Documentation from the Workshop on Council Discharge - Finding Solutions

Budgetary Affairs

Policy Department D for Budgetary Affairs
Directorate General for Internal Policies of the Union
PE 603.807 - May 2017

Given the importance of cooperation between the two institutions and responsibility before the EU citizens, the Parliament stresses an urgent need for better dialogue. The Parliament as a discharge authority is looking for ways to solve the institutional conflict and to move forward in the process of granting discharge to the Council. The workshop should discuss ways to solve the institutional conflict by strengthening the Parliament's role as the discharge authority.

This document can not constitute an authentic record of proceedings. The workshop was public and live webstreamed. The video record can be found under the following link: http://www.europarl.europa.eu/ep-live/en/committees/video?event=20170530-1500-COMMITTEE-CONT
CONTRIBUTING EXPERTS

Dr. Giacomo BENEDETTO, Jean Monnet Chair in EU Budget Policy, Royal Holloway, University of London
Dr. David RINALDI, Research Fellow at CEPS
Dr. Hartmut ADEN, Professor of European and German Public Law, Berlin School of Economics and Law
Dr. Maria-Luisa SANCHEZ-BARRUECO, Senior Lecturer of European Union Law, University of Deusto
Dr. Paul STEPHENSON, Assistant Professor, University of Maastricht

RESPONSIBLE ADMINISTRATOR

Ms Vera MILICEVIC
Policy Department D: Budgetary Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-budg@europarl.europa.eu

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Original: EN

ABOUT THE EDITOR

Policy Departments provide in-house and external expertise to support European Parliament’s committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU policies.

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poldep-budg@europarl.europa.eu

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WORKSHOP

POLICY DEPARTMENT D
BUDGETARY AFFAIRS

COUNCIL DISCHARGE
FINDING SOLUTIONS

DATE
30 May 2017

TIME
15:00 - 17:00

ROOM
PAUL-HENRI SPAAK BUILDING P4B001

Committee on Budgetary Control

CHAIR:
Ingeborg GRÄSSLE
RAPPORTEUR:
Bart STAES

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WORKSHOP PROGRAMME
WORKSHOP ON
COUNCIL DISCHARGE - FINDING SOLUTIONS
Organized by the Policy Department on Budgetary Affairs
For
The Committee on Budgetary Control

***
Chair: Ingeborg Gräßle
Rapporteur: Bart Staes
***

Tuesday, 30 May 2017
15:00 - 17:00
European Parliament, Brussels
Paul Henri Spaak Building, Room PHS 4B001

DRAFT WORKSHOP PROGRAMME

15:00 - 15:10  Opening remarks and Introduction
Ingeborg GRÄBLES, MEP,
Chair of the Committee on Budgetary Control

Bart STAES, MEP
Member of the Committee on Budgetary Control and rapporteur for
the event

***
15:10 - 15:35 Democratic accountability of Council’s budget

Dr. Giacomo BENEDETTO,
Jean Monnet Chair in EU Budget Policy, Royal Holloway, University of London

Dr. David RINALDI,
Research Fellow at CEPS

Dr. Hartmut ADEN,
Professor of European and German Public Law, Berlin School of Economics and Law

Presentation of the briefing on
“Democratic accountability of Council’s budget - Council executive powers”

15:35 - 16:00 Council discharge - finding solutions

Dr. Maria-Luisa SANCHEZ-BARRUECO,
Senior Lecturer of European Union Law, University of Deusto

Dr. Paul STEPHENSON,
Assistant Professor, University of Maastricht

Presentation of the briefing on
“Council discharge by the European Parliament - finding solutions”

16:00 - 16:50 Debate

Questions & Answers and general debate

16:50 - 17:00 Conclusions and Closing remarks

Bart STAES, MEP
Member of the Committee on Budgetary Control and rapporteur for the event

Ingeborg GRÄBLE, MEP,
Chair of the Committee on Budgetary Control
BIOGRAPHIES OF SPEAKERS
Giacomo Benedetto holds the Jean Monnet Chair in EU Budget Policy at Royal Holloway, University of London, where he directs the European Studies programme and teaches units on the politics, institutions, budgets, public policy and foreign policy of the European Union. Previously he held a lectureship at the University of Manchester and he gained a PhD on the European Parliament from the London School of Economics.

He is co-editor of European Union Budget Reform (Palgrave 2012) and associate editor of the peer-reviewed European Journal of Government and Economics.

He has published research on the EU budget, the European Parliament, the British Parliament, and Euroscepticism in international peer-reviewed journals.

He has also provided input to the European Parliament’s Budgets Committee and to the European Commission’s Budget Focused on Results programme.

He is a co-author of a study on the Potential and Limitations of Reforming the Financing of the EU Budget prepared for the EU’s High Level Group on Own Resources.
Dr. David RINALDI,
Research Fellow at CEPS and Maître de Conférences, ULB-IEE

As Research Fellow at CEPS, David carries out research on EU budgetary and investment policy and their interplay with the EU economic governance framework. Before joining CEPS, David worked as research fellow at the Jacques Delors Institute, as academic assistant at the College of Europe (European Economic Studies Department), as consultant on public finances at the Council of Europe (Social Cohesion Division), and as account manager in private banking.

He teaches European Economic Governance at the ULB (Institute for European Studies) and held teaching positions at the Paris College of Art (visiting professor, microeconomics) and at Bocconi University (teaching assistant, macroeconomics).

David holds a PhD in Economics from the DEFAP Graduate School in Public Economics in Milan and carried out study visits at the University of Nottingham, Bocconi University and University of Zaragoza. Internships at the Permanent Mission of Italy to the United Nations in New York and at the United Nations - Economic Commission for Africa in Addis Ababa complement his education.

The full list of publication is available on Academia.edu and ResearchGate. His op-eds are to be found on Europe is Talking (in English) and on the Huffington Post Italia (in Italian).
Hartmut Aden is Professor of European and German Public Law, Public Policy and Public Administration at the Berlin School of Economics and Law (HWR, Hochschule für Wirtschaft und Recht Berlin).


He obtained his Doctoral degree from Leibniz University in 1997, on the theme of Police policymaking and legal control of police work in Europe in the context of changing processes in the national states, illustrated by the examples of Germany, France and the Netherlands. He was Assistant Professor at Leibniz University Hanover from 1997-2005 and Senior Audit Manager in the German Federal Court of Audit (Bundesrechnungshof, Bonn) during 2005-2009.

Since 2009 he is Professor of German and European Public Law (since 2009) and also Public Policy and Public Administration (since 2016) at the Berlin School of Economics and Law, where he is also serving as Data Protection Commissioner and Deputy Director of the Berlin Institute for Safety and Security Research.
Dr. Maria-Luisa SANCHEZ-BARRUECO,
Senior Lecturer of European Union Law, University of Deusto

EDUCATION
2006 Ph.D. in Law (“summa cum laude”). University of DEUSTO (Bilbao).
1997 MA in European Policy & Administration (“very good”). COLLEGE OF EUROPE (Bruges, Belgium).
1994 BA (Law). University of Deusto (Bilbao).

PROFESSIONAL INTERESTS
Systemic legitimacy
Democratic accountability
Financial Accountability
EU Financial management
EU Institutional framework
EU institutions reform
Leadership
Fundamental rights in the EU
Public integrity/ethics.

PROFESSIONAL ACTIVITIES & ACHIEVEMENTS
2017 Offers evidence on the budgetary implications of Brexit at the UK House of Lords Subcommittee on EU Financial Affairs.
2016 Elected as Committee Member (by membership) of the University Association for Contemporary European Studies (UACES) (2016-2019).
2016 Invited by the European Court of Auditors to present at a workshop on institutional matters.
2015 Leading organiser of the 45th UACES Annual Conference in Bilbao (+500 papers).
2015 Is awarded the Teaching quality award (Level 2) in “European Union Law” and “International Organisations”, UNIBASQ.
2014 Member of the Advisory Board for research projects on development cooperation for the Dutch Research Foundation- Flanders (Fonds Wetenschappelijk Onderzoek - Vlaanderen, FWO).
2010 Habilitation as Assistant Professor by the agency on the quality of higher education (UNIQUAL), 2010.
2007 Research grant on EU Public Finances (Jointly awarded by the European Court of Auditors and the European University Institute)


Member of professional associations UACES (University Association of European Contemporary Studies), UK European Union Studies Association (EUSA), USA Spanish Association of Professors of International Law & International Relations (AEPDIRI), Spain
Dr. Paul STEPHENSON,  
Assistant Professor, University of Maastricht

Paul Stephenson is Assistant Professor at the Department of Politics, Faculty of Arts and Social Sciences at Maastricht University in the Netherlands. He studied European Studies (modern languages and management) at Royal Holloway, University of London, and graduated with a B.A. (Hons) First. During his first degree he was an Erasmus student at Montpellier Graduate Business School and the University of Seville. He went on to do an M.Phil and PhD at Cambridge University, affiliated to the Centre of International Studies and Darwin College (1998-2002). His doctoral research examined policy-making for trans-European transport networks (TEN-T).

He spent almost five years working as a European project development officer within INTERREG based at the joint technical Secretariat in Lille, France (2002-2006). He then returned to academia, taking up a position at Maastricht University and was Director of Studies of the MA in European Studies (2008-2013).

He was a Marie Curie Research Fellow at Science Po Paris (2013-2015) during which time he developed his ongoing research on the European Court of Auditors within his project APPLAUD (Accountability and Public Policy Audit in the EU).

He co-founded the research network EUFINACCO (Financial Accountability in the EU) and continues to work to broaden its membership and promote its work.
PRESENTATIONS
First intervention:

Presentation of the briefing on

“Democratic accountability of Council’s budget - Council executive powers” by

Dr. Giacomo BENEDETTO,
Jean Monnet Chair in EU Budget Policy, Royal Holloway, University of London

Dr. David RINALDI,
Research Fellow at CEPS

Dr. Hartmut ADEN,
Professor of European and German Public Law, Berlin School of Economics and Law
Roadmap

1. Over the last decade the European Parliament has refused to grant discharge to the Council
2. The Council has not responded to the Parliament’s questions or supplied documentation on its accounts
3. The Council has fully cooperated with the Court of Auditors
4. The Parliament has concerns with the policy outcomes associated with the Council’s expenditure
5. Among these policy concerns are the potential uses of administrative funds for executive activities by the Council
6. A modus vivendi to agree on a way forward was tabled but not taken forward
7. We propose solutions and strategies for the Parliament in this briefing
Frequency of annual questions from the Parliament to the Council on executive tasks, 1/3

<table>
<thead>
<tr>
<th></th>
<th>09</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-financing with Commission in external policy?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Number of staff posts for EU Special Representatives?</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Allocation of EUSR staff posts between Council and EEAS?</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>For the High Representative, cost share between Council and Commission?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>How did Council prepare its budget for the High Representative?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Expenditure in CFSP/CSDP for Council</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

30 May 2017 — Workshop on Council Discharge by the European Parliament — Committee on Budgetary Control

Frequency of annual questions from the Parliament to the Council on executive tasks, 2/3

<table>
<thead>
<tr>
<th></th>
<th>09</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative expenditure for CSDP operations?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Administrative expenditure and number of posts for ATHENAE?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Number staff in external actions?</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Travel costs for EUSR staff?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Which CFSP/CSDP costs transferred to EEAS?</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

30 May 2017 — Workshop on Council Discharge by the European Parliament — Committee on Budgetary Control
Frequency of annual questions from the Parliament to the Council on executive tasks, 3/3

<table>
<thead>
<tr>
<th>Question</th>
<th>09</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why was the creation of EEAS not taken into account in budget 2011?</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Please provide more details on the CFSP/CSDP in the Council</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>How much of Council's budget is contributed to the EEAS?</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Please answer unanswered questions since 2010</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Reasons given in the Parliament’s annual resolutions to reject discharge to the Council, 1/2

<table>
<thead>
<tr>
<th>Reason</th>
<th>09</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council should be scrutinised like all other institutions</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Council fails to meet CONT or rapporteur</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>EP opposes new inter-institutional agreement on discharge</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-response by Council to questionnaire</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Lack of budgetary documentation</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Ramassage: Buildings</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
Reasons given in the Parliament’s annual resolutions to reject discharge to the Council, 2/2

<table>
<thead>
<tr>
<th></th>
<th>09</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Procurement</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Separate Council and European Council budgets</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td><strong>Need for performance indicators in travel, logistics, interpretation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>No Council reply to ECA report</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>No analysis of demography of Council staff</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>No rules on integrity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Council’s Powers, 1/2

- 1970 – Own Resources, Parliament gains annual budget amendment power, gentlemen’s agreement follows
- 1975 – More budget power for Parliament, creation of Court of Auditors
- Council was a legislature but
- Since 1993, Council exercises more executive power:
  - European Council
  - Freedom, Security, Justice, CFSP/CSDP, Eurozone
  - HRVP => EEAS
Council’s Powers, 2/2

- Matthias Rossi in 2012: sceptical on EP power to grant discharge to the Council
- Carlino Antpöhler in 2012: Ambiguity - There is no explicit provision on the discharge to the Council. The legislation does not say that Parliament only grants to the Commission
- Article 316(3) TFEU, Financial Reg (FR), Art. 162, FR, Art. 166 allow leeway
- EP Rule 94: Discharge for each institution
- Parliament model is for discharge relationship like that of other institutions that respond to questionnaires, e.g. CoR or CJEU

Council’s Budget 1/3

- Council expenditure only includes administrative expenditure: there is no evidence of misreporting
- But there is no distinction between administrative costs incurred to support the Council’s legislative or executive activities
## Council’s Budget, 2/3

<table>
<thead>
<tr>
<th></th>
<th>€</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Persons working for the Institutions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Members</td>
<td>1,302,000</td>
<td>0.24</td>
</tr>
<tr>
<td>Officials and temporary staff</td>
<td>299,452,000</td>
<td>55.00</td>
</tr>
<tr>
<td>Other staff and outsourced services</td>
<td>13,306,000</td>
<td>2.44</td>
</tr>
<tr>
<td>Other expenditure related to persons</td>
<td>9,242,000</td>
<td>1.70</td>
</tr>
<tr>
<td>Mission expenses of the Sec-Gen</td>
<td>2,980,000</td>
<td>0.55</td>
</tr>
<tr>
<td>Travel expenses of staff related to European Council</td>
<td>600,000</td>
<td>0.11</td>
</tr>
</tbody>
</table>

## Council’s Budget, 3/3

<table>
<thead>
<tr>
<th></th>
<th>€</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Buildings, equipment and operating costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings and associated costs</td>
<td>55,768,000</td>
<td>10.00</td>
</tr>
<tr>
<td>ICT and furniture</td>
<td>46,204,000</td>
<td>8.00</td>
</tr>
<tr>
<td>Operating expenditure</td>
<td>117,780,000</td>
<td>22.00</td>
</tr>
<tr>
<td>Travel</td>
<td>18,267,000</td>
<td>3.35</td>
</tr>
<tr>
<td>Interpreting</td>
<td>82,739,000</td>
<td>15.18</td>
</tr>
<tr>
<td>Internal meetings</td>
<td>5,462,000</td>
<td>1.00</td>
</tr>
<tr>
<td>Other meetings and conferences</td>
<td>275,000</td>
<td>0.05</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>2,000,000</td>
<td>0.37</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>545,054,000</td>
<td>100</td>
</tr>
</tbody>
</table>
Council’s Meetings in 2015 – What’s executive?

- 5,973 meetings organised by the Directorate for Conferences and Protocol (DGA 2A)
- 8 European summits
- 3 Euro summits
- 1 multilateral summit in Brussels, the EU-Community of Latin American and Caribbean States (EU-CELAC)
- 20 Eurogroup meetings
- 78 Council meetings (or equivalent)
- 138 Coreper meetings
- 3,471 working party meetings
- Over 1,300 other protocol events
- Interpreting: 75% of operating costs

Oversight & Audit

- ECA Annual Report approach has limitations:
  - Overall picture non-institution specific
  - Sampling Transactions (~ 150 transaction a year for the whole audit)
  - Rotational Approach (from 2012 to 2015, Council included once)
  - Based on respect of legal requirement & principles
- ECA Special Reports may complement, but rare exercise
Missing information

- Value for money, i.e. performance budgeting (e.g. buildings, staff)
- Internal Audit Procedure
- Foreign Policy actions
  - Translation and travel costs
  - EU Special Representatives
  - Military operations, Athena mechanism
  - Split expenditure with MS on the occasion of summits

Concluding Remarks

- No evidence of Council misuse of funds, but there is a question of accountability and policy
- Council cites its status as a legislature and security concerns (an executive rationale) for non-accountability
- ECA may examine only 6 files per year since Council takes 6% of heading 5
- Salaries, buildings and other administrative expenditure is reported but not quantified as legislative or executive
- For annual budget, European Parliament has two rapporteurs – 1 is for Section III (Commission and agencies) and 1 is for all other sections
- ECA contains 5 chambers, by policy/heading not institution
- EP decides discharge based on institution not policy
- **ASYMMETRY UNDERMINES ACCOUNTABILITY**
Policy Recommendations: Court of Auditors

- Special report on Council and European Council justified by institutional change since 2009: HRVP, EEAS, European Council presidency
- Chamber V (Financing and Administering the Union) could be divided.
- Chamber III (External Action, Security and Justice) could explicitly audit Council files

Policy recommendations: Parliament-Council relations

- Consider a new modus vivendi
- Or an inter-institutional agreement
  - Sunset clause, renewal with consent of EP and Council
  - Maintain substance of gentlemen’s agreement for law-making expenditure, for which Parliament and Council would open similar documents for recommendation and discharge
  - Specify access to Council’s executive expenditure
Policy recommendations: Internal to Council

• Division of Section II of budget
  • New Section XI for European Council or for executive activities, with its own discharge

• Categorise all administrative expenditure as legislative or executive
  • For mixed usage (buildings or staff), subdivide according to percentage

Policy recommendations: Internal to Parliament

• Better conceptualisation of issues in questionnaires

• Parliament could allow Council oversight of its files for the Council’s recommendation as part of new agreement

• Insertion of article in Annex IV of Rules of Procedure requiring automatic vote to delay or reject discharge for any institution not presenting its accounts to the Parliament or not completing the Parliament’s questionnaire
Policy recommendations: If disagreement continues?

- Florence Chaltiel (2012):
  - As Council insists only Commission is responsible for budget => use vote of investiture in Commission to extract cooperation or threaten to censure Commission to extract cooperation
  - Parliamentary questions to Council and Commission
  - Parliamentary committees of enquiry
- Enquiries by LIBE or AFET committees
- Parliamentary right of amendment to annual budget to reduce expenditure in parts of headings 3 and 4 where Council involvement is likely
Second intervention:

Presentation of the briefing on “Council discharge by the European Parliament - finding solutions” by

Dr. Maria-Luisa SANCHEZ-BARRUECO,
Senior Lecturer of European Union Law, University of Deusto

Dr. Paul STEPHENSON,
Assistant Professor, University of Maastricht
Council Discharge – Finding Solutions

María-Luisa Sánchez Barrueco
Deusto Law School

Paul Stephenson
Maastricht University

Outline

• Where does the disagreement come from?
• Was the legal framework of financial accountability always the same?
• Which arguments are invoked by EP & Council?
• How can the deadlock be broken?
Understanding the disagreement before solving it

**Council**
- narrow interpretation of the legal framework currently in force *(de lege lata)*

**Parliament**
- broad interpretation of the legal framework as it should be *(de lege ferenda)*

Methods of legal interpretation

Towards comprehensive financial accountability commensurate to its effect on EU legitimacy

Financial accountability in historical perspective

- **1957 EEC**
  - Discharge procedure:
    - Council sole authority
    - Commission sole responsible

- **1951-1957 ECSC**
  - External auditor reported to a Commission of Presidents of the institutions

- **1975 Brussels Treaty**
  - + Financial Regulation
    - ECA created
    - Discharge: Assembly upon recommendation of Council

- **1970 Luxembourg Treaty**
  - EP gains budget powers
    - Joint discharge with Council

- **1992 Maastricht Treaty**
  - EP discharge upon Council recommendation
    - Adds "sound financial management"
    - Adds hearings COM prior to discharge
    - Adds follow-up obligations

- **1997 Amsterdam T.**
  - Adds Statement of Assurance
    - Starts considering States

- **2007 Lisbon Treaty**
  - States subject to stricter rules in budget implementation
    - Focus on performance
    - Adds institutional sincere cooperation in budget

- **2009**
**Discharge as accountability mechanism**

- **TRANSPARENCY**
  - Openness (budget implementation package)
  - Reporting (regular reports on activities)

- **EXPOSURE**
  - Being questioned (questionnaires, hearings)
  - Providing justification for conduct

- **JUDGEMENT**
  - Being the object of a discharge decision
  - Being the subject of criticism that lasts

- **LIABILITY**
  - Discharge creates new obligations (soft)
  - Potential sanctions only in adjacent fields

**Arguments evoked by the two institutions**

1. **Article 317 TFEU**
   - Budget implementation is COM’s exclusive responsibility
   - Other institutions & organs intervene as ‘COM “agents’ (delegates/conferral)

2. **Article 319 TFEU**
   - Solely COM is the subject of discharge
   - Separate discharges are considered internal (organizational) EP documents devoid of outward effect

3. **Art. 13.2 TEU**
   - Duty of sincere cooperation between institutions binds the EP too.

4. **Hierarchy of EU Legal Acts**
   - EP attempts at overriding the institutional balance through its RoP and institutional practice.
Arguments evoked by the two institutions

1. Art. 317 TFEU just covers operations
   - Targets only operational budget, not administrative
   - Outdated by institutional practice
   - Need to acknowledge that COM lacks powers to oversee budget implemented by other subjects

2. All institutions act as equal
   - Financial officers
   - Relationship with COM’s IAS
   - Relationship with ECA

3. Art. 55 FR
   - Conferral of powers to other institutions is permanent and irrevocable

4. Council is no discharge authority & insufficient accountability
   - Council and EU CO merged
   - Lack of transparency
   - Lack of cooperation

Breaking the deadlock

- Assuring the European citizenship that no EU budget line escapes democratic oversight should be the overarching goal
- Various options, none optimal
- Main options hinge on building alliances with other actors at EU & national level

INTRAINSTITUTIONAL
- Improving EP internal functioning in financial accountability.

LEGAL
- Updating the legal framework to reflect a better appraisal of the Council in budget management

JUDICIAL
- Seizing the Court of Justice for clarification of the legal framework.

INTERINSTITUTIONAL
- Negotiating a renewed agreement with the Council
Breaking the deadlock  I.- Intra-institutional

- To set an example in financial management
- To improve questionnaires through checks & balances
- To raise awareness on the relevance of (financial) accountability across committees & political groups
- To open the black box of the Council and search for allies among pioneer states in accountability
- To precise the added value of political accountability in budget control

Breaking the deadlock  II.- Legal

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Legal base</th>
<th>EP</th>
<th>Strength</th>
<th>Weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td>TREATY (Ordinary)</td>
<td>48(2) TEU</td>
<td>STRONG (assent)</td>
<td>HIGH (top legal act)</td>
<td>Long &amp; uncertain (Convention, National ratification)</td>
</tr>
<tr>
<td>TREATY (Simplified)</td>
<td>48(6) TEU</td>
<td>WEAK (opinion)</td>
<td>HIGH (top legal act)</td>
<td>Serves for internal policies but not their financial management &amp; accountability</td>
</tr>
<tr>
<td>FINANCIAL REGULATION</td>
<td>322 TFEU</td>
<td>STRONG (ordinary leg. proc.)</td>
<td>HIGH-MEDIUM (quasi-constitutional)</td>
<td>Subject to annulment Of little use if colliding interpretation with Treaty</td>
</tr>
<tr>
<td>ANNUAL BUDGET</td>
<td>314 TFEU</td>
<td>STRONG (special leg. proc.)</td>
<td>MEDIUM</td>
<td>Changes are not permanent</td>
</tr>
<tr>
<td>RULES OF PROCEDURE</td>
<td>232 TFEU</td>
<td>STRONG (helps practice gain ground)</td>
<td>LOW</td>
<td>Internal rules cannot break hierarchy</td>
</tr>
</tbody>
</table>
Breaking the deadlock

Future revisions should reassess...

• ... whether the Council is a Discharge Authority

<table>
<thead>
<tr>
<th>ACCOUNTABILITY DIMENSION</th>
<th>COUNCIL INVOLVEMENT</th>
<th>EP INVOLVEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRANSPARENCY (receives others’ reports)</td>
<td>STRONG</td>
<td>STRONG</td>
</tr>
<tr>
<td>EXPOSURE (can question others)</td>
<td>WEAK</td>
<td>STRONG</td>
</tr>
<tr>
<td>JUDGEMENT (issues criticism)</td>
<td>WEAK</td>
<td>STRONG</td>
</tr>
<tr>
<td>LIABILITY (imposes obligations/sanctions)</td>
<td>WEAK</td>
<td>MEDIUM/WEAK</td>
</tr>
</tbody>
</table>

Breaking the deadlock

Future revisions should reassess...

• ... the political accountability of administrative spending by institutions other than COM (especially the Council)
  – Precise the principles of conferral on institutions (55 FR) and delegation on national authorities, respectively.
  – Precise management and executive functions in institutions other than the Commission.
  – Precise the boundaries between political accountability and institutional autonomy.
Breaking the deadlock

II.- Legal

*Future revisions should reassess…*

- ... Improving transparency and reporting
  - Adding new reports to the financial package (balance with efficiency?)
  - Adding more detail to the budget might precise better respective spending of Council and EUCO

- ... the scope of political accountability over budget implementation
  - Elaborate on the criteria applied in political accountability as compared to ECA’s performance audit.
  - Respect the boundaries between financial accountability and general political accountability, specifically in areas where EP has limited powers.

Breaking the deadlock

III.- Judicial

*An uncertain path…*

- Parliament vs Council ⇒ **action for failure to act**
  - Interpretation of ‘institutional balance’ in discharge
  - Legality of questionnaires (to the Council)

- Council vs Parliament ⇒ **action for annulment**
  - Legality of the discharge decision
Conceding powers in exchange for better accountability…

- Include clauses on **common values** and principles
- Neutral **procedural clauses** prevent conflicts and reduce mistrust
- **Aim at gaps** (eg. responsiveness) rather than reopening unproblematic issues (eg. openness)

marialuisa.sanchez@deusto.es

Given the importance of cooperation between the two institutions and responsibility before the EU citizens, the Parliament stresses an urgent need for better dialogue. The Parliament as a discharge authority is looking for ways to solve the institutional conflict and to move forward in the process of granting discharge to the Council. The workshop should discuss ways to solve the institutional conflict by strengthening the Parliament’s role as the discharge authority.

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