Agreeing the EU’s annual budget
Can Parliament vote in Strasbourg or Brussels?

SUMMARY

In 1992, the governments of the European Union (EU) Member States adopted a decision on the location of the seats of the institutions and of certain bodies and departments of the European Communities, often known as the Edinburgh Decision. Accordingly, the seat of the European Parliament was established in Strasbourg, where 12 monthly plenary sessions, including the budget session, were to be held, whilst additional plenary sessions were to be held in Brussels. The Edinburgh Decision was annexed as a Protocol to the Treaty of Amsterdam, and this wording has remained unchanged in the Protocol (No 6) now attached to the Treaty of Lisbon. In consequence, it is been an act of primary law since 1997, with the protocol on an equal legal footing with other provisions of the Treaties.

Article 314 of the Treaty on the Functioning of the European Union (TFEU) lays down the procedure for adopting the annual EU budget in a special legislative procedure, together with a detailed calendar. The latter provides that Parliament votes on the budget in a plenary session up to three times: firstly within 42 days of receiving the Council’s amendments to the Commission proposal; secondly within 14 days of receiving a compromise text elaborated by the Conciliation Committee; and thirdly – if the Council rejects the text of the Conciliation Committee – within 14 days of the date of Council’s rejection.

Tension exists between the Protocol provision that 'the budget session' is to be held in Strasbourg, and the calendar set out in Article 314 TFEU. In particular, the restrictions of the Article 314 calendar may not always allow a vote on the budget during 'Strasbourg sessions'. This was the case, for instance, in 2016: Parliament held the first budgetary debate and vote in Strasbourg, but the second (on the Conciliation Committee text) took place in Brussels. France took the Parliament to the Court of Justice of the EU, claiming that voting on the final budget in Brussels is a violation of Protocol No 6. However, the Court rejected the French claim and ruled that it was sufficient for the Parliament’s initial legislative resolution to have been voted in Strasbourg.
Historical background: Parliament's three seats

Before the Merger Treaty

When the European Coal and Steel Community (ECSC) was created in 1951, the location of its seat was not determined in its founding treaty, the Treaty of Paris. Specifically, Jean Monnet’s idea to establish a European district in Luxembourg was not met with enthusiasm from the Member States (including Luxembourg itself). In 1952, the ECSC ministers of foreign affairs decided to locate its High Authority, and the European Court of Justice (ECJ), in Luxembourg, while the Assembly was established in Strasbourg, pending a further decision. Following the creation of the European Economic Community (EEC) and Euratom under the Treaty of Rome, the three separate Commissions began to operate in Brussels; the Assembly continued to meet in Strasbourg, whilst its Secretariat continued to function in Luxembourg. However, the Assembly's committees began to hold their meetings in Brussels.

Between the Merger Treaty and the Edinburgh Decision

The 1965 Merger Treaty provided for a single Commission and a single Council for the three communities (ECSC, EEC and Euratom), and also decided on the provisional place of work of the three institutions. Under that treaty, Luxembourg, Brussels and Strasbourg remained the 'provisional places of work' of the Community institutions, and the Assembly's General Secretariat and its departments remained in Luxembourg. Following the Merger Treaty, the Assembly – later the Parliament – started to hold short sessions in Luxembourg, leading the Grand Duchy authorities to construct a new administrative building for the Assembly, containing venues for both the committees and political groups, as well as plenary sittings. A larger new hemicycle was completed on the Plateau du Kirchberg in June 1980, and this was used for four plenary sessions between June 1980 and February 1981. However, on 7 July 1981, Parliament adopted a subsequent resolution on the seat of the institutions in which it decided, pending a final decision on a single meeting place for the European Parliament, to hold its plenary sessions in Strasbourg and as a general rule, to organise the committee and political group meetings in Brussels. The validity of this resolution was confirmed by the ECJ in Case 230/81 (see below, 'Case law of the European Court of Justice').

Edinburgh Decision

On 12 December 1992, the representatives of the governments of the Member States, meeting in the European Council at Edinburgh, adopted a decision on the location of the seats of the institutions and of certain bodies and departments of the European Communities by common agreement, often known as the Edinburgh Decision. Article 1(a) of the Decision provided that:

The European Parliament shall have its seat in Strasbourg where the twelve periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The Committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.

By virtue of that decision, the Parliament’s official seat was located exclusively in Strasbourg, with two additional working places located in Brussels and Luxembourg. The decision did not therefore establish a split or double seat for Parliament, but merely additional working places. The decision required, furthermore, that 12 plenary sessions per year must be held at Parliament's seat, i.e. in Strasbourg, but that additional plenary sessions must be held in Brussels. The wording of the provision does not allow for an interpretation whereby more than 12 plenary sessions could be held in Strasbourg or in another location, e.g. in Luxembourg, as was the case between 1967 and 1980. However, the decision can be said to have legally reaffirmed the status quo of the 1980s and early 1990s onwards, when the Parliament no longer met for plenary sessions in Luxembourg.
Current legal framework

Protocol on the location of the seats of the EU institutions

The content of the Edinburgh Decision was annexed to the Treaty of Amsterdam as a Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union (now Protocol (No 6) attached to the Lisbon Treaty, with the wording concerning the Parliament unchanged). However, the incorporation of the Edinburgh Decision into the Treaties in the form of a protocol ‘upgraded’ the legal value of the rules on the seat and working places of Parliament, which from an act of secondary law (a decision of the Member States), became an act of primary law, having equivalent legal force to all other rules contained in the Treaties (with the exception of declarations, which have only political value). This is a legally important step when it comes to the relationship between the Protocol and Article 314 TFEU which specifies the calendar for the annual budgetary procedure. The value of this relation has been taken into account by the ECJ in its reasoning in its 2018 judgment, France v Parliament (see 'Case law of the European Court of Justice' below).

Article 314 TFEU – calendar for the budgetary procedure

Article 314 TFEU lays down the special legislative procedure for adopting the annual EU budget and lays down the calendar for that procedure with the following steps:

<table>
<thead>
<tr>
<th>Legal basis</th>
<th>Deadline</th>
<th>Institution</th>
<th>Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 314(1)</td>
<td>1 July</td>
<td>All institutions except the European Central Bank (ECB)</td>
<td>Each institution draws up an estimate of its expenditure for the following financial year and sends it to the Commission by 1 July.</td>
</tr>
<tr>
<td>Art. 314(2)</td>
<td>1 September</td>
<td>Commission</td>
<td>The Commission consolidates the estimates received from the institutions into a draft budget which may contain different estimates. The draft budget must contain an estimate of revenue and an estimate of expenditure. It must be submitted to the European Parliament and to the Council by 1 September, in the form of a proposal containing the draft budget.</td>
</tr>
<tr>
<td>Art. 314(3)</td>
<td>1 October</td>
<td>Council</td>
<td>The Council adopts a position on the draft budget submitted by the Commission, and forwards this (with full reasons for its position) to the Parliament by 1 October.</td>
</tr>
</tbody>
</table>
| Art. 314(4) (a) and (b) | 42 days from receiving Council's position | Parliament | Within the deadline of 42 calendar days from receiving Council’s position, the Parliament may either:  
– approve the Council’s position (in which case the budget is adopted), or  
– adopt amendments to the Council’s position by a majority of its component members; the amended draft is forwarded to the Council and to the Commission. Parliament’s President, in agreement with the President of the Council, immediately convenes the Conciliation Committee (composed of the members of the Council or their representatives and an equal number of members representing the European Parliament).  
If the Parliament takes no decision within the deadline of 42 days, the budget is adopted in the form contained in the Council’s position. |
### European Parliament's Rules of Procedure

Parliament's Rule of Procedure (RoP) contain a number of provisions concerning budgetary procedure. In particular, Rule 93 provides that the committee responsible (i.e. the Committee on Budgets (BUDG)), may decide to draw up any report that is deemed to be appropriate concerning the budget, whereas any other committee may deliver an opinion within the time limit set by the committee responsible. Rule 94 provides details on the procedure for presenting Parliament's position on the draft budget. Amendments to the Council's position may be tabled by members in the BUDG committee. Likewise, political groups and other committees, as well as a group of

| Art. 314(4)(c) | 10 days from forwarding of Parliament's position to the Council | Council | If the Council informs the Parliament, within the deadline of 10 days, that it approves Parliament's amendments to the budget, the Conciliation Committee does not meet and the budget is adopted as amended by Parliament. |
| Article 314(5) | 21 days from the convening of the Conciliation Committee | Conciliation Committee | Otherwise, the Conciliation Committee has 21 days to reach agreement on a joint text. It votes by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the Parliament. Representatives of the Council and Parliament are obliged to vote on the basis of the positions of their respective institutions. The Commission takes part in the meetings and facilitates the achievement of an agreement. If the Conciliation Committee fails to agree on a joint text, the Commission must present a new draft budget. |
| Article 314(6) and (7) | 14 days from the adoption of the position of the Conciliation Committee | Parliament Council | If the Conciliation Committee agrees on a joint text within the deadline of 21 days, the Parliament and Council have 14 days to approve that compromise text. If only one of the two institutions approves the text (but the other does not reject it), or if both approve it or fail to take a decision, the version of the budget agreed in the Conciliation Committee is adopted. If both institutions reject the text, the Commission must present a new draft budget. This also occurs if one institution rejects the text and the other institution fails to decide, or if Parliament rejects, but Council approves, the text. Therefore, if only the Council rejects the text, the outcome depends on the Parliament. If the Parliament does not reject the text (i.e. fails to decide), the Commission must present a new draft budget. |
| Article 314(7)(d) | 14 days from the date the Council rejects the Conciliation Committee text | Parliament | If the European Parliament approves the joint text, but the Council rejects it, Parliament has 14 days from the date of the Council rejection, and acting by a majority of its component members and three-fifths of the votes cast, may decide to confirm all or some of the amendments made by Parliament at the previous stage of the procedure. Where a Parliament amendment is not confirmed by this qualified majority, the position agreed in the Conciliation Committee on the budget heading that is the subject of the amendment, is retained. The budget is then deemed to be definitively adopted on this basis. |
| Art. 314(9) | Following completion of the procedure | President of the Parliament | Once the budgetary procedure has been completed, the President of the European Parliament declares that the budget has been definitively adopted. |
members reaching at least the low threshold (1/20th, i.e. 38 members, Rule 179), may table amendments to the Council’s position on the draft budget. It is up to the Parliament’s President to set the time limit for the tabling of amendments. Amendments are first voted in the BUDG committee, before they are discussed in Parliament. Amendments tabled in Parliament but rejected by the BUDG committee may only be put to the vote if this has been requested in writing, before a deadline to be set by the President, by a committee, or by a political group, or members reaching at least the low threshold (38 members). Parliament, in its plenary session, takes successive votes: on the amendments to Council’s position on the draft budget, section by section, and then on a motion for a resolution concerning the draft budget as a whole. Articles, chapters, titles and sections of the draft budget, in respect of which no amendments have been tabled, are deemed to have been adopted (automatically).

Due to the tight deadlines set in Article 314 TFEU (see above), the Parliament’s own rules on deadlines and time limits are of particular importance. Specifically, Rule 165 provides that a debate and vote may not be opened on a text unless it has been distributed at least 24 hours earlier. Furthermore, Rule 167(1) requires that all Parliament documents must be drawn up in the official languages of the EU. In practice, this means that they need to be translated well in advance so that they can be distributed at least 24 hours before the debate.

**European Court of Justice case law**

**Early case law**

The question whether the EU budget must be debated and voted upon exclusively during the 12 plenary sessions taking place in Strasbourg, or whether it may also be partly debated and voted upon during the additional plenary sessions that take place in Brussels, was answered by the ECJ judgment of 2 October 2018, in case C-73/17 France v Parliament (see below). However, this judgment needs to be seen in the broader context of earlier case law on the location of Parliament’s plenary sessions and, specifically, the location of debates and votes on the budget.

**Case 230/81 Luxembourg v Parliament (no sessions in Luxembourg)**

The first case concerning the location of Parliament’s seat and working place is ECJ judgment of 10 February 1983 (230/81) in a case brought by Luxembourg against the Parliament. Luxembourg demanded that the Court declare the European Parliament resolution of 7 July 1981, on the location of the seat of the institutions of the European Community, and in particular that of the Parliament, invalid. That resolution concerned a Parliament decision, in the absence of a decision of the Member States, to hold all plenary sessions in Strasbourg. This meant that Parliament would no longer hold any plenary sessions in Luxembourg, as had been its practice since 1967. The Court dismissed the Luxembourg government action, ruling that ‘the decision of the Parliament to hold in future all plenary sittings in Strasbourg is not contrary to the decisions of the Governments of the Member States in the matter and is not beyond the powers of the Parliament’ (para. 46).

**Case C-345/95 France v Parliament (only 11 sessions in Strasbourg)**

Case C-345/95 France v Parliament was decided under the new legal framework – the Edinburgh Decision (see previous section). The Parliament adopted a calendar for 1996, providing for 11 (and not 12) plenary sessions in Strasbourg. France took the Parliament to the ECJ, demanding the annulment of this calendar. In its judgment of 1 October 1997, the Court agreed with France, annulling the Parliament’s calendar for 1996, for failing to provide for 12 ordinary plenary sessions in Strasbourg. The Court pointed out that the Parliament does not hold ordinary plenary sessions in August or, during election years, in June. In the years during which it has held a total of 12 plenary sessions in Strasbourg, two such sessions took place in October.
The ECJ further underlined that, by specifying that the budget session is to be held in Strasbourg, the governments of the Member States intended to establish that the Parliament must exercise its budgetary powers in plenary sitting, in accordance with Article 203 of the EC Treaty (now Article 314 TFEU), during one of the ordinary plenary sessions. The Court therefore ruled that the Edinburgh Decision defines the seat of the Parliament as the place where 12 ordinary plenary sessions must take place on a regular basis, including those during which the Parliament exercises its budgetary powers. Additional plenary sessions cannot therefore be held in any other place of work, unless the Parliament has held the 12 ordinary plenary part-sessions in Strasbourg. Based on this reasoning, the Parliament vote adopting a calendar with only 11 sittings in Strasbourg was annulled.

Joined cases C-237/11 and C-238/11 France v Parliament (two sessions per week)

Two cases, initiated by France (and supported by Luxembourg), concerned the draft 2012 and 2013 Parliamentary calendars. The draft calendars initially adopted by Parliament’s Conference of Presidents provided for a plenary session to be held in Strasbourg every month, except in August, during which no sessions were scheduled, and in October, where two sessions were scheduled. Originally, the 2012 Parliamentary calendar provided for two sessions in October over four days (1-4 October, 22-25 October), and similarly, for 2013 (30 September-3 October, 21-24 October). The ECJ pointed out that these draft calendars were consistent with Parliamentary practice, particularly holding two sessions in one month, due to the lack of sessions in August. That such plenary sessions last four days, from Monday, 17.00 to Thursday, 17.00 hours was not contested.

However, Parliament later amended these calendars, placing two sessions in one single week. In 2012, this meant that instead of sessions on 1-4 October and 22-25 October, the new calendar provided for two consecutive sessions in the same week, i.e. 22-23 October (Monday-Tuesday) and 25-26 October (Thursday-Friday). Similarly, in 2013, two monthly plenary sessions previously scheduled for 30 September-3 October and 21-24 October, were replaced with sessions taking place during the same week (21-22 October, followed by 24-25 October).

In its decision, the ECJ referred to its earlier judgment in Case C-345/95 France v Parliament (see above), to point out that that the seat of the Parliament is the place where ‘12 ordinary plenary part-sessions’ of that institution must take place on a regular basis. Those 12 plenary sessions must be distinguished from the ‘additional plenary part-sessions’, which cannot be scheduled unless the Parliament actually holds the 12 ordinary plenary sessions. However, the sessions scheduled in the same week were shorter than Parliament’s usual sessions, which was inconsistent with the importance of the topic to be debated – the EU annual budget. As a result, the Court annulled the modified calendars because they did not provide for 12 plenary sessions to be held in Strasbourg.

Case C-73/17 France v Parliament (voting on the EU budget in Brussels)

Case C-73/17 France v Parliament, decided by the ECJ on 2 October 2018, is the most recent judicial decision on the seat of the European Parliament, and specifically addresses the location of voting on the EU budget.
Agreeing the EU’s annual budget

Considerations

The considerations of this case, in the form of a timeline of the budgetary procedure leading to the adoption of the 2017 annual budget, are presented in the table below.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission</td>
<td>18 September 2016</td>
<td>Publication of the draft budget for 2017</td>
</tr>
<tr>
<td>Council</td>
<td>12 September 2016</td>
<td>Position on draft forwarded to Parliament</td>
</tr>
<tr>
<td>Parliament – BUDG committee</td>
<td>28-29 September 2016</td>
<td>Votes</td>
</tr>
<tr>
<td>Parliament – plenary in Strasbourg</td>
<td>26 October 2016</td>
<td>Adoption of legislative resolution on 2017 budget</td>
</tr>
<tr>
<td>Parliament/Council</td>
<td>27 October 2016</td>
<td>Beginning of conciliation procedure</td>
</tr>
<tr>
<td>Parliament/Council</td>
<td>17 November 2016</td>
<td>Compromise reached</td>
</tr>
<tr>
<td>Parliament – plenary in Brussels</td>
<td>30 November 2016- 1 December 2016</td>
<td>Budget debated</td>
</tr>
<tr>
<td></td>
<td>1 December 2016</td>
<td>Approval of compromise text and declaration of adoption by President of the Parliament</td>
</tr>
</tbody>
</table>

Claims and arguments

Action for annulment brought by France

On 9 February 2017, France brought an action for the annulment of the four Parliamentary measures concerning the adoption of the general budget of the EU for the financial year 2017:

- the agenda for the sitting of 30 November 2016, in so far as it includes the debates on the joint text on the draft general budget;
- the agenda for the sitting of 1 December 2016, in so far as it includes a vote followed by explanations of votes on the joint text on the draft general budget;
- legislative resolution of 1 December 2016 on the joint text on the draft general budget;
- the act by which the President of the European Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted.

France demanded that the Court annul all four acts. However, at the same time it requested that the legal effects of the act by which the President of the European Parliament declared adoption of the general budget of the EU for the financial year 2017, be maintained – until the act is re-proclaimed in Strasbourg.

Arguments advanced by France

The French government argued that the term 'budget session' used in Article 314(4) TFEU cannot be interpreted as referring specifically to the session during which the initial draft budget, as
amended by the Council, is examined and generally amended by the Parliament (which took place during the October 2016 plenary in Strasbourg).

France also argued that an adjustment of the parliamentary calendar would have enabled the debate and the vote on the joint text on the draft annual budget of the EU for the 2017 financial year to be held exclusively in Strasbourg. Such a debate and vote could, in any event, have taken place during the November 2016 ordinary plenary session. It also argued that the act whereby the President of the Parliament declared the annual budget of the EU for the 2017 financial year to be definitively adopted could still have been adopted during the next ordinary plenary session, from 12-15 December 2016, held in Strasbourg. France argued that, since the date on which the Conciliation Committee would reach agreement on a joint text on the draft annual budget of the EU (17 November 2016) could reasonably have been predicted by the Parliament at the time that it adopted its calendar, the Parliament should have scheduled an ordinary plenary part-session for a date after 21 to 24 November 2016, thereby enabling a timely vote in Strasbourg.

Arguments advanced by the Parliament

Firstly, the Parliament argued that the action for annulment brought by France is inadmissible, in so far as it concerns the two agendas of the sittings of Parliament of 30 November 2016 and of 1 December 2016 and of the resolution of 1 December 2016 on the joint text on the draft general budget. According to the Parliament, agendas are purely internal Parliamentary organisational measures and produce no legal effects vis-à-vis third parties. As for the resolution, it is only a preparatory act for the adoption of the act by which the President of the Parliament declared that the general budget of the EU for the 2017 financial year was definitively adopted. Therefore, only the President’s act may be the subject of an action for annulment – not the agendas and resolution.

Secondly, Parliament argued that the term ‘budget session’ must be understood as referring exclusively to the part-session during which the Parliament proposes amendments to the initial draft budget as amended by the Council. In support of its interpretation, Parliament raised three arguments:

- **historical** – claiming that the rule dates back to Article 203 of the Treaty of Rome, which only gave Parliament the right to propose amendments to the budget, and did not provide for co-decision. It can therefore refer only to the session concerning the initial draft budget;
- **textual** – the term ‘budget session’ is used in the singular, not in the plural, hence it can refer to one specific part-session only;
- **originalist** (referring to original intent of the Member States) – with the Edinburgh Decision, the Member States wished only to enshrine the Parliament’s previous organisational practice. Towards the end of October or at the beginning of November, a plenary session in Strasbourg (October II session), which was additional to the periods of ordinary monthly plenary sessions, was used, essentially, for the first reading of the annual budget. In contrast, nothing in the protocols concerning the seats of the institutions requires the Parliament also to hold the debates and subsequent votes on the joint text adopted by the Conciliation Committee during an ordinary session in Strasbourg.

Opinion of Advocate General Wathelet

In his opinion, delivered on 5 June 2018, Advocate General Melchior Wathelet disagreed with the Parliament’s historical, textual and originalist arguments, proposing a contextual interpretation instead. While admitting that ‘plenary session’ is used in the singular, the Advocate General argued that the understanding proposed by the Parliament would be a ‘restrictive interpretation’, incompatible with Article 314 TFEU. That rule provides for at least two parliamentary debates in Parliament if the Council does not approve the amendments adopted by the Parliament following its examination of the draft budget (Article 314(6) TFEU). He also added that the possibility of a second parliamentary session dedicated to adopting the budget is not new, but already existed
under Article 203 of the Treaty of Rome, therefore providing a historical counter-argument to Parliament's position.

Upholding the view that the entire budgetary procedure should, in principle, take place during plenary sessions in Strasbourg, the Advocate General nonetheless allowed for exceptions where necessary to observe the deadlines and avoid resort to the system of 'provisional twelfths' laid down in Article 315 TFEU.

However, with regard to the specific facts of the case at hand, the Advocate General considered that, since the joint text on the draft budget was only adopted on 17 November 2016, it could not have been debated at the ordinary plenary session in Strasbourg held from 12 to 15 December 2016. The ordinary session held in Strasbourg from 21 to 24 November 2016 was therefore the only period during which the Parliament could, in theory, have debated and voted on the joint text on the draft budget for the 2017 financial year. However, the Advocate General drew attention to the fact that the Council and Parliament's services were only informed by the Commission that the relevant documents were available in an email dated 24 November 2016 at 16.42, which is less than one hour before the end of the plenary session. It was therefore impossible to hold a debate on that day. It would have also have become impossible to adopt the 2017 budget within the time limits set out in Article 314(6) TFEU. It was necessary, therefore, to include the topic on the agenda of the additional plenary session, scheduled in Brussels on 30 November and 1 December 2016.

On the other hand, the Advocate General found that there was nothing to prevent the President of the Parliament from signing the act adopting the 2017 budget during the last ordinary session in Strasbourg on 12-15 December 2016. Therefore, in the Advocate General's view, the Court should annul the act by which the President of the Parliament declared that the general budget of the EU for the 2017 financial year as definitively adopted. The Advocate General effectively proposed a compromise solution, suggesting the Court partly agree with the French position and partly with that of Parliament.

**Decision of the Court – judgment of the Grand Chamber**

In its 2 October 2018 judgment – given by the Grand Chamber – the ECJ neither agreed with the arguments put forward by France, dismissing them in their entirety, nor with the opinion of the Advocate General who wanted to accept them at least partially. The Court argued that the Protocol concerning the seats of the institutions refers to the 'budget session', but neither specifies a precise period for ordinary plenary sessions, nor the acts falling within the scope of the Parliament's powers in the budgetary procedure that must be adopted during that session. Therefore, the notion of the 'budget session' should be understood, according to the Court, as referring to all the periods of plenary session during which the Parliament exercises its budgetary powers and to all the acts adopted by the Parliament for that purpose.

In particular, the notion of the 'budget session' must also encompass the second reading, i.e. that taking place after the Conciliation Committee has prepared a compromise text, since that text may differ to a large extent from the one endorsed by Parliament at first reading, and needs to be debated in an open way (i.e. in plenary). This is all the more true in light of the fact that the 28 Members of the European Parliament participating in the Conciliation Committee need not necessarily reflect all the political groups in the Parliament, but rather the majority.

Concerning the deadlines and time limits laid down in Article 314 TFEU, the ECJ pointed out that they were established to ensure that the EU annual budget is adopted by the end of the year preceding the financial year in question. Of particular importance is the 14-day period laid down in Article 314(6) and qualified in Article 314(7), which provides that if the Parliament fails to take a decision at second reading on the joint text on the draft annual budget within that deadline, the Commission must submit a new draft budget and, consequently, that the budgetary procedure must be repeated in its entirety. In such a situation, the Parliament additionally loses the power to decide alone on the adoption of the budget, acting by qualified majority in a further vote (as
provided for by Article 314(7)(d) TFEU). Furthermore, if within the 14-day period laid down in Article 314(6) TFEU, there has been no debate and vote in the Parliament on the joint text on the draft annual budget, the joint text may be adopted by the Council alone.

The ECJ also pointed out that Protocol (No 6) and Article 314 TFEU have the same legal value. Therefore, obligations arising from a provision of the protocol cannot, as such, prevail over one contained in Article 314 TFEU, and vice versa. Given their equal ranking and therefore legal value within the hierarchy of norms, these two rules must be reconciled on a case-by-case basis, and no automatic priority of one over the other can be established. Therefore, whereas the Parliament is, in principle, obliged to exercise its budgetary powers in an ordinary plenary part-session in Strasbourg, this does not exempt it per se from the obligation to comply with the deadlines arising from Article 314 TFEU.

Regarding the French government’s argument that the Parliament could have adapted its calendar to ensure that all budgetary debates and votes take place in Strasbourg, the ECJ pointed out that, at the time when the calendar of ordinary plenary part-sessions was adopted, what exact stages of the procedure would take place was unknown. In particular, at that time it was not known whether the Conciliation Committee would have been convened and whether it would have reached an agreement on a joint text. In fact, had the Conciliation Committee reached a compromise before 17 November 2016, the Parliament could have debated that text during its Strasbourg session on 21-24 November 2016, thereby satisfying both the protocol provisions and the Article 314 TFEU deadline. As a result, the Court found that the planning of the Parliamentary calendar was appropriate.

Concerning the appropriateness of having the second reading in Brussels during the part-session of 30 November – 1 December 2016, the Court first pointed out that the Conciliation Committee’s joint text was sent to the Parliament and Council on 17 November 2016. Nonetheless, the discussion on the budget was not included for the agenda of the next plenary session in Strasbourg, held on 21-24 November 2016, but was instead included on the agenda for the part-session in Brussels the following week. However, the Council approved the joint text on the draft annual budget only on 28 November 2016, i.e. after the session in Strasbourg had ended. The deadlines provided in Article 314 TFEU meant that the Parliament had only until 1 December 2016 to express its view on the compromise text. If it had not done so, the budget would have been adopted without the Parliament’s participation at second reading, i.e. it would not have been able to exercise fully its Treaty competences with regard to the adoption of the budget.

The French government argued that the Parliament could have taken its second-reading decision earlier. However, the Court sided with the Parliament and agreed that it had the right to use the whole period allocated, especially because internal discussions within the groups and the BUDG committee ‘take considerable time’ which ‘is particularly important for preparing for the debate and vote on the budget in plenary session and, in particular, for securing a majority’.

Moreover, the Parliament was additionally excused not discussing the text in Strasbourg due to the fact that the definitive version of the joint text, following technical finalisation, was only made available on the afternoon of 24 November 2016, shortly before the end of the session. This did not allow for the translation and distribution 24 hours in advance of the discussion, required by Parliament’s Rules of Procedure (see ‘Parliament Rules of Procedure’ above). Allowing a week for the finalisation of the text at technical level was not deemed excessive, even by the French government. The Court added that even if the text were available earlier, this would still not oblige Parliament to table the text during the November plenary in Strasbourg, as Members need more than the statutory 24 hours to acquaint themselves with it. Therefore, the Parliament did not ‘make an error of assessment’ when placing the second reading debate on the agenda of the session in Brussels, rather than the Strasbourg session in November.

Finally, regarding the appropriateness of the declaration of the European Parliament’s President, that the budget is adopted, being made in Brussels, and not in Strasbourg, the Court first observed
agreeing the EU's annual budget

that Article 314 TFEU does not provide for any deadline. However, it also found that this act 'is in fact closely linked to the vote, at second reading, on the joint text on the annual budget' and that it is an act of 'formally declaring, after verification that the procedure has been conducted lawfully, that the annual budget of the EU has been definitively adopted'. Due to the close link between the vote and the act, and the merely formal nature of the act, the President may therefore make the declaration at the same plenary session during which the second reading vote takes place. Furthermore, it would be inappropriate for the European Parliament's President to wait for the next session (in Strasbourg), 'in view of the importance of the adoption of the annual budget for the actions' of the EU.

Comments

In legal terms, the Court's decision is based on the assumption that both the protocol rule providing that the European Parliament's seat is in Strasbourg, and the rules of Article 314 TFEU setting the deadlines of the budgetary procedure, are on an equal footing. Neither of the two rules of primary EU law is superior or inferior, and nor are they a rule or exception (hence the principle lex specialis derogat legi generali does not apply). The Court focused its line of reasoning on the substance, rather than the formal aspects of the law, considering that respect for the budgetary procedure deadlines is most important, failing which the Parliament would not be able to avail itself of its Treaty powers. Furthermore, delaying the President's declaration of adoption to the next session in Strasbourg would not be beneficial to the Union, as it would postpone the formal adoption of the budget. The Court's approach to reading the rules of the Protocol and of the Treaties can be said to be teleological (purpose-oriented) and contextual. It is teleological, because the Court focuses on the purpose for which the rules exist, rather than merely treating them in a formalist way (e.g. looking at their history or the linguistic expressions used therein). This is especially the case with the Court's interpretation of Article 314 TFEU, which aims to safeguard Parliament's budgetary powers and ensure an open and democratic budgetary debate. In the Court's view, this general purpose must prevail over a formalist reading of the rules on the location of Parliament's seat. Interestingly, the Court did not follow the Parliament's own reading of the relevant provisions of the treaty, which was historical and linguistic, focusing on the origin of the rules of Article 314 and on the singular expression used ('plenary session'). Instead, it read the rules in their context, treating them as part of an interconnected system guided by a specific goal – the democratic and transparent character of the budgetary procedure.

Conclusions

The Parliament's powers in the adoption of the annual EU budget are among its most important competences, both legally and politically. The importance of the annual budgetary debate in Parliament, which is held in public during a plenary session, is a crucial event in the democratic life of the Union. However, as the Court pointed out in its judgment of 2 October 2018, this democratic and open character does not depend on the location of the debate – Strasbourg or Brussels. Nonetheless, according to the legally binding Protocol on the seat of the European institutions, 12 plenary sessions, including that on the budget, must take place in Strasbourg. The Court stopped short of stating that it is sufficient for any, of the potentially three, budgetary votes in plenary to take place in Strasbourg to fulfill that requirement. Instead, referring very closely to the facts of the case at hand, it found that if the Parliament took all due care to formulate its calendar appropriately, it is sufficient if only the initial debate (as envisaged in Article 314(4) TFEU), takes place in Strasbourg, whereas subsequent procedural steps are carried out during the additional ('mini') plenary sessions in Brussels. It is important that, should the Parliament plan its calendar correctly (which the Court found to have been the case), there is no need to postpone a debate or the proclamation of the adopted budget to a subsequent ordinary plenary session in Strasbourg to satisfy the requirements of the protocol on the location of the seats alone. However, the Court did not go as far as to say that the Parliament can plan in advance to hold only one of the budgetary sessions in Strasbourg (and
freely choose which one), thereby excluding from the outset the possibility that they all take place in its official seat.

ENDNOTES

1 Danescu E.R., 'Luxembourg, permanent capital of the Community institutions' in Pierre Werner and the European integration process: from the Schuman Plan to the Fontainebleau Summit, University of Luxembourg, 2016.

2 Case C-230/81, Facts and issues, p. 259, para. 2.

3 ECJ, case 230/81, p. 260.


5 ECJ, case 230/81, p. 262, para. 8.