the powers of the European Parliament in budgetary matters

The decision making process in budgetary matters in the European Union is characterised by a specific division of competences between two budgetary authorities, the Council and the European Parliament. The balance of powers between Council and EP varies according to the moment in the budgetary cycle.

If one looks carefully at the Financial Perspectives, which constitute the financial framework of the Community where the big envelope of Community resources and expenditures is agreed, the European Council undoubtedly has a stronger role than the EP: the power to establish them constitutes in fact one of the main components of the power of political impetus defined in Art. 4 of the Treaty on European Union. Its authority, furthermore, guarantees that the financial framework set by the Financial Perspectives will be respected,

as has been always the case.

As for the adoption of the annual budget of the Community, the Parliament has the last word over the so-called "Non-compulsory expenditures" (NCE)<sup>5</sup> within the ceilings established in the financial perspectives, whereas the Council has the last word over the Compulsory Expenditures (CE).<sup>6</sup>

Finally, when establishing detailed rules for the implementation of the budget, through Financial Regulations and Implementing Rules, the EP is only consulted, yet with the guarantee of a special form of "conciliation", as the first case-study will show. However, the EP has a power of control over the Commission when managing and implementing the budget, through the so-called "discharge" procedure.<sup>7</sup>

These specific divisions of competences among the three EU institutions in the budgetary process indicate that inter-institutional bargains have special importance in the budgetary field. Since 1970, the Parliament has had the right to decide on expenditures arising from political choices of which it was not the author (not being a full co-legislator), and it has always used the budget as a means to pressure the Council and affirm its position in inter-institutional debates. As a consequence, the Member States have

always tried to limit the EP's attempts to increase its power by reducing the quantity of resources available to the EU and by keeping a fairly tight control over those resources.

Therefore, only an overall analysis of EP budgetary powers can give a precise overview of its strength *vis-à-vis* the other institutions, and especially the Council, since it is mostly through the linkage of different issues that the EP manages to maximise its powers as a budgetary authority.

### The case: the new Financial Regulation

#### *The background*

Council Regulation 1605/2002 on the Financial Regulation (FR) applicable to the general budget of the European Communities was until December 2006 the instrument to implement the budget of the European Communities, as laid down in the EC Treaty (Art. 279 TEC).

It set forth principles and rules governing the Community budget (such as transparency or sound financial management) and laid down more detailed provisions on management of Community funds (such as conditions for the award of grants or contracts, rules on accounting, etc.).

This Regulation was adopted by the Council by unanimity (Qualified Majority Voting after 1 January 2007) on the basis of a Commission proposal and following consultation with the European Parliament.

Furthermore, technical arrangements for the implementation of the FR were to be adopted by the Commission through the so-called Implementing Rules (IR).

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According to Art. 184 of the FR, it shall be modified every three years, or whenever it is necessary. In May 2005 the Commission presented a proposal to amend Council Regulation 1605/2002. The purpose was to insert provisions concerning an increase in transparency and efficiency in the application of financial rules, establishing simpler procedures for access to funds and grants, providing for automatic release of reserve money for all basic acts adopted during the budgetary year and granting more autonomy to the Commission when transferring appropriations<sup>8</sup> (especially concerning staff expenditure). In accordance with Art. 179 TEC (regulating the procedure for the adoption of the FR), the Commission's proposal was submitted to the European Parliament for consultation and to the Court of Auditors for an opinion.

However, Art. 184 of the FR also provides that at the request of the EP, a special "conciliation" procedure may take place in order to review the Regulation. The meaning of this conciliation ("concertation" in the French version) is contained in the Joint Declaration of 1975 on budgetary discipline, which foresees a special dialogue procedure in case of budgetary conflict. Furthermore, this interpretation is confirmed by Art. 45 of the Inter-institutional Agreement on budgetary procedure of 17 May 2006, which establishes that the Financial Regulation "should be adopted in accordance with the conciliation procedure established by the Joint Declaration [...] of 4 March 1975, in the spirit which enabled agreement in 2002".

The Joint Declaration of 1975, indeed, has been one of the first examples of the use of "soft law" instruments to solve conflicts between the institutions, especially in controversial fields such as the budget. While the legal force of the inter-institutional agreements may be controversial,<sup>9</sup> it also constitutes a solution for endless conflicts among the Institutions in budgetary matters. The power of the Parliament in the amendment procedure of the FR can thus be defined as a sort of "reinforced consultation", in which the letter of the treaty is supplemented by an atypical act to which the Institutions have showed the will to bind themselves.<sup>10</sup>

With this in mind, it is interesting then to observe how the EP made use of both the "reinforced consultation" mentioned above, as well as its more general budgetary power, in order to "force" the Council to include some of its amendments in the Financial Regulations.

#### *The EP reply*

The Budget Committee of the EP (whose Rapporteur on this dossier was the German MEP Ms Grässle) proposed several amendments to the Commission proposal. These concerned, among others, the division of competences between the FR and the IR (adopted by the Commission),<sup>11</sup> the introduction of the principles of proportionality and effective and efficient

internal control into the FR and the following points:

- more transparency and efficiency in the application of financial rules, through the establishment of a database of names of all beneficiaries,
- automatic release of reserves<sup>12</sup> for all basic acts adopted during the budgetary year, which were not foreseen when adopting the annual budget.<sup>13</sup> The Parliament rejected the automatic release of “provisions” reserves, (established to cover cases not foreseen by the annual budget) where a basic act enters into force after the adoption of the annual budget since it would allow the legislator (the Council in case of consultation procedure) to decide on the allocation of resources without the consultation of the Parliament (Artt. 23, 49 FR),
- autonomous power of decision for the Commission for transfers of appropriations concerning staff expenditure, within the limit of 3% of the appropriations of the year.

#### *The Council view and the inter-institutional dialogue*

On the procedural side, the Council wished to respect the legal procedures foreseen for the review of the Regulation, as respect of the formal procedure would have ensured a more prominent role for the Council. Moreover, in its view, the “reinforced consultation” procedure and the triad would have been sufficient to guarantee a coordination of positions among the Institutions.

On the content side, the Council, although in principle it supported the Commission’s proposal, wished nevertheless to limit the autonomy of the Commission to authorise

additional expenditure for its administrative staff, and to cancel the provision requiring the publication of the names of beneficiaries of EU funds and grants, especially under the Common Agricultural Policy (CAP).

The position of the Council was therefore different from that of the Parliament, for whom, however, the straightforward use of the “reinforced conciliation” procedure would not guarantee the acceptance of their amendments by the Council.

As in numerous other cases, then, the EP linked the negotiations for the amendment of the FR to the negotiations leading to the adoption of the annual budget. Therefore, in the same conciliation procedure, the two issues were discussed together. In these combined negotiations, the EP threatened to cut 50% of the Council’s desired expenditure on the Common

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Foreign Security Policy (CFSP) and to transfer expenditures for Special Representatives to Chapter V (administrative expenditures), with a view to abolishing them altogether in the future. Expenditures for CFSP operations and for administration, in fact, fall, surprisingly, under the category of non-compulsory expenditures (NCE), over which the EP has the final word when adopting the annual budget, even though they are of special importance for Member States.

As for the Commission, finally, since the EP supported its proposals for an increase in administrative staff and autonomy when mobilizing reserves, it integrated most of the EP’s amendments, creating a basis for negotiation more favorable to its needs, sometimes even against the Council position.



*The final outcome*

The new Financial Regulation (Council Reg. 1995/2006 amending Reg. 1605/2002), adopted on 13 December 2006, contains the main elements of the final outcome of this negotiation process.

As for transparency, it is foreseen now in the recast Financial Regulation to implement, through sectoral regulations, the provision concerning publication of the names of the final beneficiaries of funds, as requested by the EP. Moreover, the Commission has undertaken through the adoption of the Implementing Rules to set up a database on beneficiaries.

The results of this are already becoming apparent, e.g. in the current negotiations to amend Regulation 1290/2005 on the financing of the CAP, where Member States seem to agree for ex-post publication of information concerning the beneficiaries of Community funds.<sup>14</sup>

The Parliament did not get the power to be consulted in case of modification of the Implementing Rules, even though the Commission accepted to introduce a provision pertaining thereto in its amended proposal before the dialogue.

As for the automatic release, EP concerns have been taken into account, since it is allowed now only in case of legal acts adopted in co-decision, so that the EP keeps the power of control over budgetary decisions when it has limited powers as legislative authority (for instance, in the case of a consultation procedure)

The Commission obtained the power, during the last month of the financial year, to decide autonomously on transfers of appropriations concerning staff expenditure, within a limit of 3% of the appropriations of the year.

Therefore, the Council accepted many of the EP's amendments, such as an increased respect of principles of transparency and proportionality (through the publication of names of beneficiaries, for instance), and some guarantees of respect of its role as budgetary and legislative authority (by deleting the provision on automatic release of reserve, for instance). As for EP concerns on Commission's autonomy, the latter committed itself to take into account the EP's concerns in the daily implementation of the financial rules.

### **When the "reinforced consultation" is not enough: the negotiation of Financial Perspectives**

Since 1988, resources and expenditures of the European Communities are framed into a multi-annual planning instrument, called Financial Perspectives. They take the form of an inter-institutional agreement, adopted consensually by the three Institutions, even though, at the end of the process, the final act needs to be adopted by the Heads of State or Government in the European Council.

The adoption of the financial framework 2007-2013

has proven to be particularly difficult in the framework of an enlarged and more complex European Union, given the sensitivity of issues such as the reform of the CAP and the future of the UK rebate.

In December 2003, in fact, the six net contributors, Austria, France, Germany, The Netherlands, Sweden and the United Kingdom sent a letter to the Commission and requested that the future financial framework should not be higher than approximately 1% of EU Gross National Income (GNI).

In February the Commission published a proposal for the new multi-annual framework 2007-2013 in which it was envisaged that, on the contrary, the Union resources would be retained at 1.24% max of EU GNI,<sup>15</sup> and the European Parliament supported this approach by insisting on the need for the Union to have sufficient resources to deliver on its policies.

The Brussels Summit of June 2005 produced some dramatic headlines as the EU leaders were unable to reach agreement. Finally, at the Brussels summit of December 2005 the EU Council brokered an agreement for a sum total of €862 billion, corresponding to a level of 1.045% of

GNI. This was clearly lower than what the Commission had proposed and what the European Parliament had supported on a number of occasions.<sup>16</sup>

The European Parliament had in fact asked for an additional 14 billion Euro to finance cohesion policy initiatives such as Galileo and Natura 2000. As a consequence of not getting its way, the EP threatened to block the adoption of an agreement and thus to leave the European Union without a financial framework for the immediate future if the Council were to refuse to accept its amendments.

At the end of a marathon seven-hour meeting on 4 April 2006, the three institutions agreed a deal on the Financial Perspective for 2007-2013 in which an extra €4 billion was supported by the Council for programmes and initiatives regarded as priorities by the EP delegation.

This compromise was much less than desired by the EP and many MEPs were unable to hide their disappointment, even though the official statement maintained that "it was the only possible compromise that Parliament could achieve, within the magnitude of the negotiations, for a multi-annual Budget with a view to guaranteeing the continuity of EU legislation, ensuring sound financial management of EU funding and maintaining Parliament's legislative and budgetary powers over the next period".<sup>17</sup>

The negotiations were indeed long and complicated. On a number of occasions, the EP threatened to block the adoption of the inter-institutional agreement if the Council wanted to insist on the cut on EU resources, among other things. Nevertheless, the inter-institutional agreement, lacking a formal binding power, does not guarantee any special and formal power to the European Parliament.

Thus it seems that the best option for the EP of influencing

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the decision making process remains the linkage of any specific negotiation to other issues where it can enjoy stronger budgetary rights. In this specific case however, there was no linkage of issues: in such broad and important negotiations, there was no possibility for the EP to link the approval of the financial package to other issues.

Even the additional €4 billion that the EP managed to secure at the last minute to fund its priority programmes can be understood as a somewhat predictable victory, confined nonetheless within the framework of the “formal power” that the EP already holds. In fact, the inter-institutional agreement represents a forum for discussion and negotiation in which the EP can expect to gain “some” of its demands from the Council, and therefore, not surprisingly, the EP was able to see some of its requests satisfied.

Thus, the result of the negotiation for the adoption of the Financial Perspectives represents neither an example in which the EP was able to exert its influence beyond its formal role, nor a victory as some MEP tried to claim, for clear political reasons, in the aftermath of the compromise.

### Conclusions

The two cases presented have served as examples of how the EP uses its budgetary powers in the complex negotiations that form the inter-institutional relationship. Although at first glance these powers may appear constrained (a lack of EP power on the revenue side, limits on the NCE, and ceilings provided by the financial perspectives in which the Council is the dominant power), the EP wields them as a “weapon” at times of inter-institutional conflict.

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The main lessons to draw are therefore threefold: firstly, it is confirmed that its budgetary powers provide the EP with a very useful tool for asserting its role in the general

decision making process within the EU.

Secondly, this tool becomes notably relevant when the EP is able to link some specific items of negotiation to its budgetary power, so that the latter becomes a “threat” for the other institutions. The linkage of issues entails that political and diverse issues that are usually not analysed together are brought into focus together by the centrifugal forces of the EP’s strong budgetary powers.

Thirdly, budgetary politics are a multi-faceted phenomenon that go beyond Treaty provisions and mathematical calculations. The interaction between institutions in this field, in fact, is not limited to single discussion chains or to the individual procedures ostensibly involved, but appears rather as a continuum or inter-woven chains, and only by observing it as an overall cycle is it possible to understand the extent of the power of the individual institutions.

Moreover, the EP has proven able to use the budget as a means of elaborating and asserting norms of public control, and not just as a weapon of obtaining concessions in other fields. For example, the insistence on inserting the principle of proportionality in the recast Financial Regulation is also a means for the EP to assert a basic principle of public administration and to secure a better implementation of the norms. Or, for example, the rule of unity, for which there should be one single budget for all the expenditures and revenues of the Community, has been used on several occasions by the EP to include all operations in the budget (especially those falling under Pillar II and III) in order to have a broader impact upon the decision making process.

Even though the victories of the EP are the fruits of compromise, and therefore are weakened by long negotiations and battles with the Council and Commission, it is worth analysing these successes in light of this ability to link issues with its budgetary power. It is likely, in fact, that even where it is able to obtain new formal powers, the EP will continue to “exploit” its budgetary advantage in all cases where its powers are otherwise limited.



Round-table held in Vilnius, Lithuania, on 12 October 2007. The discussion focused both on the general issues of the budget review and the Lithuanian perspective.

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## NOTES

- \* Dr Manuela Alfé, Researcher, Unit "European Decision Making", EIPA. The author is especially grateful to Annalisa Gliubizzi and to the Eipascope committee for the useful comments and advice. Any remaining errors are, of course, the sole responsibility of the author.
- <sup>1</sup> See, among others, S. Hix (2002), "Constitutional Agenda-Setting through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam", *British Journal of Political Science* 259-280; A. Maurer (2003), "The Legislative Powers and Impact of the European Parliament", *Journal of Common Market Studies* 41, 227-248; B. Rittberger (2003), "The Creation and Empowerment of the European Parliament", (2003) *Journal of Common Market Studies* 41, 203-226.
  - <sup>2</sup> See Daniela Kietz and Andreas Maurer (2007), "The European Parliament in Treaty Reform: Predefining IGCs through Interinstitutional Agreements", in *European Law Journal*, Vol. 13, No. 1, Jan 2007.
  - <sup>3</sup> See R. Corbett, F. Jacobs and M. Shackleton (2005), *The European Parliament*, 6th edition, London: Catermill; M Westlake, (1994) *The Commission and the Parliament: Partners and Rivals in the European Policy-Making Process*, London: Butterworths and M. Westlake, (1994) *A modern guide to the European Parliament*, Pinter Publishers, London 1994.
  - <sup>4</sup> A very recent and similar case is provided by the reform of comitology of July 2006, when the EP managed to convince the Council to accept its requests, since it blocked the expenditures for comitology committees, therefore creating a deadlock in the decision making process, considering that the Commission could not adopt important and urgent implementing measures, especially in the field of Agriculture. This has led to the adoption of a new Council Decision on comitology, where many of the EP concerns have been integrated.
  - <sup>5</sup> The difficult distinction between CE and NCE has always been source of tensions among Council and Parliament. However, in general terms expenditure is compulsory when the underlying principle and the amount are determined by a legal obligation, and consequently is not compulsory when the budgetary authority is more autonomous in deciding its amount.
  - <sup>6</sup> It is worth mentioning, however, that the EP cannot increase the NCE over the "maximum rate of increase" (Art. 272.7 TEC).
  - <sup>7</sup> The discharge procedure is the instrument by which the EP confirms that the Commission (and the other institutions) has correctly discharged their financial management responsibility in the financial year two years previous.
  - <sup>8</sup> The transfer of appropriation is an exception to the budgetary principle of specification, by which the Commission may transfer appropriations established for one purpose to another purpose for the sake of budget implementation.
  - <sup>9</sup> J. Monar (1994) "Interinstitutional Agreements: The Phenomenon and its new dynamics after Maastricht", 31 *Common Market Law Review*, pp. 693-719; F. Snyder, "Interinstitutional Agreements: Forms and Constitutional Limitations", in G. Winter (ed.) (1996), *Sources and Categories of European Union Law. A Comparative and Reform Perspective*, Nomos, pp. 453-466.
  - <sup>10</sup> The European Court of Justice has especially contributed to clarify the binding and legal force of Inter-institutional Agreements. For an extensive analysis of the role of the Court of Justice, see J. Klabbers, "Informal instruments before the European Court of Justice", (1994) 31 *Common Market Law Review*, 997 and W. Hummer, From "Interinstitutional Agreements" to "Interinstitutional Agencies/Offices"?, *European Law Journal*, Vol. 13, No. 1, January 2007, pp. 47-74.
  - <sup>11</sup> The EP feared that the Commission could transfer too many competences to the field regulated by IR, and therefore that it could bypass the control of the budgetary authority (the Commission can indeed adopt the IR autonomously, on the basis of its implementing powers).
  - <sup>12</sup> Reserves are the funding that may be placed in reserve by the budgetary authority and released upon the fulfillment of specific conditions.
  - <sup>13</sup> Before the amendments, the Financial Regulation foresaw the obligation for the Commission to ask for specific authorisation to the budgetary authority each time it wanted to use money from the reserve to finance a basic act adopted after the adoption of the annual budget (Art. 23 FR).
  - <sup>14</sup> See Press release, Council of EU, 2825<sup>th</sup> Meeting Agriculture and Fisheries, Luxembourg 22-23 October 2007.
  - <sup>15</sup> Commission working document: Proposal for renewal of the Inter-institutional agreement on budgetary discipline and improvement of the budgetary procedure (COM(2004)0498).
  - <sup>16</sup> See Boge Report BÖGE's (EPP-ED, DE) report on Policy Challenges and Budgetary Means of the enlarged Union 2007 -2013, (2004/2209(INI), adopted by the EP on 8 June 2005.
  - <sup>17</sup> Speech by MEP Boge (Rapporteur on the Financial Perspectives) on the occasion of the vote in plenary on the Inter-institutional Agreement on Financial perspectives.