WORKSHOP
Discharge of the Council's Budget

BRIEFING PAPERS

2012
WORKSHOP

DISCHARGE OF THE COUNCIL'S BUDGET

Brussels, 27 September 2012

BRIEFING PAPERS

Abstract:
The Workshop has been organised in order to provide the Committee on Budgetary Control with external expertise on the legal position of the European Parliament with regard to the discharge of the Council's budget. Three briefing papers by academic experts have been prepared, giving different views on the topic. All experts agree on the Parliament's right to receive information considered necessary. Its legal authorisation to grant discharge to the Council has not been supported by all experts.
This document was requested by the European Parliament’s Committee on Budgetary Control for a Workshop on the "Discharge of the Council’s Budget".

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WORKSHOP

POLICY DEPARTMENT
BUDGETARY AFFAIRS

DISCHARGE OF THE COUNCIL'S BUDGET

THURSDAY
27 SEPTEMBER 2012

9h00 - 12h30

Altiero Spinelli
ASP 3G-2

Committee on Budgetary Control
Chair: Michael Theurer
Rapporteur: Inés Ayala Sender
DISCHARGE OF THE COUNCIL'S BUDGET

Organised by Policy Department D

Thursday, 27 September 2012, 09:00 - 12:30

European Parliament, Brussels
Room: Altiero Spinelli Building ASP-3G2

WORKSHOP PROGRAMME

09:00 - 09:20 Welcome and Introduction

09:00 - 09:10 Welcome by Michael Theurer
Chair of Committee on Budgetary Control

09:10 - 09:20 Introduction by Inés Ayala Sender
Rapporteur for the 2010 Council Discharge

09:20 - 10:50 Position of the Academic world (Confirmed)
Presentations by 3 renowned academic experts,
followed by Q&A and discussion:

Matthias Rossi, Prof. (Augsburg/Germany)
Florence Chaltiel, Prof. (Grenoble/France)
Carlino Antpöhler (Heidelberg/Germany)
10:50 - 11:20  Position of the Council (TBC)

Contribution by NN


EP Legal Service's position on Council Discharge

Ricardo PASSOS, Director

11:50 - 12:20  General debate: panellists, Members, and other participants

12:20 - 12:30  Closing remarks by Rapporteur
Discharge to be granted to the Council by the European Parliament?

SUMMARIZED REMARKS

Entlastung des Rates durch das Parlament?

ZUSAMMENFASSENDE BEMERKUNGEN

(The Briefing Paper will be published after the Workshop on the "Discharge of the Council’s Budget")
Discharge to be granted to the Council by the European Parliament?

SUMMARIZED REMARKS

I. PRELIMINARY NOTES

1. The question whether the European Parliament is de lege lata authorized to grant or refuse discharge to the Council in respect of the implementation of the Council budget must be strictly separated from the question whether it should be authorized to so de lege ferenda.

2. Even under the existing legal framework, the question whether the European Parliament is authorized to decide on the discharge of the Council must be separated from the issue as to what information the European Parliament requires and must receive by law as a basis for its decision on the discharge of the Commission.

II. THE EUROPEAN PARLIAMENT’S POWER OF DISCHARGE WITH RESPECT TO THE COUNCIL

1. According to the role allocation of the European institutions the Parliament and the Council jointly act as the “budgetary authority”. Both are involved in the drawing-up and the adoption of the annual budget in accordance with Article 314 TFUE as well as in the procedure for giving a discharge to the Commission according to Article 319 TFUE. The Council hence is a responsible discharge authority and not itself subject to discharge. According to Article 319 TFUE the only institution subject to discharge is the Commission.

2. Secondary legislation cannot alter the division of powers between the institutions regulated in primary law. The internal conferral of the power to implement the sections of the budget by the Commission to each institution does not release the Commission from the overall responsibility for budgetary implementation.

3. The principle of overall responsibility of the Commission for the execution of the budget is not only prevailing primary law but also at the same time factually justified. Firstly, it safeguards the division of powers between drawing-up and implementation of the budget. Secondly, it thereby reflects the institutional division of powers between the institutions. Thirdly, differentiating between a subdivided conferral of responsibility in the internal area and their joint exercise in public can therefore also be understood as manifestation of the principle of loyal cooperation between the institutions. Fourthly, the principle of overall responsibility contributes to create political stability within the Union as legal and political consequences only occur in case of severe violations of budgetary provisions, whereas smaller infringements are left to the internal clarification and relief process of the respected institutions.

4. A discharge power of the European Parliament against the Council cannot be based on the institutional balance between the institutions but would the other way round disrupt this balance. For the European Union is equally based on the Parliament as representative of the Union citizen as well as the Council as representative of the member states.

5. In the light of these findings derived from primary law, the European Parliament’s refusal of discharge to the Council may be politically significant (depending on the amount of media coverage), however it has no legal consequences.
III. BASIS OF PARLIAMENTS’ DECISION ON THE DISCHARGE

1. The Parliament has a right to all information which from its point of view is necessary for the decision on the discharge of the Commission. According to the overall responsibility of the Commission towards the Parliament in principle it is the exclusive addressee of the information obligation. Hence, a direct right to information of the Parliament towards the Council does not exist.

2. The – recommending – decision of the Council on the discharge of the Commission is autonomous and independent in regard to the final decision of the Parliament. The autonomy and independence does not only cover the (political) assessment, but as well the choice of the relevant information. Art. 319(1) TFEU solely states which information has to be available for the Council and the Parliament as a minimum basis for their respective discharge decisions. However, it cannot be understood in a sense that beyond that the same information has to be at the disposal of the Parliament and the Council.

3. Since the overall responsibility of the Commission for the budget implementation towards the Parliament also covers the budget implementation of the Council, the Commission is upon request obliged to grant access to all information on its budget implementation.
Entlastung des Rates durch das Parlament?

ZUSAMMENFASSENDE BEMERKUNGEN

I. VORBEMERKUNGEN

1. Die Frage, ob das Europäische Parlament de lege lata befugt ist, dem Rat die Entlastung zu seinem Haushaltsvollzug zu erteilen bzw. zu verweigern, ist strikt von der Frage zu trennen, ob es hierzu de lege ferenda befugt sein sollte.


II. ENTLASTUNGSBEFUGNIS DES EUROPÄISCHEN PARLAMENTS GEGENÜBER DEM RAT


III. INFORMATIONSGRUNDLAGEN DER ENTLASTUNGSENTSCHEIDUNG DES PARLAMENTS


Scrutiny of the implementation of the budget by the European Parliament

Summary

The European Parliament is responsible for scrutiny of the budget and grants discharge for implementation of the budget. The EP and the Council have been in dispute for several years because the Council has not fully cooperated with the EP in optimum scrutiny of the use of European public funds. This paper sets out the available legal information and the points of conflict and suggests approaches that may improve matters.

06/09/2012
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<td>Interinstitutional Agreement on budgetary discipline and sound financial management</td>
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CONTEXT
General philosophy behind the views developed in the consultancy paper

The European Parliament (EP) has steadily gained power over the period of European integration. The situation can be summed up by saying that it has grown from ‘almost nothing to almost everything’ (F. Chaltiel, Le processus décisionnel européen après le traité de Lisbonne, second edition, La Documentation Française 2010).

In the legislative field, Parliament has become the European Union’s co-legislator with the Council. In the budgetary control field, it is claiming more effective scrutiny of the implementation of the budget.

There was a dispute in 2011 when the EP refused to grant discharge to the Council for the 2009 accounts. It had already postponed discharge for the 2007 financial year in 2009, on the grounds of lack of transparency and the Council’s refusal to open a dialogue with it on expenditure. Again in 2012, Parliament postponed the discharge, on the basis of persistent disagreement with the Council over Parliament’s budget role.

Parliament is responsible for granting the budget discharge under the Treaties. There have been occasions when it has postponed discharge and it has refused to grant discharge. The key issue, which has been building up for several years, is Parliament’s wish to examine the accounts of all the institutions, not just the Commission. The Council, however, considers that the discharge given to the Commission is valid for all the institutions and has shown considerable reticence about cooperating with Parliament, as institutional balance requires, on following up scrutiny of its own expenditure.

Objective and method
This paper analyses how the discharge must be dependent on greater diligence by the Council in the name of institutional balance, European democracy and economic efficiency. It comprises three points: the texts available, analysis of the dispute and proposals for improvements in accordance with greater respect for institutional balance, greater democracy and an economically better managed budget.

The method is the following: consideration of the legal texts in force, in the light of the disputes between the EP and the Council, and finally proposals for approaches to improve the situation. Attention is given to the legal angle and putting forward solid arguments for better cooperation between the two institutions on scrutiny of the implementation of the budget. The analysis also sets out a more general position geared to an overview of the concept of European democracy and the developments implied in terms of increased prerogatives for the European Parliament.
CHAPTER 1: PRACTICE AND THE RELEVANT TEXTS

KEY WORDS

- The Treaties set out the division of powers between the European Union institutions

- The institutional balance is defined on the basis of the Commission’s power of initiative and implementation, the Council and the EP’s power of decision-making and the democratic scrutiny exercised by the EP

- The powers of budgetary control devolved to the EP are determined by the Treaties and secondary law

- The basic idea in the Treaties and secondary law is that the Commission is the institution primarily responsible for implementation of the budget

- In practice the Council is a major authority in implementation of the EU budget

PRACTICE AND RELEVANT ARTICLES IN THE TREATY

Practice:

Parliament has been examining the accounts of each institution and giving discharge individually since 2001.

This practice may be considered to have created a custom within the meaning of the rules of international law.

Since the treaties of 1970 and 1975, Parliament’s role in the budget procedure has been gradually enhanced. The Lisbon Treaty put Parliament and the Council on an equal footing in adoption of the whole European Union budget

The Treaty articles:

Article 319 of the TFEU provides the legal basis for parliamentary scrutiny of the implementation of the budget.

Article 319 of the TFEU lays down that the European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of implementation of the EU budget. The article also states that, to this end, the Council and Parliament shall examine the accounts, the financial statement and the evaluation report referred to in Article 318 of the TFEU, the annual report by the Court of Auditors together with the replies of the institutions to the observations of the Court of Auditors, the statement of assurance on the reliability of the accounts and the legality and regularity of the underlying transactions referred to in Article 287 of the TFEU.
SECONDARY LAW

The Financial Regulation (FR):

Article 50 states that the Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them. It also states that each institution may delegate its powers of budget implementation in accordance with the limits laid down in the instrument of delegation and the rules applicable. Consequently it is important that direct scrutiny can be carried out on compliance, hence the following conclusions on secondary law and primary law:

Interinstitutional Agreement:

The Interinstitutional Agreement on budgetary discipline and sound financial management, concluded between the European Parliament, the Council and the Commission on 17 May 2006, sets out the financial framework for 2007-13 and aims to implement budgetary discipline. It also aims to improve the functioning of the annual budgetary procedure and cooperation between the institutions in budgetary matters.

ACT:

Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management

The Agreement on budgetary discipline and sound financial management (IIA) was concluded between the European Parliament, the Council and the Commission. It concerns the drafting and implementation of the European Union (EU) budget. The European institutions have decided to organise their cooperation by means of this agreement, in order to improve the way the budgetary procedure works and to ensure sound financial management of European finances.

The IIA comprises three sections:

- Part I establishes the financial framework for the 2007-2013 period, specifically the amounts of expenditure for each policy area;
- Part II organises the cooperation between the Parliament, the Council and the Commission during the budgetary procedure;
- Part III establishes the rules aimed at ensuring sound financial management of EU funds.

CONCLUSIONS

On the basis of consideration of the relevant texts and with regard to institutional balance:

1. From the Treaty articles and secondary law, it appears that the Commission is the authority for implementation of the budget and consequently discharge must be granted to the Commission alone.
Parliament and the Council are the legislative and budgetary authorities.

Conclusion as regards the requirements of democracy

2. A paradox emerges when the Treaty provisions and the reality of EU law are considered together. The Commission does not implement the budget on its own. As part of the general trend of the taking back of power by the Member States, it appears that the Council is itself an authority for implementing the budget.

Contrary to the popular belief that the EU is centralised, it is in fact very decentralised, which means that only 10% of the budget is directly implemented by the Commission. The Member States and the other institutions help implement the budget.

Secondary law permits this, in particular Articles 50, 53b, c and d of the Financial Regulation.

This poses a problem of transparency and accountability.


KEY WORDS

- Disputes between the EP and the Council
- Refusal to grant discharge
- Postponement of discharge
- Situation in 2012

TERMS OF THE DEBATE

In the democratic exercise of its duty of scrutiny over the implementation of the budget, the EP has asked for the details of the Council’s accounts. This is a question both of principle and specific scrutiny. It has emerged that transfers of appropriations are not sufficiently justified and that the bases of property transactions are insufficiently clear, as the Court of Auditors has pointed out. It is against this background that the EP is asking both for more transparency on the Council’s accounts and more regular dialogue with the Council on this subject.

The Council has a different position, based on a strict reading of the letter of the Treaty. The Treaty mentions the budget discharge as a whole and not institution by institution. The Council therefore refuses to present all the documents asked for by the EP, on the grounds that the expenditure concerned is administrative. This is contested by the EP, particularly in the field of foreign affairs.

Consequently the EP has been unable to get the Council to:

- Consent to hand over the documents and explanations needed so that scrutiny of implementation of the budget is as rigorous as it should be;
- Agree to engage in dialogue with the members of the Committee on Budgetary Control;
Accept the principle whereby the EP must give individual discharge to the Council.

Consequently approaches have to be found for improvements for the benefit of democracy, efficiency and good governance.

**EVENTS IN THE PERIOD 2007-2012 CONCERNING THE DISCHARGE**

The Council considers that the discharge is valid for all institutions even if, depending on the section, a more detailed account can be requested.

The EP has tried to obtain documents and explanations, which it has not received. It has often repeated the Court of Auditors’ criticisms.

*In 2009 discharge for the Council’s budget for 2007 was postponed because of a lack of clarity in the details communicated by the Council.*

There was widespread consensus, at the European Parliament’s plenary sitting on 23 April in Strasbourg, to postpone the grant of discharge to the Council for the 2007 budget. MEPs gave it six months to provide the information requested, including on the extra-budgetary accounts that had allegedly been used for travel and mission expenses abroad. Parliament gave all the other institutions a positive verdict, apart from the European Police College.

The European Parliament adopted, by 571 to 41, with 21 abstentions, a report by Søren Bo Søndergaard (GUE-NGL, Denmark) on the Council’s discharge for its 2007 budget. The plenary followed the recommendation of the Committee on Budgetary Control, which called for postponement with its vote on 16 March (see Europolitics 3737). According to the rapporteur, Parliament ‘has no answer from the Council on all the questions related to its accounts’. The Council was increasingly making use of part of its administrative budget for operational expenditure, particularly in the area of foreign affairs and security policy.

**COUNCIL DENIES ACCUSATIONS**

As the discharge authority, Parliament wanted to keep an eye on such expenditure. In doing so, it brought into question the 1970 gentlemen’s agreement, whereby Parliament and the Council do not meddle in each other’s accounts. The EP asked the Council to submit an annual activity report, as do the other institutions. It should be emphasised that this text does not constitute binding secondary law. Thus it could not be invoked before the CJEU. Members also sought clarifications on its extra-budgetary accounts. Around €12 million were allegedly transferred in 2006 from the heading for interpretation expenses to travel expenses in the fields of foreign affairs, security and defence policy.

The EP wanted to see these budget headings for 2007.

*In November 2009, Parliament finally granted discharge to the Council, after its earlier refusal. It voted to do so by 587 votes, considering that it had received satisfactory replies and the publication on the*

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1. *In view of the increasingly operational nature of expenditure, financed under the Council's administrative budget, in the fields of foreign affairs, security and defence policy, and justice and home affairs*, in future ‘the scope of this arrangement should be clarified with a view to distinguishing traditional administrative expenditure from operations in these new policy areas’. Parliament was thus calling for a revision of the gentlemen’s agreement, which is not a binding document and is interpreted too broadly by the Council. The negotiations on this revision could be incorporated into the examination of the Financial Regulation, with a view to putting it in place at the beginning of the post-2013 multiannual framework. It also asked that in future Council expenditure should be scrutinised in the same way as that of the other institutions in the framework of the discharge procedure. This scrutiny should be based on the written documents such as accounts of the preceding financial year relating to the implementation of the budget, a financial statement of the assets and liabilities, an annual activity report on their budget and financial management, the internal auditor’s annual report and an oral presentation given in the meeting of the Committee responsible for the discharge procedure.

Council website of relevant documents on the implementation of the budget by the Council was satisfactory.

Between 2009 and 2012 the two institutions were frequently in dispute with each other on the subject.

In 2011 Parliament’s Committee on Budgetary Control proposed rejection of the discharge:

Commenting on the Budgetary Control Committee’s rejection of the Council discharge today in the European Parliament, Crescenzo Rivellini MEP, rapporteur of the proposal, said: ‘The Budgetary Control Committee today voted to reject the discharge of the Council, due to the inability to obtain the necessary documentation, the lack of cooperation shown by the Council to Parliament and the choice of not wanting to recognise the legitimacy of the latter as a discharge authority are the main reasons which justify the strong negative opinion on the actions of Council spending.’

A setback, then, for the institution that brings together the Heads of State and Government of the twenty-seven Member States, which, as expected and confirmed by the next plenary, will mark a precedent that could lead to an Institutional review by the Court of Justice. Parliament, in accordance with the Treaties, has the right and duty to verify the expenditure by the EU institutions to ensure the legitimacy and control on behalf of the citizens. If the Council does not want to undergo this scrutiny, Parliament may refer to the Court of Justice for failure to appeal in accordance with Art. 265 of the TFEU.

‘As rapporteur, I can only rejoice at the great exercise in democracy shown by the Parliament, the unconditional support of all my colleagues who decided to defend the rights of citizens to control, through their representatives, budgets and expenses of the European Institutions. This finally recognises Parliament’s role of as a representative of democracy’, concluded Rivellini.

The decision to refuse discharge was based on lack of transparency, lack of cooperation by the Council and lack of information provided.

THE SITUATION IN 2012

In 2012 the EP again refused to vote the discharge:


The stalemate between the European Parliament and the Council over the latter institution’s discharge drags on. On 27 March, members of the European Parliament’s Committee on Budgetary Control (CONT) decided to postpone okaying the Council’s 2010 accounts, although they noted that payments were free from material error. MEPs say the purpose of the postponement is to reach an agreement with the Danish EU Presidency on the key aspects of the procedure. A repeat of last year’s fiasco appears, however, likely.

In October 2011, a large majority of deputies voted against granting the Council’s 2009 discharge. Arguing that the plenary can only grant one discharge, not individual ones, according to the treaty, the Council considers its accounts were cleared at the same time as the Commission’s ones, in May 2011. Parliament – with the support of the Commission – disputes this and says the Council’s interpretation runs against a practice dating back to 1995. No further steps have been taken, however, despite a threat by Crescenzio Rivellini (EPP, Italy), rapporteur on the Council’s 2009 discharge to drag the Council to court.

This year round, if the plenary follows the CONT committee’s lead and grants the Commission discharge in May, then the Council is bound to argue its accounts are thus cleared too, says an EU source.
Much like the Hungarian EU Presidency, Copenhagen claims to want to reach an agreement with Parliament on a long-term method based on ‘mutual transparency and accountability’ to deal with the discharge procedure and calls for an end to the gentlemen’s agreement, dating back to 1970, which foresees that EP and Council do not scrutinise each other’s budget sections. So far the Parliament, with whom the mutual transparency requirement does not sit well, has not nominated a negotiating team and talks are at a standstill.

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EXAMPLE OF DIFFICULTIES IN EXERCISING SCRUTINY

An example of the difficulties: in its 2010 annual report the Court of Auditors criticised the financing of the Residence Palace building project because of the advance payments (paragraph 7.19); Parliament noted that the Court of Auditors made the observation that during the period 2008-2010 advance payments made by the Council totalled €235 000 000; noted that the amounts paid came from under-utilised budget lines; pointed out that ‘under-utilised’ is the politically correct term for ‘over-budgeted’; and pointed out that in 2010 the Council increased the budget line for ‘Acquisition of immovable property’ by €40 000 000.

According to the Council, the appropriations were made available by budget transfers authorised by the budget authority in accordance with the procedures provided for under Articles 22 and 24 of the Financial Regulation.

According to the Court of Auditors, such a procedure does not comply with the principle of budget accuracy, despite the savings made in paying rent.

CONCLUSIONS

Chapters 1 and 2 on the consideration of relevant texts and the dispute from the point of view of institutional balance.

Is the EP legally entitled to receive the documents requested from the Council?
If this is necessary for efficient and effective scrutiny the answer is yes. It goes without saying that the EP needs the documents requested for effective scrutiny. It is up to the EP to decide on the usefulness of the content of each document. Unless the document is top secret, there is no reason to refuse.

This is what was done in 2009 for example, when Parliament postponed the discharge. It asked for the documents on the content of the expenditure and considered that it had obtained them, which is why it finally granted discharge to the Council.

The same requirement confirmed in the economic field
Scrutiny is essential for economic efficiency and management of the EU budget. For example, when the Court of Auditors criticises budget transfers to headings concerning building stock, the EP has to be able to exercise scrutiny by hearing members of the Council and obtaining access to the relevant documents.

From the point of view of economic efficiency and good and sound management, it is relevant that each institution should be able to manage its budget and human resources without automatically referring to the Commission. Consequently, it would seem logical for the Parliament to be able to scrutinise directly what is administered autonomously, as the Commission’s responsibility in this context is largely artificial seeing that the Commission does not implement or manage the budget. Consequently the EP must have access to all the necessary information.
CHAPTER 3: PROPOSALS FOR IMPROVEMENTS

KEY WORDS

- Court of Justice rulings
- European constitutional court rulings
- Proposals and arguments relating to the EU’s democratic principles

COURT OF JUSTICE RULINGS

On institutional balance:

The CJEU has affirmed that the EP is a fully-fledged institutional actor. The Court has played a major role in active legitimation, passive legitimation and promoting institutional balance.

A 1983 judgment (Case 230/81, 10 February 1983) is interesting, if it is read in the light of the powers acquired by the European Parliament since then. According to the Court, the institutions’ power of internal organisation must not prejudice institutional balance or the division of powers between the EU and the Member States. It can be interpreted as having the effect that the delegation of implementation from the Commission to the Council requires increased and particular scrutiny by Parliament of the sections of the budget where implementation is objectively the responsibility of the Council. The general logic of successive transfers of powers to the EP serves to reinforce this idea.

It is also important to recall that the CJEU has already had occasion to check respect by the Council of Parliament’s prerogatives, by imposing the principle of reconsultation when the decision eventually taken by the Council diverged too much from the proposal initially submitted to Parliament. This goes back to the time when the Parliament’s legislative powers were almost non-existent.

It should not be forgotten that the Court of Justice sets great store by the principle of institutional balance. The CJEU derived the principle of the balance of powers that characterises the European Community’s institutional structure from Article 3 of the ECSC Treaty (Judgment of the Court of 13 June 1958, Meroni, Case 9/56, English special edition p. 133, and Judgment of the Court of 29 October 1980, Roquette, Case 138/79, p. 3333).

More recently the 1990 decision in European Parliament v Council of the European Communities (Case C-70/88) stated that under the Treaties the Court has the task of ensuring that in the interpretation and application of the Treaties the law is observed and must therefore be able to maintain the institutional balance. This decision could be used in support of action concerning the discharge.

Along the same lines, in the 1995 decision in European Parliament v Council of the European Union (Case C-65/93, 1 p. 643, 30 March 1995), the principle of genuine cooperation between the institutions and the European Parliament is incorporated in the dialogue between institutions.

On the basis of these decisions, one could invoke the principle of effectiveness to require the Council to forward the documents requested and more generally to account for its budget. The PRINCIPLE OF EFFECTIVENESS is widely used by the CJEU when establishing the major European principles.
RECENT DECISIONS BY NATIONAL CONSTITUTIONAL COURTS

The first example to be considered is the German constitutional court, matching a recent decision by the French constitutional council.

The German constitutional court has found on several occasions that the Treaties do not sufficiently meet democratic requirements.

The so lange jurisprudence of the end of the 1960s and beginning of the 1970s may be mentioned here. The court found that respect for the principle of primacy was dependent on effective protection of fundamental rights. In the end it informed the Court of Justice that it was satisfied in 2000.

More recently and with a direct link to the democratic requirement, the Court found that the Lisbon Treaty did not provide a sufficient guarantee for the rights of the national parliament.

The immediate concern relates to the budget treaty and the forthcoming decision on 12 September. In parallel, mention may be made of the constitutional court’s decision of 9 August 2012, which ratifies the TSCG after a very minimalist reading of the treaty.

The lesson to be drawn is as simple as obvious: constitutional jurisdictions are looking for a strengthening of the democratic principle and its application at European supranational level. If the European Parliament does not have all the means of effective democratic scrutiny, respect for democracy will still be seen as falling within the remit of the national parliaments.

PROPOSALS

Institutional architecture and its balance:

The European Parliament has often opened the way for respect for institutional balance by claims and action, not necessarily on the basis of the Treaties. It should do the same today on the question of the budget discharge.

We may recall the areas where Parliament has taken up the challenge and achieved success in that the outcome has subsequently been legalised.

Examples
Taking the name European Parliament instead of Assembly.
Passive and active legitimation before the Court of Justice.
The claims to be involved in the legislative process. On this last point, it has put more time into achieving the status of legislator and it is still not on an equal footing with the Council in all areas. However, these claims have often been acknowledged and enshrined in the Treaties.

On the specific question of the Council discharge, it can be justified by institutional balance and a principle that could be developed in terms of parallelism of actions and scrutiny. In principle it is the Commission, which is responsible for the implementation of the budget, that is bound to account to Parliament. BUT, in the logic of the Council’s taking back of powers on implementation of the budget, institutional balance requires that the Council should also be subject to parliamentary scrutiny in the use of public funds.

This requirement is strengthened by the democratic principle.
The democratic requirement and parliamentary scrutiny:

The European Parliament should not be reticent in moving forward on grounds of European democracy. The concept of a democratic deficit may be somewhat tarnished and exaggerated but it is not invalid. In democratic states, it is the parliament’s responsibility to scrutinise the use of public funds. The same should apply at EU level, where European taxpayers are represented by their European parliamentary representatives. NO TAXATION WITHOUT REPRESENTATION. By paying their taxes to the Member States, EU citizens pay into the EU budget.

Parliament is the institution par excellence that gives expression to European democracy. The conclusion is that efforts against the democratic deficit should be channelled through increased scrutiny of the accounts by Parliament.

Important: note that the Lisbon Treaty devotes a whole chapter to the democratic principle.

BASIC ARGUMENT

The European Union is based on the democratic principle; it has a European Parliament directly elected by the people. The principle of parliamentary democracy is no taxation without representation. This principle is reinforced in texts such as the Declaration of the Rights of Man and of the Citizen in France, which lays down that citizens should be able to follow the way in which public taxes are used. If the EU is a democracy, citizens should, via their European representatives, be able to keep strict watch over the use of public funds.

The Lisbon Treaty strengthens democratic requirements:

TITLE II – PROVISIONS ON DEMOCRATIC PRINCIPLES

Article 9

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 10

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament.

   Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.
Article 11

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens’ initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

Article 12

National Parliaments contribute actively to the good functioning of the Union:

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;

(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;

(c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with Articles 88 and 85 of that Treaty;

(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;

(e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;

(f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

Source: TFEU
APPOROACHES TO CONSIDER

To sum up, on the basis of these two points, the following approaches should be considered.

Contradicting the premise (based on Article 146 of the Financial Regulation) that implementation of the budget is a closed system where the Commission, in fine, takes responsibility, despite delegation of the implementation of the budget. On the contrary, the presumption on the grounds of institutional balance is that Council should account to Parliament since the Council is one of the main delegates in the budget exercise.

Using Article 312 of the TFEU, introduced by the Lisbon Treaty, whereby the multiannual financial framework must be adopted by Council regulation after Parliament has given its consent, Parliament must thus be able to comply with this rule.

Calling for a detailed study on parliamentary scrutiny of the use of EU public funds by the Council, particularly with regard to external relations.

Proposing a code of good conduct in several areas:
- the concept of extra-budgetary accounts: defining a maximum number and limiting their use
- reasons must be given for transfers of funds
- assistance to associations.

Showing that the 1970 agreement, which the Council invoked, whereby the European Parliament and the Council do not mutually scrutinise their administrative expenditure, does not have any legal value as regards the development of primary law and secondary law and does not correspond to reality, given that the Council’s implementing powers go well beyond mere administrative expenditure, as the work of Parliament and the Court of Auditors has shown.

Putting pressure on the Commission and/or trying to enter into alliances with it.

Informing the Court of Justice.

Publicising in the media a resolution entitled ‘Democracy and the European budget: how is the European taxpayers’ money spent?’ Incorporating points included in the EP resolutions of 10 May 2011 and 25 October 2011, setting them against criticisms made every year by the Court of Auditors.
CHAPTER 4: MEANS OF ACTION OTHER THAN REFUSING TO GRANT DISCHARGE

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<th>KEY WORDS</th>
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<td>• Media action</td>
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<td>• Pre-judicial action</td>
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The responses are associated with the first point in that they set out all the arguments that Parliament might have used.

HOW MIGHT IT HAVE USED THEM?

THE PRESS
First approach: the press

Publication of a press release in each of the large national media in the 27 Member States, publicising the refusal to grant discharge.

With two possible hypotheses:

- Either a short press release, which would bring this disagreement to the knowledge of European public opinion;
- Or, preferably, a text signed by several MEPs, explaining that the role of the European Parliament is to scrutinise the use of European public funds and that by paying their taxes the citizens of each Member State contribute indirectly to the European budget, and concluding by explaining there has been no discharge vote by Parliament because of a lack of transparency on the use of public funds;
- Or publication of a proposal for a bilateral agreement whereby the Council would undertake to provide the documents requested.

ALLIANCE WITH THE COMMISSION
Second approach: alliance with the Commission

Putting pressure on the Council by engaging in a contest between the general European interest and the Council’s reticence to move European democracy forward.

CONFRONTATION WITH THE COMMISSION
Third approach: if the Commission will not cooperate, go for a contest or even a trial of strength with the Commission

It may be recalled that in March 1999, when the European Parliament was preparing to vote a motion of censure against the Commission, the Commission preferred to resign.
In that light, the European Parliament should ask the Commission, as guardian of the Treaties, to demand that the Council responds to Parliament’s requests, not only requests for hearings but also for explanations on the precise use of parts of the budget.

**JUDICIAL ROUTE**

**Fourth approach: judicial route**
The European Parliament has already suggested referring the matter to the Court of Justice with a view to obtaining respect for its prerogatives.

Timetable and possible arguments:

- **timetable:** if the Council continues to refuse to forward the documents requested, to provide explanations in reply to questions asked and to take part in meetings to which it is invited, inform it that legal proceedings are imminent then, in the absence of cooperation, refer the matter to the Court;
- **arguments:** those developed in point 1 on the balance of powers, institutional balance and democracy.

**SUBSIDIARY APPROACHES**

In the context of relations with the national parliaments, send each national parliament a summary of the disagreements and points that the European Parliament thinks raise questions about good management.

Hold a parliamentary meeting on budget democracy with the representatives of each national parliament and the European Parliament.

Make the budget vote dependent on the transmission of data on the implementation of the budget.
REFERENCES


ANNEXES

1. EP prerogatives that could be used for more effective scrutiny

Parliament has several instruments for scrutiny.

- **Investiture of the Commission**
  Parliament was informally responsible for the investiture of the Commission from 1981. But it had to wait until the Maastricht Treaty (1992) for the nominations by the Member States of the President and Members of the Commission as a college to be subject to its approval. The Treaty of Amsterdam went further by making the appointment of the President of the Commission subject to the approval of Parliament before the other Members of the college were appointed. Parliament also introduced hearings of Commissioners-designate in 1994. Under the Lisbon Treaty, the choice of candidate for the post of President of the Commission must take account of the results of the European elections.

- **Motion of censure**
  The motion of censure against the Commission (Article 234 of the TFEU) has been in existence since the Treaty of Rome. It requires a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament. It requires the Commission to resign as a body. Eight motions of censure have been put to the vote since the beginning, none of which has been adopted, but the number of votes in favour of censure has regularly increased. However, the last motion of censure (vote on 8 June 2005) obtained only 35 votes for, with 589 against and 35 abstentions.

- **Parliamentary questions**
  These comprise written and oral questions with or without debate (Article 230 of the TFEU) and questions for Question Time. The Commission and Council are obliged to reply.

- **Committees of inquiry**
  Parliament can set up temporary committees of inquiry to consider alleged contraventions or maladministration in the implementation of EU law (Article 226 of the TFEU).

- **Scrutiny of foreign policy, common security policy and police and judicial cooperation**
  Parliament is entitled to receive regular information in these areas and may address questions or make recommendations to the Council. It is consulted on the main aspects and basic choices of the CFSP and on any measure envisaged, with the exception of the common positions on political and judicial cooperation (Article 36 of the TEU). The Interinstitutional Agreement on budgetary discipline and sound financial management (2006/C 139/01) has also helped improve consultation procedures on the CFSP.
Since the Lisbon Treaty came into force, almost all aspects of police and judicial cooperation and other areas within the scope of the area of freedom, justice and security have been subject to the general legislative procedure (codecision). In the field of foreign policy, the creation of the office of High Representative of the Union for foreign affairs and security policy will make it possible to increase Parliament’s influence in foreign affairs and security policy as the person appointed to this post is also Vice-President of the Commission.

- **Proceedings before the Court of Justice of the European Union**
  
  Parliament has the power to bring cases before the Court of Justice in the event of breach of the Treaty by another institution.
  
  It has the right of intervention, which means that it can associate itself with another party to a case. This right was exercised in the Isoglucose case (judgment of 29 October 1980, in Cases 138 and 139/79). In this case the Court cancelled a Council regulation for breach of the obligation to consult Parliament.
  
  In the event of proceedings for failure to act (Article 265 of the TFEU), it may bring a case against an institution for infringement of the Treaty, as in Case 13/83, where the Court found against the Council for having failed to take measures on the common transport policy.
  
  Under the Treaty of Amsterdam, Parliament could bring proceedings for annulment only to protect its prerogatives. The Treaty of Nice amended Article 203 of the EC Treaty: Parliament is not obliged to put forward a particular concern; it is now in a position to enter into proceedings in the same way as the Council, the Commission and the Member States. Parliament may be a defendant in proceedings against an act adopted under the codecision procedure or when one of its acts has legal consequences for third parties. Article 263 of the TFEU thus upholds the Court’s jurisprudence in Cases 320/81, 294/83 and 70/88. Finally, it is possible to obtain the Court of Justice’s opinion on whether an interinstitutional agreement is compatible with the Treaty (Article 218 of the TFEU).

- **Petitions**
  
  Citizens of the Union exercise their right of petition by addressing their petitions to the President of Parliament (Article 227 of the TFEU).
2. EXTRACT FROM THE LIBERALS AND DEMOCRATS WEBSITE, 25 NOVEMBER 2011

The Council cannot escape parliamentary scrutiny for the proper management of its budget

Liberals and Democrats supported the refusal to discharge the Council for the implementation of its budget in 2009 as decided in today’s European Parliament plenary session in Strasbourg. The Committee on Budgetary Control (CON) recommended by a large majority to vote against the discharge for the Council, arguing that the Treaty and practice confer exclusive jurisdiction for discharges to Parliament, a jurisdiction disputed by the Council which refuses complete transparency in the publication and justification of expenditures.

Theodoros SKYLAKAKIS (Democratic Alliance, Greece), ALDE shadow rapporteur for the 2009 discharge, said during the debate: *The European Parliament is the only institution to be elected by universal suffrage and has sole authority to grant discharge to the other institutions. The Council must comply with this rule. By refusing to speak before our committee, the Council declines to inform our citizens on how it manages the money entrusted to them by the European taxpayer. To overcome this impasse, there remains recourse to the European Court of Justice and Parliament is not afraid of this test to decide once and for all on its rights.*

Jan MULDER (VVD, Netherlands), Chair of the Committee on Budgetary Control, added: *‘According to the Treaty the European Parliament is the ultimate discharge authority and therefore the Council has to provide all information that the Parliament deems fit to ask. It is deplorable that the Council refuses to do this’.*

Jorgo CHATZIMARKAKIS (FDP, Germany), ALDE coordinator for the Committee on Budgetary Control, concluded: *‘The Council now urgently has to adjust to European law and abandon its absolutist position. As Committee on Budgetary Control, we do not mean to pillory the Council. But to discharge any institution, we need insights into its accounts. We have repeatedly asked the Council to provide us with this necessary information. As long as the Council refuses to answer the questions the Committee, and thus the European Parliament as the only responsible discharge authority according to the Treaty of Lisbon, is asking, we just cannot give discharge. It might be that Parliament and Council find themselves in front of the European Court of Justice.’*

Source:

3. EXTRACTS FROM THE JURISPRUDENCE OF THE ECHR

ECHR
MATTHEWS v. UNITED KINGDOM

(Application no. 24833/94)

Extracts from the judgment

52. As to the context in which the European Parliament operates, the Court is of the view that the European Parliament represents the principal form of democratic, political accountability in the Community system. The Court considers that whatever its limitations, the European Parliament, which derives democratic legitimation from the direct elections by universal suffrage, must be seen as that part of the European Community structure which best reflects concerns as to ‘effective political democracy’.

53. Even when due allowance is made for the fact that Gibraltar is excluded from certain areas of Community activity (see paragraph 12 above), there remain significant areas where Community
activity has a direct impact in Gibraltar. Further, as the applicant points out, measures taken under Article 189b of the EC Treaty and which affect Gibraltar relate to important matters such as road safety, unfair contract terms and air pollution by emissions from motor vehicles and to all measures in relation to the completion of the internal market.

54. The Court thus finds that the European Parliament is sufficiently involved in the specific legislative processes leading to the passage of legislation under Articles 189b and 189c of the EC Treaty, and is sufficiently involved in the general democratic supervision of the activities of the European Community, to constitute part of the ‘legislature’ of Gibraltar for the purposes of Article 3 of Protocol No. 1.

Approach to investigate: Theory of the appearance of budget implementation without scrutiny.

4. RELEVANT EXTRACTS FROM NATIONAL JURISPRUDENCE

Constitutional court

Extract from the decision of 20 December 2007 on the Lisbon Treaty, concerning the importance of the exercise of democracy by the national parliament

* – WITH RESPECT TO THE NEW POWERS VESTED IN NATIONAL PARLIAMENTS IN THE FRAMEWORK OF THE UNION:

28. The Treaty submitted to the Constitutional Council increases the participation of national Parliaments in the activities of the European Union. 12) of Article 1 of said Treaty sets out in Article 12 of the Treaty on European Union the list of prerogatives recognised as vested in such Parliaments for this purpose. It is necessary to decide whether such prerogatives may be exercised within the framework of the current provisions of the Constitution;

29. 7 of Article 48 of the Treaty on European Union, as worded pursuant to 56) of Article 1 of the Treaty of Lisbon, recognises the French Parliament is entitled to oppose the implementation of a procedure of simplified revision of the Treaties, and reiterates the provisions of Article IV-444 of the Treaty establishing a Constitution for Europe. It requires a revision of the Constitution for the same reasons as those set forth in the decision of November 19th 2004 referred to above. The same applies to Articles 6, 7 paragraphs 1 and 2, and 8 of the Protocol on the application of the principles of subsidiarity and proportionality to which the Treaty of Lisbon refers and which reiterate the provisions of Article 6 to 8 of the Protocol n°2 of the Treaty establishing a Constitution for Europe, while extending the timeframe within which the French Parliament may, if need be under procedures proper to each of its Houses, formulate a reasoned opinion;

30. Furthermore, 3 of Article 81 of the Treaty on the Functioning of the European Union, as worded pursuant to 66) of Article 2 of the Treaty of Lisbon, recognises the right of a national Parliament to make its opposition known within six months to a decision subjecting certain aspects of family law with cross-border implications not to a special legislative procedure requiring the unanimous agreement of the Council after consultation with Parliament but to the ordinary legislative procedure;

31. 3 of Article 7 of the abovementioned Protocol on the application of the principles of subsidiarity and proportionality confers on national Parliaments, within the framework of ordinary legislative procedure, new means, in comparison with the Treaty establishing a Constitution for Europe, of ensuring compliance with the principle of subsidiarity. Under this provision, when the Commission decides to maintain a proposal which has been criticised by a majority of votes allocated to national Parliaments or, if need be, to each House thereof, each national Parliament having two votes and
each House of a bicameral Parliamentary system having one vote, on the grounds of non-compliance with the principle of subsidiarity, the reasoned opinion of the Commission and those of the national Parliaments shall be submitted to the Council and the European Parliament. If, by a majority of 55% the members of the Council or a majority of votes cast in the European Parliament, the Union legislator is of the opinion that the proposal of the Commission is not compatible with the principle of subsidiarity, such proposal shall not be given further consideration;

32. The recognised right of the French Parliament to oppose the subjecting to ordinary legislative procedure of certain aspects of family law requires a revision of the Constitution in order to allow for the excising of this prerogative. The same holds good for the new means conferred upon Parliament, if need be according to procedures specific to each of its two Houses, to ensure compliance with the principle of subsidiarity in the framework of ordinary legislative procedure. (…)

Constitutional court in Karlsruhe

Translation of an extract from the website Lemonde.fr on the Court’s decision of June 2012

On 19 June the German constitutional court found that the parliament should lay a greater role in future decisions strengthening European integration, but the decision has no impact on the current establishment of the European Stability Mechanism (ESM).

While the Chancellor, Angela Merkel, has become the apostle of closer European integration, Tuesday’s decision sounds a warning: more Europe will come about with advance participation by the people’s representatives, not only with their subsequent participation. The judges in Karlsruhe argued that there should be greater participation by Parliament in exchange for the transfer of more powers to the European Union.

The Greens’ parliamentary group, the smallest in the Bundestag, brought a case before the constitutional court in Karlsruhe last year, against the procedure for adopting the European Stability Mechanism (ESM).

This loans and guarantees mechanism put in place by the euro zone countries to assist the most fragile in the event of a crisis is in the process of ratification and must come into force at the beginning of July. The Karlsruhe verdict has no impact on this process. The Members of the Bundestag must deliver their opinion on 29 June.

STRENGTHENING THE PARLIAMENT’S PREROGATIVES

According to the Greens, in view of the sums of money involved – this year alone Germany will have to pay almost €9 billion towards its capital – Members ought to have been consulted beforehand and to have had an influence on the drafting of the text and not simply to have been asked to ratify it. The government defended itself by arguing that Germany, as a sovereign state, had reached agreement on the ESM with its partners under rules of international law.

At the end of the public hearing in November, the President of the Court, Andreas Vosskuhle, had let it be understood that the verdict would go in the direction of strengthening the Parliament’s prerogatives. This is the direction already taken by previous judgments on rescuing the euro zone, a subject that the Court has had to rule on several times over the last two years. Its most recent decision on the subject, in February, prohibited aid under the rescue fund, the EFSF, being decided in Germany by only a small committee of nine Members; it ruled that the 620 Members of the Bundestag should be consulted.
Successful applications in Organstreit proceedings regarding the ‘ESM/Euro Plus Pact’

In its judgment pronounced today, the Federal Constitutional Court considered well-founded the applications made by the Alliance 90/The Greens parliamentary group with which the applicant asserts that the German Bundestag’s rights to be informed by the Federal Government have been infringed in connection with the European Stability Mechanism (ESM) and the Euro Plus Pact.

Legal background:

According to Article 23.2 sentence 2 of the Basic Law (Grundgesetz – GG), the Federal Government shall keep the German Bundestag informed, comprehensively and at the earliest possible time, ‘in matters concerning the European Union’.

The first application is aimed at what is known as the European Stability Mechanism (ESM). The European Stability Mechanism is an intergovernmental instrument of the euro area Member States to combat the sovereign debt crisis in the area of the European Monetary Union. The applicant applies for a declaration that the Federal Government infringed the German Bundestag’s rights to be informed under Article 23.2 GG by omitting to inform immediately before and after the European Council meeting of 4 February 2011 comprehensively, at the earliest possible time and continuously, about the configuration of the ESM, and that it in particular omitted to send the Draft Treaty establishing the ESM to the German Bundestag on 6 April 2011 at the latest.

The second application concerns what is known as the Euro Plus Pact, which was presented to the public for the first time at the European Council meeting of 4 February 2011. This agreement which was initially discussed in Germany under the name ‘Pakt für Wettbewerbsfähigkeit’ (Competitiveness Pact), is intended in particular to structurally reduce the risk of currency crises in the euro area. To achieve this, the Euro Plus Pact intends, among other things, to strengthen the economic pillar of the monetary union and to achieve ‘a new quality of economic coordination’. In this context, the applicant applies for a declaration that the Federal Government infringed the German Bundestag’s rights under Article 23.2 GG by omitting to inform the Bundestag before the European Council meeting on 4 February 2011 about the Federal Chancellor’s initiative for an enhanced economic coordination of the euro area Member States and by omitting until 11 March 2011 to inform it comprehensively and at the earliest possible time about the Euro Plus Pact after the meeting.

Against this backdrop, the Organstreit proceedings (proceedings relating to a dispute between supreme federal bodies) have to clarify whether the rights of participation and the rights to be informed which are due to the Bundestag according to Article 23.2 GG can also apply to intergovernmental instruments of the nature described which are dealt with by the Federal Government in the context of European integration and which are related to the European Union.

The Second Senate of the Federal Constitutional Court ruled that the Federal Government infringed the German Bundestag’s rights to be informed under Article 23.2 sentence 2 GG with regard to the European Stability Mechanism and with regard to the agreement on the Euro Plus Pact.

In essence, the decision is based on the following considerations:
I. Standard of review

1. Article 23 GG confers on the German Bundestag far-reaching rights of participation and rights to be informed in matters concerning the European Union. The stronger involvement of Parliament in the process of European integration serves to compensate the competence shifts in favour of the Member States’ governments in the national structure of powers that result from Europeanisation. Matters concerning the European Union include Treaty amendments and corresponding changes at primary-law level (Article 23.1 GG) as well as legislative acts of the European Union (Article 23.3 GG). International treaties that complement European Union law or otherwise show particular proximity to European Union law are also matters concerning the European Union. There is no single characteristic that is at the same time final and clearly delimited according to which it can be ascertained whether such proximity exists. What is important instead is an overall consideration of the circumstances, including planned contents, objectives and effects of legislation, which, depending on their weight, can prove decisive individually or in their combination.

2. The Federal Government’s duty, laid down in Article 23.2 sentence 2 GG, to keep the German Bundestag informed comprehensively and at the earliest possible time intends to make it possible for the German Bundestag to exercise its rights, anchored in Article 23.2 sentence 1 GG, to participate in matters concerning the European Union. The information must make it possible for the Bundestag to influence the Federal Government’s opinion-forming early and effectively; information must be provided in such a way that Parliament’s role is not reduced to merely exercising indirect influence. Apart from this, the interpretation and application of Article 23.2 GG must take into account that the provision also serves the publicity of parliamentary work, a requirement which is derived from the democratic principle laid down in Article 20.2 GG.

(a) In accordance with its function, the requirement of comprehensive information is to be construed in such a way that the more complex a matter is, the deeper it intervenes in the legislative’s area of competences and the closer it gets to formal decision-making or to a formal agreement, the more intensive the required information will be. From this, requirements result with regard to the quality, quantity and timeliness of the information. Thus, the duty to comprehensively inform encompasses not only initiatives and positions taken by the Federal Government itself and the subject-matter, the course and the result of the meetings and deliberations of organs and bodies of the European Union in which the Federal Government is represented. The duty to inform also entails an obligation to make available official materials and documents of the organs, bodies and authorities of the European Union and of other Member States.

(b) To inform in time is as important as the quantity of the information. The indication ‘at the earliest possible time’ in Article 23.2 sentence 2 GG means that the Bundestag must receive the Federal Government’s information at the latest at a point in time that enables it to deal with the matter in a substantiated manner and to prepare a statement before the Federal Government makes declarations which have an effect on third parties, in particular binding declarations concerning legislative acts of the European Union and intergovernmental agreements.

(c) With a view to the requirements placed on its clarity, continuity and reproducibility, the information must, in principle, be provided in a written form. Exception are only admissible within narrow limits; they may, however, be required if the Federal Government can ensure comprehensive information at the earliest possible time only if the information is provided orally.

(d) Boundaries of the duty to inform result from the principle of the separation of powers. Within the Basic Law’s system of functions, a core area of the government’s own executive responsibility exists that includes an area of initiative, deliberation and action which in principle has to be respected. As long as the Federal Government’s internal formation of opinion has not come to an end, Parliament
Scrutiny of the implementation of the budget by the EP

has no right to be informed. If, however, the Federal Government’s opinion-forming has evolved in such a specific direction that the Federal Government can communicate interim or partial results to the public or would like to set out on a process of concertation with third parties with a position of its own, a project no longer falls within the core area of the Federal Government’s own executive responsibility that is shielded from the Bundestag.

Source: German constitutional court website

5. **Extract from the European Parliament resolution of 10 May 2012 with observations forming an integral part of the decision on the discharge for implementation of the European Union general budget for the financial year 2010, Section II – Council (COM(2011)0473 – C7-0258/2011 – (2011)2203(DEC))**


The Parliament is still waiting for the reply of the Council on the actions and request for documents set out in the two above mentioned resolutions; [it] calls on the Secretary-General of the Council to provide Parliament’s committee responsible for the discharge procedure with comprehensive written answers to the following questions:

(a) with regard to previous Council discharge debates in Parliament’s committee responsible for the discharge procedure, the Council did not attend these meetings regularly, however, it is considered of utmost importance that the Council attends in order to reply to committee members’ questions referring to the Council discharge. Does the Council agree to attend future debates on the Council discharge in Parliament’s committee responsible for the discharge procedure?

(b) why does the Council change the presentation/the format of the internal audit every year? Why is the internal audit so short, generic and unclear every year? Will the Council for the 2010 discharge onwards please present the internal audit in (a) language(s) other than French?

(c) has an external audit been carried out? If so, may Parliament’s committee responsible for the discharge procedure see it? If an external audit does not exist, why has the Council chosen not to make one?

(d) until now, the activity of the Council implied co-financing with the Commission, which has experienced an increase after the entry into force of the Treaty of Lisbon. What audit and control systems have been put in place to ensure full transparency? Given that the Treaty of Lisbon increased the co-financing with the Commission, what is the Council’s understanding of ‘respond to the appropriate enquiries’?

(e) the Court of Auditors, in its annual report 2009, found that in two out of six procurement procedures audited, the Council did not respect the rules of the Financial Regulation for the publication of the outcome of the procedure. Has the Council scrutinised more samples of similar procurements? Has the internal procedure been streamlined in order to avoid similar cases in the future?

(f) staff of European Union Special Representatives (EUSRs): Please indicate the staff (all staff, establishment plan and others) number of posts, grade for the EUSRs in the Council for 2009. In which way and when will the EUSRs-staff posts be allocated between the Council and the European External Action Service (EEAS)? What was the travel budget for each of the EUSRs? How many of the EUSRs’ staff were transferred on 1 January 2011 to the EEAS? How many will remain with the Council and why?

(g) the Council highlights budgetary questions concerning the consequences of the Treaty of Lisbon in point 2.2 in the financial activity report (11327/2010, FIN 278). Has the Council solved the problems concerning Mr Solana’s expenditures? What part of the expenditures falls under the Council budget and what part falls under the Commission budget?

(h) what were the operational expenditures, administrative expenditures, staff, buildings, etc. envisaged by the Council for 2009 in order to set up the High Representative/Vice President of the Commission (HR/VP)?

(i) the HR/VP came into office on 1 December 2009. How was the cost distributed between the Council and the Commission (for staff, travel, etc.)? How did the Council prepare the budget for the HR/VP for 2010? Which budget lines and sums were reserved for her activities?

(j) **how will office space released in the process of staff transfer to the EEAS influence Council’s plans on buildings?**

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Have arrangements been made for the subsequent use of such office space? What is the anticipated cost for the removals? When were calls for tenders for the removals (if any) published?

(k) what was the administrative and operational expenditure related to the Common Foreign and Security Policy (CFSP)/Common Security and Defence Policy (CSDP) tasks, which were at least partly financed from the Union budget in 2009? What was the total amount of CFSP expenditure in 2009? Could the Council identify at least the main missions and their cost in 2009?

(l) what was the cost of meetings for Council working groups on CFSP/CSDP in Brussels and elsewhere and where did these meetings take place?

(m) what was the administrative expenditure relating to the implementation of the European Security and Defence Policy (ESDP)/CSDP military operations? What share of the total amount of expenditures arising from military operations has been charged to the Union budget?

(n) what was the administrative expenditure implemented for the operation of the ‘ATHENA’ mechanism, how many posts were needed for that mechanism, will any of the posts in question be transferred to the EEAS? To whom will the postholders report?

(o) there is a low occupation rate of posts in the Council’s establishment plan (91% in 2009, 90% in 2008). Does this consistently low rate cause any repercussions on how the Council’s General Secretariat (CGS) functions? Can the CGS perform all its functions with the current occupation rate? Are lower occupation rates specific to any particular services? What are the reasons for the persistent discrepancy?

(p) what is the total number of posts assigned to the task of ‘policy coordination’ and administrative support (as defined in the Commission’s annual staff screening reports)? What percentage of the overall number of posts do these represent?

(q) to achieve the administrative objectives in 2009 the Council added teleworking to its working procedures. How does the Council prove the efficiency of this working procedure? In addition, the Council is asked to report on further measures taken in this respect and in particular those to improve the quality of financial management as well as their impact;

(r) the Council increased its posts by 15 (8 AD and 7 AST) to cover the staffing requirements of the Irish language unit. How many staff members deal with other languages (staff per language)? Are there already staff employed for and from the applicant countries? If the answer is in the affirmative how many posts are concerned (separated per country and language)?

(s) the ‘Reflection Group’ was established on 14 December 2007, and its members appointed on 15-16 October 2008. What were the reasons why the necessary financing could not have been envisaged and included in Budget 2009? Is a transfer in Budget 2009 from the contingency reserve to a budget position financing a structure conceived in 2007 strictly budget neutral? The Council earmarked €1 060 000 for the ‘Reflection Group’. How many posts can be allocated to this group?

(t) the expenditures concerning travel delegations still seem to be problematic (cf. Council note 15 June 2010, SGS10 8254, II bullet, page 4). Why do these expenditures appear in so many different budget lines?

(u) why does the internal audit still find it necessary to add ‘les frais de voyage des délégués et les frais d’interprétation’ (delegates’ travelling expenses and interpretation expenses) after strong criticism in the last two resolutions from Parliament on the Council discharge?

(v) the Council again has used underspending on interpretation to provide extra financing for delegations’ travel expenses; as a result, actual 2009 commitments for travel expenses amounted to considerably less than the initial budget, and less than half of the amount available after the transfer (€36 100 000 initial and €48 100 000 available after transfer against €22 700 000 committed). What were the reasons for this €12 000 000 transfer (cf. the financial activity report 11327/2010, FIN 278 –point 3.3.2-VI bullet)? Why is the transfer from interpretation to delegates’ travelling expenses estimated at €12 000 000 by the Council at page 12 and at €10 558 362 at page 13? What has the remaining amount transferred from interpretation been spent on (the total amount transferred from interpretation is €17 798 362)? In addition, the Council is asked to explain the large amount of recovery orders made before 2009 and carried over to 2009 (€12 300 000) as well as recoveries made from declarations relating to 2007 (€6 300 000);

(w) in 2009 the Council, as it did in 2008, reallocated a considerable amount of its budget to buildings, in particular, more than doubling the initial allocations to the acquisition of the Residence Palace (reallocating €17 800 000 in addition to €15 000 000 earmarked in Budget 2009). What are the reasons for this? Can the CGS provide concrete figures of the savings achieved as a result of this? What was the initially projected cost of the Residence Palace Building? Does the Council think the initially projected cost will be accurate or could the cost be higher than
estimated? What steps are envisaged to finance the building?

(x) implementation of the Council budget appropriations carried over: Could the Council present the estimated amount and subject of the invoices which were not received by June 2010 for the year 2009 and therefore carried over?

(y) the carry-over to 2010 of the appropriations of assigned revenues accrued in 2009 amounted to €31 800 000. This is about 70 % of the assigned revenue for 2009. What are the reasons for this high carry-over ratio? What will happen/has happened to this revenue in 2010?

(z) what does ‘technical provision of €25 000 000 for the launch of the European Council 2010’ mean? (cf. the financial activity report 11327/2010, FIN 278 point 3.1, IV bullet).

(aa) what is the level of confidentiality of the Council budget specified by the different budget lines?

(ab) can the Council point out the specific measures taken to improve the quality of the Council’s financial management, in particular as regards the points raised in paragraph 5 of Parliament’s resolution of 25 November 2009 (10) accompanying its decision on discharge to the Council for the financial year 2007?

(ac) Calls on the Secretary-General of the Council to provide Parliament’s Committee responsible for the discharge procedure with the following documents:
- the full list of budgetary transfers concerning the 2009 Council budget;
- a written statement on the Council’s mission expenses as carried out by the EUSRs;
- the Members States’ declaration for 2007 (cf. the financial activity report 11327/2010, FIN 278 point 3.2.2, II bullet); and
- the report of the ‘Reflection Group’ in order to understand why such a report costs €1 060 000 (cf. the financial activity report 11327/2010, FIN 278 point 2;

15. Notes the Commission’s reply of 25 November 2011 to the letter from the Chair of the Committee on Budgetary Control, in which the Commission says it is desirable for Parliament to continue to give, postpone or refuse discharge to the other institutions as has been the case up until now;

16. Points out that on 31 January 2012 the Chair of the Committee on Budgetary Control sent a letter to the Presidency-in-Office of the Council, stating his wish to establish political dialogue and forwarding supplementary questions from the Committee on Budgetary Control on the discharge to the Council; hopes therefore that the Council will provide to the competent committee for the discharge procedure a reply to the questionnaire –attached to the Chair’s letter- before the plenary debate;

17. Regrets, however, that the Council refused to attend any official meeting of the Committee on Budgetary Control related to its discharge.

The underlining was added by the author of this paper.
Résumé

Le Parlement européen est l’autorité de contrôle de l’exécution du budget. Il doit accorder la décharge de l’exécution budgétaire. Depuis plusieurs années, un conflit s’est noué entre le PE et le Conseil, ce dernier refusant de coopérer pleinement avec lui pour un suivi optimal de l’emploi des fonds publics européens. La présente note précise les données juridiques en présence, les points de conflit et propose des pistes d’amélioration.
Ce document a été demandé par la commission parlementaire du contrôle budgétaire dans le cadre d'un Workshop sur "la Décharge budgétaire du Conseil".

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LISTE DES ABREVIATIONS

AII  L'Accord sur la Discipline budgétaire et la Bonne gestion financière
CEDH  Cour Européenne des Droits de l'Homme
CJUE  Cour de Justice de l'Union européenne
MP  Membre du Parlement
PE  Parlement européen
RF  Règlement financier
TUE  Traité sur l'Union européenne
TFUE  Traité sur le Fonctionnement de l'Union européenne
CONTExTE
Philosophie générale des points de vue développés dans la consultation.

Le Parlement européen (PE) n’a cessé de gagner du pouvoir au fil de la construction européenne. On peut résumer la situation en disant qu’il n’est passé de "presque rien à presque tout". (F CHALTIEL, le processus décisionnel européen après le traité de Lisbonne, 2ème édition, La Documentation Française 2010).

Sur le plan de la procédure législative, il est devenu un co-législateur de l’Union européenne avec le Conseil.
Sur le plan du contrôle budgétaire, il revendique un contrôle plus effectif de l’exécution du budget.


En vertu des traités il est l’institution compétente pour accorder la décharge budgétaire. Il lui arrive de la différer et il lui est arrivé de la refuser. Le problème central qui se noue depuis plusieurs années tient dans la volonté du Parlement européen d’examiner les comptes de chaque institution et non seulement de la Commission. Le Conseil, quant à lui, estime que le quitus donné à la Commission vaut pour l’ensemble des institutions et manifeste une grande réticence à coopérer comme l’équilibre institutionnel l’exigerait avec le Parlement quant au suivi du contrôle de ses propres dépenses.

Objectif et méthode
L’objet de la présente contribution est d’analyser en quoi la décharge doit être conditionnée par une diligence plus grande du Conseil au nom de l’équilibre institutionnel et de la démocratie européenne, ainsi que de l’efficacité économique. Elle comporte trois points: les textes en présence, l’analyse des conflits et les propositions d’amélioration dans le sens d’un équilibre institutionnel mieux respecté, d’une démocratie renforcée et d’un budget économiquement mieux géré.

La méthode retenue est la suivante : la reprise des textes juridiques en vigueur, confrontée aux conflits entre le PE et le Conseil et enfin la proposition de pistes d’amélioration. L’angle juridique est privilégié, afin de proposer de solides arguments allant dans le sens d’une meilleure coopération entre les deux institutions dans le cadre du contrôle de l’exécution du budget. L’analyse propose aussi une position plus générale visant à une hauteur de vue sur la notion de démocratie européenne et les évolutions qu’elle implique en termes de prérogatives renforcées du Parlement européen.
CHAPITRE 1: LA PRATIQUE ET LES TEXTES EN PRESENCE

MOTS CLES

- Les traités organisent la répartition des compétences entre les Institutions de l'Union européenne
- L'équilibre institutionnel est défini à partir d’un pouvoir d’initiative et d’exécution de la Commission européenne, d’un pouvoir de décision du Conseil et du PE et d’un contrôle démocratique exercé par le PE
- Les traités ainsi que le droit dérivé déterminent les compétences de contrôle budgétaire dévolu au PE
- Les traités et le droit dérivé restent fondés sur l’idée que la Commission est l’institution principale d’exécution du budget
- La pratique montre que le Conseil est une autorité majeure d’exécution du budget européen

PRATIQUE ET ARTICLES PERTINENTS DU TRAITÉ

La pratique:

Depuis 2001, le Parlement examine les comptes de chaque Institutions et donne décharge individuellement.

Cette pratique peut être considérée comme ayant créé une coutume au sens des règles du droit international.


Les articles du traité:

L’article 319 du TFUE donne la base juridique du contrôle parlementaire de l’exécution du budget.

L’article 319 du TFUE dispose que le Parlement européen, sur recommandation du Conseil, donne décharge à la Commission sur l’exécution du budget de l’UE. Le même article prévoit également qu’à cet effet, le Conseil et le Parlement européen examinent les comptes, le bilan financier et le rapport d’évaluation visés à l’article 318 du TFUE, plus le rapport annuel de la Cour des comptes, accompagné des réponses des institutions aux observations de la Cour des comptes, et la déclaration d’assurance concernant la fiabilité des comptes ainsi que la légalité et la régularité des opérations sous-jacentes visée à l’article 287 du TFUE.
DROIT DERIVE

Le Règlement financier (RF):

Son article 50 précise que la Commission peut conférer à d’autres institutions le soin d’exécuter une partie du budget.
Il précise aussi que chaque institution doit exercer lesdits pouvoirs conférés dans les limites de la délégation et des règles applicables.
Il importe donc qu’un contrôle direct puisse s’effectuer sur ce respect d’où les conclusions suivantes à propos du droit dérivé et du droit originaire:

Accord interinstitutionnel:

L’accord interinstitutionnel sur la discipline budgétaire et la bonne gestion financière, conclu entre le Parlement européen (PE), le Conseil et la Commission le 17 mai 2006, contient le cadre financier pour les années 2007-2013 afin de mettre en œuvre la discipline budgétaire. L’accord a également pour objectif d’améliorer le déroulement de la procédure budgétaire annuelle et la coopération interinstitutionnelle dans le domaine budgétaire.

ACTE:

Accord interinstitutionnel entre le Parlement européen, le Conseil et la Commission sur la discipline budgétaire et la bonne gestion financière

L’accord sur la discipline budgétaire et la bonne gestion financière (All) a été conclu entre le Parlement européen, le Conseil et la Commission. Il porte sur l’élaboration et l’exécution du budget de l’Union européenne (UE). Par cet accord, les institutions européennes ont décidé d’organiser leur collaboration afin d’améliorer le déroulement de la procédure budgétaire et d’assurer une bonne gestion des finances européennes.

L’All se compose de trois parties:

- la partie I établit le cadre financier pour la période 2007-2013, c’est-à-dire les montants de dépense prévus pour chaque domaine politique;
- la partie II organise la coopération entre le Parlement, le Conseil et la Commission au cours de la procédure budgétaire;
- la partie III établit des règles visant à assurer la bonne gestion financière des fonds de l’UE.

CONCLUSIONS

Sur l’observation des textes pertinents et de la pratique d’un point de vue de l’équilibre institutionnel:

1. Des articles du traité et du droit dérivent, il apparaît que la Commission est l’autorité d’exécution du budget et que de ce fait, c’est à elle seulement que la décharge doit être accordée.

Le Parlement et le Conseil sont des autorités législatives et budgétaires.
Conclusion en termes d’exigence démocratique

2. un paradoxe émerge de la lecture combinée des dispositions du traité et de la réalité du droit de l’UE. La Commission n’est pas la seule à exécuter le budget. Dans la tendance générale du regain de pouvoir des États membres, il apparaît que le Conseil est une autorité d’exécution du budget en soi.

La nature très décentralisée de l’UE, contrairement aux lieux communs tendant à la penser centralisée, fait que seulement 10 p cent du budget est exécutés directement par la Commission. Les États membres et les autres institutions contribuent à l’exécution du budget.

Le droit dérivé l’autorise, notamment, les articles 50, 53 b, c et d du règlement financier.

Ce qui pose un problème de transparence et d’accountability (terme anglais plus pertinent qu’une traduction en termes de rendu de comptes par exemple).
CHAPITRE 2: LES POINTS DE CONFLITS ENTRE LE CONSEIL ET LE PE

MOTS CLES
- Conflits entre le PE et le Conseil
- Refus de quitus
- Report de quitus
- Situation en 2012

TERMES DU DEBAT

Le PE, dans l’exercice démocratique de sa fonction de contrôle de l’exécution du budget, demande à connaissance le détail des comptes du Conseil. C’est une question à la fois de principe et de contrôle concret. Il apparaît en effet que des transferts de crédits ne sont pas suffisamment justifiés, que des opérations immobilières sont conduites sur des bases insuffisamment claires, comme le souligne la Cour des comptes. C’est dans ce contexte que le PE demande à la fois des éléments plus transparents sur les comptes du Conseil et des dialogues plus réguliers avec le Conseil sur ce sujet.

Le Conseil a une position différente, en se fondant sur une lecture stricte de la lettre du traité. Le traité mentionne la décharge du budget dans son ensemble, et non institution par institution. Il refuse donc de donner l’ensemble des documents demandés par le PE, en prétendant de la nature administrative des dépenses concernées. Ce que conteste le PE, notamment en matière d’affaires étrangères.

Par conséquent, le PE ne parvient pas à obtenir du Conseil qu’il:
- Consente à délivrer les documents et explications nécessaires à un contrôle de l’exécution budgétaire aussi rigoureux qu’il se doit;
- Accepte de venir dialoguer avec les membres du comité de contrôle (CONT);
- Admette le principe selon lequel le PE doit pouvoir donner décharge individuelle au Conseil.

Il faut donc trouver des pistes d’amélioration au nom à la fois de la démocratie, de l’efficacité et de la bonne gouvernance.

LES EVENEMENTS DES ANNEES 2007-2012 SUR LA DECHARGE

Le Conseil considère que la décharge vaut pour l’ensemble des institutions même si selon les sections, des comptes peuvent être plus précisément demandés.

Le PE a tenté d’obtenir des documents et des explications qu’il n’a pas eus. Il a souvent repris des critiques formulées par la Cour des comptes.

Le consensus était trouvé, le 23 avril en plénière à Strasbourg, pour reporter l'octroi de la décharge 2007 du Conseil. Les députés lui laissent six mois pour fournir les informations demandées, notamment sur les « comptes hors budget » qui auraient été utilisés comme frais de voyage et de mission à l'étranger. Toutes les autres institutions ont obtenu le verdict positif du Parlement, sauf le Collège européen de police.

Le Parlement européen a adopté par 571 voix pour, 41 contre et 21 abstentions le rapport du Danois Soren Bo Sondergaard (GUE/NGL) sur la décharge du Conseil pour l'exercice budgétaire 2007. La plénière a suivi la recommandation de la commission du contrôle budgétaire qui, lors de son vote du 16 mars, avait réclamé l'ajournement (Europolitique n° 3737). D’après le rapporteur, le Parlement « n’a aucune réponse du Conseil sur toutes les questions qui ont trait à ses comptes ». Or, ce dernier utilise de plus en plus une partie de son budget administratif pour des dépenses opérationnelles, notamment dans le domaine des affaires étrangères et de la politique de sécurité.

LE CONSEIL DÉMENT LES ACCUSATIONS


En novembre 2009, le PE finit par accorder la décharge au Conseil, après l’avoir refusée préalablement. Il la vote à 587 voix, en estimant que les réponses apportées à ses demandes sont satisfaisantes, ainsi que la publication de documents pertinents sur le site du Conseil, sur l’exécution du budget par le Conseil, est satisfaisante.

De 2009 à 2012, on observe de fréquents conflits entre les deux institutions sur le sujet.

En 2011, la commission parlementaire de contrôle budgétaire propose le rejet de la décharge:

« Commenting on the Budgetary Control Committee’s rejection of the Council discharge today in the European Parliament, Crescenzo Rivellini MEP, Rapporteur of the proposal, said: “The Budgetary Control Committee today voted to reject the discharge of the Council, due to the inability to obtain the necessary documentation, the lack of cooperation shown by the Council to Parliament and the choice of not wanting to recognise the legitimacy of the latter as a discharge authority are the main reasons which justify the strong negative opinion on the actions of Council spending.”

1 « compte tenu de la nature sans cesse plus opérationnelle des dépenses - financées au titre du budget administratif du Conseil - réalisées dans le domaine des affaires étrangères, de la politique de sécurité et de défense ainsi que de la justice et des affaires intérieures », il convient désormais de « clarifier le champ de l’accord en la matière en vue de faire la distinction entre les dépenses administratives traditionnelles et les opérations dans ces nouveaux domaines politiques ». Le Parlement appelle donc à réviser le gentlemen’s agreement qui n’est pas un « document contraignant » et reste interprété de façon « trop large » par le Conseil. Les négociations sur cette révision pourraient être intégrées à l’examen du règlement financier en vue d’une mise en place dès le début du cadre pluriannuel post-2013. Il demande par ailleurs que les dépenses du Conseil soient dans le futur vérifiées de la même manière que celles des autres institutions dans le cadre de la procédure de décharge. Ce contrôle devrait se fonder sur la transmission d'une série de documents écrits comme les comptes de l’exercice écoulé afférents aux opérations du budget, un bilan financier décrivant l’actif et le passif, un rapport annuel d’activités concernant leur gestion budgétaire et financière, le rapport annuel de l’auditeur interne ainsi qu’un exposé oral effectué lors de la réunion de la commission compétente pour la procédure de décharge. Source Résolution du PE 16 juin 2010.
A setback, then, for the Institution that brings together the Heads of State and Government of the twenty-seven Member States, which, as expected and confirmed by the next Plenary, will mark a precedent that could lead to an institutional review by the Court of Justice. Parliament, in accordance with the Treaties, has the right and duty to verify the expenditure by the EU Institutions to ensure the legitimacy and control on behalf of the citizens. If the Council does not want to undergo this scrutiny, Parliament may refer to the Court of Justice for failure to appeal in accordance with Art. 265 of the TFEU.

"As Rapporteur, I can only rejoice at the great exercise in democracy shown by the Parliament, the unconditional support of all my colleagues who decided to defend the rights of citizens to control, through their representatives, budgets and expenses of the European Institutions. This finally recognises Parliament's role of as a representative of democracy", concluded Rivellini.”

La décision de refuser la décharge se fonde sur le manqué de transparence, le manqué de coopération du Conseil et le manqué d'informations transmises.

LA SITUATION EN 2012

En 2012 le PE refuse de nouveau de voter la décharge :

L’impasse entre le Parlement européen et le Conseil concernant la décharge des comptes de ce dernier se prolonge. La commission du contrôle budgétaire (CONT) du PE a décidé, le 27 mars, de reporter l’aval des comptes même si elle note que les paiements ne comportent pas d’erreur matérielle. Ce report vise à conclure un accord avec la présidence danoise sur les aspects clés de la procédure. Le scénario de l’an dernier risque cependant de se répéter.


Cette année, si la plénière suit CONT et accorde la décharge à la Commission en mai, le Conseil affirmera que ses comptes ont aussi le feu vert du PE, indique une source.

La présidence danoise souhaite un accord avec le Parlement sur une méthode à long terme basée sur la transparence mutuelle et la responsabilité en matière de procédure de décharge et demande qu’il soit mis fin au gentlemen’s agreement remontant à 1970, selon lequel le PE et le Conseil n’examinent pas les sections budgétaires de l’autre. Le PE, à qui l’obligation de transparence mutuelle sied mal jusqu’à présent, n’a pas nommé d’équipe de négociateurs. Les discussions sont dans l’impasse.

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EXEMPLE DE DIFFICULTES DANS LE CONTROLE

Ex montrant les difficultés dans son rapport annuel 2010, la Cour des comptes a critiqué le financement du projet immobilier "Résidence Palace" à cause des avances (paragraphe 7.19.); observe que la Cour des comptes a constaté qu’au cours de la période 2008-2010, le montant total des avances versées par le Conseil s’est élevé à 235 000 000 EUR; constate que les montants versés provenaient de lignes budgétaires sous-utilisées; souligne que le terme "sous-utilisées" est une
manière politiquement correcte de qualifier une dotation budgétaire excessive; souligne qu'en 2010, le Conseil a augmenté la ligne budgétaire "Acquisition de biens immobiliers" de 40 000 000 EUR.

Selon le Conseil, les crédits ont été rendus disponibles par des virements budgétaires autorisés par l'autorité budgétaire conformément aux procédures prévues aux articles 22 et 24 du règlement financier.

Selon la Cour des comptes une telle procédure porte atteinte au principe de vérité budgétaire, malgré les économies obtenues au niveau du paiement de loyer.

CONCLUSIONS

Des Chapitres 1 et 2 sur l'observation des textes pertinents et de la pratique conflictuelle d'un point de vue de l'équilibre institutionnel.

La question se pose de savoir si le PE est-il juridiquement habilité à recevoir les documents demandes au Conseil?
Si cela est nécessaire à l'efficacité et à l'effectivité du contrôle la réponse est oui. Or il va de soi que le PE a besoin de disposer des documents demandes pour un contrôle efficace. C'est au PE de décider de l'utilité de la communication de chaque document. A moins d'un secret défense, il n'y a pas de raison de refuser.
C'est ce qui s'est produit par exemple en 2009, lorsque le Parlement a différé la décharge. Il a demandé des documents sur le contenu des dépenses et à considéré les avoir obtenus, ce qui explique qu'il ait finalement accordé le quitus au Conseil.

D'un point de vue économique, l'exigence se vérifie de la même manière
Le contrôle est indispensable à l'efficacité économique et au management du budget de l'UE. Par exemple, lorsque la Cour des comptes stigmatise le transfert de budget vers des lignes consacrées à la construction d'un parc immobilier, il faut que le PE puisse contrôler, par l'audition des membres du Conseil et par la disponibilité des documents pertinents.

D'un point de vue de l'efficacité économique et d'un bon et sain management, il est pertinent que chaque institution puisse gérer son budget et ses ressources humaines sans en référer systématiquement à la Commission. Dès lors il semblerait logique que le Parlement puisse contrôler directement ce qui est géré de manière autonome, la responsabilité de la Commission étant dans ce contexte largement artificielle puisque ce n'est pas elle qui exécute ni gère. Il en résulte que le PE doit pouvoir disposer de tous les éléments nécessaires.
MOTS CLES
- Enseignements de la CJUE
- Enseignements des décisions de Cours constitutionnelles européennes
- Propositions et raisonnement sur le principe démocratique de l’UE

LES ENSEIGNEMENTS DE LA JURISPRUDENCE DE LA CJUE

Sur l’équilibre institutionnel:
La CJUE a contribué à l’affirmation du PE comme acteur institutionnel à part entière. Qu’il s’agisse de la légitimation active, de la légitimation passive, ou encore de la promotion de l’équilibre institutionnel, la Cour à joué un rôle majeur.

Un arrêt de 1983 (230/81, 10 février 1983) est intéressant, à condition de le lire à la lumière des pouvoirs acquis par le Parlement depuis. Selon la Cour, le pouvoir d’organisation interne des institutions ne doit pas porter atteinte à l’équilibre institutionnel ni à la répartition des compétences entre l’UE et les États membres. On peut l’interpréter comme conduisant à ce que les délégations d’exécution de la Commission vers le Conseil exigent un contrôle accru et particulier du Parlement sur les sections du budget dont l’exécution relève objectivement du Conseil. La logique générale de transferts successifs de compétences vers le PE ne fait que renforcer cette idée.

Il importe aussi de rappeler que la CJCE avait déjà eu l’occasion de vérifier le respect des prérogatives du Parlement par le Conseil en exigeant le principe de reconsultation lorsque la décision finalement adoptée par le Conseil s’éloignait trop du projet initialement soumis au Parlement. Cela remonte au temps où les pouvoirs législatifs du Parlement étaient presque inexistants.


Plus récemment la décision de 1990, Parlement européen contre Conseil, (70/88) précise que la Cour est chargée, en vertu des traités, de veiller au respect du droit dans leur interprétation et dans leur application et d’être en mesure d’assurer le maintien de l’équilibre institutionnel. Cette décision pourrait être utilisée à l’appui d’un recours à propos du quitus.

Et dans le même sens la décision de 1995 Parlement contre Conseil (65/93, 1 p 634, 30/3/1995): le principe de coopération loyale entre les institutions et le Parlement européen est intégré à ce dialogue inter institutionnel).

À partir de ce rappel de décisions, on pourrait invoquer le principe de l’effet utile pour obliger le Conseil à transmettre les documents demandes et plus généralement à rendre des comptes sur son budget. Le principe de l’EFFET UTILE est en effet largement employé par la CJUE lorsqu’il s’agit de fixer les grands principes européens.
LES ENSEIGNEMENTS DES DECISIONS RECENTES DE JURIDICTIONS CONSTITUTIONNELLES NATIONALES

On prendra l'exemple de la Cour constitutionnelle allemande en priorité, au miroir d'une décision récente du Conseil constitutionnel français.

À plusieurs reprises, la Cour constitutionnelle allemande a jugé que les traités ne respectaient pas assez les exigences démocratiques.


Plus récemment et en lien direct avec l'exigence démocratique, la Cour a jugé que le traité de Lisbonne ne garantissait pas assez les droits du Parlement national.

L'actualité immédiate est relative au traité budgétaire, et la décision du 12 septembre à venir. Au miroir, on peut citer la décision du Conseil constitutionnel du 9 août 2012, qui valide le TSCG au prix d'une lecture très minimaliste du traité.

De ces expériences, la leçon à tirer est aussi simple qu'évidente: les juridictions constitutionnelles attendent un renforcement du principe démocratique et de son application au niveau supranational européen. Ce respect de la démocratie restera encore perçu comme devant s'exercer par les Parlements nationaux, tant que le PE n'aura pas tous les moyens d'un contrôle démocratique efficace.

LES PROPOSITIONS A FAIRE

*Point de vue de l'architecture institutionnelle et de son équilibre:*

Il faut rappeler que le Parlement européen a souvent ouvert la voie du respect de l'équilibre institutionnel en revendiquant et en agissant, sans s'appuyer nécessairement sur la base des traités. Il devrait faire de même aujourd'hui avec la question du quitus budgétaire.

Rappel des domaines où l'audace du Parlement a été efficace dans la mesure où elle a été légalisée a posteriori.

Ex l'appellation de Parlement européen au lieu d'assemblée.
Ex la légitimation passive et active devant la Cour de justice.
Ex les revendications de participation au processus législatif. Sur ce dernier point, il a mis plus de temps à obtenir le rang de législateur et encore il n’est encore pas sur un pied d’égalité avec le Conseil dans tous les domaines. Il reste que les revendications ont souvent été entendues puis inscrites dans les traités.

Sur la question de la décharge relative précisément au Conseil de l’Union, elle se justifie par l’équilibre institutionnel et par un principe que l'on pourrait développer en termes de parallélisme des actions et des contrôles. En effet, en principe il s'agit bien de la Commission, responsable de l'exécution du Budget, qui doit des comptes au Parlement. MAIS dans la logique d'une reprise du pouvoir par le Conseil sur l'exécution du budget, l'équilibre institutionnel veut que le Conseil fasse aussi l'objet d'un contrôle parlementaire quant à l'emploi des deniers publics.

Cette exigence est renforcée par le principe démocratique
Point de vue de l'exigence démocratique et du contrôle parlementaire:

Le Parlement européen doit avancer sans complexe sur le terrain de la démocratie européenne. La notion de déficit démocratique a beau être en partie galvaudée et exagérée, elle a des fondements. Or dans les États démocratiques, il revient au Parlement de contrôler l’emploi des deniers publics. Il faut qu’il en soit de même à l’échelle de l’UE des lors que les contribuables européens sont représentés par leurs parlementaires européens. NO TAXATION WITHOUT REPRESENTATION. Les citoyens européens, en payant leurs impôts aux États membres, abondent le budget européen.

Le Parlement est l’institution d’expression de la démocratie européenne par excellence. Il en résulte que la lutte contre le déficit démocratique passe par un contrôle accru des comptes par le parlement.

Important : noter que le traité de Lisbonne consacre un titre entier au principe démocratique.

RAISONNEMENT SIMPLE

L'Union européenne est fondée sur le principe démocratique. Elle a un Parlement européen élu directement par les peuples. Le principe en démocratie parlementaire est « no taxation without representation » ou pas d’impôts sans représentation. Ce principe est renforcé dans des textes comme la déclaration des droits de l’homme et du citoyen en France, qui impose que les citoyens puissent suivre l’emploi des deniers publics. Si l’UE est une démocratie, il faut que les citoyens, via leurs représentants européens, puissent suivre rigoureusement l’emploi des deniers publics.

Le traité de Lisbonne renforce les exigences démocratiques:

TITRE II DISPOSITIONS RELATIVES AUX PRINCIPES DÉMOCRATIQUES

Article 9

Dans toutes ses activités, l’Union respecte le principe de l’égalité de ses citoyens, qui bénéficient d’une égale attention de ses institutions, organes et organismes. Est citoyen de l’Union toute personne ayant la nationalité d’un État membre. La citoyenneté de l’Union s’ajoute à la citoyenneté nationale et ne la remplace pas.

Article 10

1. Le fonctionnement de l’Union est fondé sur la démocratie représentative.

2. Les citoyens sont directement représentés, au niveau de l’Union, au Parlement européen.

Les États membres sont représentés au Conseil européen par leur chef d’État ou de gouvernement et au Conseil par leurs gouvernements, eux-mêmes démocratiquement responsables, soit devant leurs parlements nationaux, soit devant leurs citoyens.

3. Tout citoyen a le droit de participer à la vie démocratique de l’Union. Les décisions sont prises aussi ouvertement et aussi près que possible des citoyens.

4. Les partis politiques au niveau européen contribuent à la formation de la conscience politique européenne et à l’expression de la volonté des citoyens de l’Union.
Article 11

1. Les institutions donnent, par les voies appropriées, aux citoyens et aux associations représentatives la possibilité de faire connaître et d'échanger publiquement leurs opinions dans tous les domaines d'action de l'Union.

2. Les institutions entretiennent un dialogue ouvert, transparent et régulier avec les associations représentatives et la société civile.

3. En vue d'assurer la cohérence et la transparence des actions de l'Union, la Commission européenne procède à de larges consultations des parties concernées.

4. Des citoyens de l'Union, au nombre d'un million au moins, ressortissants d'un nombre significatif d'États membres, peuvent prendre l'initiative d'inviter la Commission européenne, dans le cadre de ses attributions, à soumettre une proposition appropriée sur des questions pour lesquelles ces citoyens considèrent qu'un acte juridique de l'Union est nécessaire aux fins de l'application des traités. Les procédures et conditions requises pour la présentation d'une telle initiative sont fixées conformément à l'article 24, premier alinéa, du traité sur le fonctionnement de l'Union européenne.

Article 12

Les parlements nationaux contribuent activement au bon fonctionnement de l'Union:

a) en étant informés par les institutions de l'Union et en recevant notification des projets d'actes législatifs de l'Union conformément au protocole sur le rôle des parlements nationaux dans l'Union européenne;

b) en veillant au respect du principe de subsidiarité conformément aux procédures prévues par le protocole sur l'application des principes de subsidiarité et de proportionnalité;

c) en participant, dans le cadre de l'espace de liberté, de sécurité et de justice, aux mécanismes d'évaluation de la mise en œuvre des politiques de l'Union dans cet espace, conformément à l'article 70 du traité sur le fonctionnement de l'Union européenne et en étant associés au contrôle politique d'Europol et à l'évaluation des activités d'Eurojust, conformément aux articles 88 et 85 dudit traité;

d) en prenant part aux procédures de révision des traités, conformément à l'article 48 du présent traité;

e) en étant informés des demandes d'adhésion à l'Union, conformément à l'article 49 du présent traité;

f) en participant à la coopération interparlementaire entre parlements nationaux et avec le Parlement européen, conformément au protocole sur le rôle des parlements nationaux dans l'Union européenne.

Source: TFUE
PISTES A RETENIR

En somme, de ces deux points, il faut retenir les pistes suivantes:

Contredire le postulat (qui ressort de l’article 146 du règlement financier) selon lequel l’exécution du budget est un système clos ou la commission assume, in fine, la responsabilité, malgré les délégations d’exécution du budget. Au contraire, l’équilibre institutionnel suppose que des comptes soient rendus au Parlement par le Conseil puisque celui-ci est un délégataire essentiel de l’exercice budgétaire.

Utiliser l’article 392 du TFUE introduit par le traité de Lisbonne selon lequel le cadre financier pluriannuel doit faire l’objet d’un règlement du Conseil après approbation du Parlement. Ce dernier doit donc pouvoir suivre le respect dudit règlement.

Demander une étude approfondie sur le contrôle parlementaire de l’usage des deniers publics européens par le Conseil, et particulièrement en matière de relations extérieures.

Proposer un code de bonne conduite sur plusieurs domaines:
- la notion de comptes hors budget, définir un nombre maximum et limiter leur usage
- Les transferts de financement doivent être motivés
- les aides aux associations

Démontrer que l’accord de 1970, que le Conseil invoqué et selon lequel le Parlement européen et le Conseil ne contrôlent pas mutuellement leurs dépenses administratives n’a à la fois aucune valeur juridique au regard de l’évolution du droit originaire comme dérivé et qu’il ne correspond pas à la réalité étant donnés les pouvoirs d’exécution du Conseil qui vont bien au-delà de simple dépenses administratives, comme en témoignent les travaux du Parlement et de la Cour des comptes.

Faire pression sur la Commission et/ou tenter un jeu d’alliances avec elle.

Saisir le Cour de justice.

CHAPITRE 4: QUELQUES ELEMENTS SUR D'AUTRES MOYENS D'ACTION QUE LE REFUS DE DECHARGE

MOTS CLES

- Actions médiatiques
- Jeu d'alliances
- Action pré-juridictionnelle
- Action juridictionnelle

Les réponses sont en lien avec le premier point dans la mesure où il contient tous les arguments que le Parlement aurait pu utiliser.

PAR QUEL MOYEN AURAIT-IL PU LES UTILISER?

LA PRESSE

Première piste: la presse

Publication d’un communiqué dans chaque grand média national des 27 États membres pour rendre public le refus de quitus.

Avec deux hypothèses possibles:

- Soit un bref communiqué, ce qui permet déjà de porter à l’ à connaissance de l’opinion publique européenne ce désaccord;
- Soit, de préférence, un texte signé par plusieurs parlementaires européens, expliquant que le rôle du Parlement européen est de suivre l’emploi des deniers publics européens et que les citoyens de chaque État membre, en payant ses propres impôts, contribue indirectement au budget européen, et concluant à l’absence de vote de quitus en raison d’une insuffisante transparence de l’emploi des fonds publics par le Parlement;
- Soit encore la publication d’une proposition d’accord bilatéral dans lequel le Conseil s’engage à fournir les documents demandés.

L’ALLIANCE AVEC LA COMMISSION

Deuxième piste : l’alliance avec la Commission

Pour faire pression sur le Conseil en créant un rapport de force entre d’une part l’intérêt général européen et d’autre part la réticence du Conseil à faire progresser la démocratie européenne.

CONFRONTATION AVEC LA COMMISSION

Troisième piste : en cas de non coopération de la Commission, aller au rapport de force, voire au bras de fer avec la Commission
On se rappelle qu’en mars 1999, alors que le Parlement européen s’apprêtait à voter une Motion de censure contre la Commission, la Commission a préféré démissionner.

Dans ce cas, le Parlement européen devrait demander à la Commission d’exiger, en sa qualité de gardienne des traités, de la part du Conseil, qu’il réponde aux demandes du Parlement, non seulement les demandes d’auditions, mais aussi les explications relatives à l’emploi précis des éléments du budget.

**VOIE JURIDICTIONNELLE**

**Quatrième piste: voie juridictionnelle**

Le Parlement européen a évoqué déjà l’idée de saisir la Cour de justice de l’Union européenne en vue du respect de ses prérogatives.

Échéancier et arguments possible:

- échéancier: si le Conseil continue à refuser de transmettre les documents demandés, de rendre des comptes sur les questions posées et de participer aux rencontres auxquelles il est invité, l’informer de la voie juridictionnelle imminente, puis enfin, en l’absence de coopération, saisir la Cour.
- arguments : ceux développés dans le point 1 relatifs à l’équilibre des pouvoirs, à l’équilibre institutionnel, et à la démocratie.

**PISTES SUBSIDIAIRES**

Dans le cadre des relations avec les parlements nationaux, transmettre à chaque Parlement national les éléments de discordes et de ce que le Parlement européen considère comme suscitant des interrogations quant à la bonne gestion.

Organiser une rencontre parlementaire sur la démocratie budgétaire avec des représentants de chaque parlement national et du Parlement européen.

Conditionner le vote du budget à la transmission de données sur l’application du budget.
REFERENCES


F. Chaltiel Terral, Le processus de décision après le traité de Lisbonne, La Documentation française 2010, 2è ed.

G. Cipriani, Rethinking the European Budget, three unavoidable reforms, Centre for European policy studies, 2007.


C. Delon-Desmoulin, Droit budgétaire de l'Union européenne, LGDJ 2011.


M. Lefevre, Quel budget européen à l'horizon 2013, Centre européen des études européennes, IFRI, 2005.


ANNEXES

1. Les prérogatives du PE utilisables pour renforcer l’effectivité de son contrôle

2. Extrait du site des démocrates et libéraux 25/11/2011

3. Extraits pertinents de la jurisprudence européenne CEDH

4. Extraits pertinents de jurisprudences nationales : conseil constitutionnel, cour constitutionnelle allemande

5. Extrait de résolution du PE mettant en relief les difficultés rencontrées pour contrôler l’exécution budgétaire par le conseil

1. LES PRÉROGATIVES DU PE UTILISABLES POUR RENFORCER L’EFFECTIVITE DE SON CONTROLE

Le Parlement dispose de plusieurs instruments de contrôle.

- **Investiture de la Commission**

- **La motion de censure**
  La motion de censure à l’encontre de la Commission (article 234 du TFUE) existe depuis le traité de Rome. Elle nécessite un vote à la majorité des deux tiers des suffrages exprimés et à la majorité des membres composant l’Assemblée. Elle contraint la Commission à démissionner en bloc. Depuis l’origine, huit motions de censure seulement ont fait l’objet d’un vote et aucune n’a été adoptée, mais le nombre de voix en faveur de la censure a régulièrement augmenté. Néanmoins, la dernière motion de censure (vote du 8 juin 2005) n’a obtenu que 35 voix, contre 589 voix contre et 35 abstentions.

- **Questions parlementaires**
  Elles comprennent les questions écrites et orales, avec ou sans débat (article 230 du TFUE) et les questions de l’heure des questions. La Commission et le Conseil sont tenus d’y répondre.

- **Commissions d’enquête**
  Le Parlement a le pouvoir de créer des commissions d’enquête temporaires qu’il charge d’examiner les allégations d’infraction ou de mauvaise application du droit communautaire (article 226 du TFUE).

- **Contrôle en matière de politique étrangère, de sécurité commune et de coopération policière et judiciaire**
  Dans ces domaines, le Parlement a droit à une information régulière et peut adresser au Conseil des questions ou des recommandations. Il est consulté sur les principaux aspects et les choix fondamentaux de la PESC et sur toute mesure envisagée, à l’exception des positions communes en matière de coopération politique et judiciaire (article 36 du TFUE). La mise en place de l’accord
interinstitutionnel sur la discipline budgétaire et la bonne gestion financière (2006/C 139/01) a également permis d’améliorer les procédures de consultation sur la PESC.
Après l’entrée en vigueur du traité de Lisbonne, presque tous les aspects de la coopération policière et judiciaire ainsi que les autres domaines relevant de l’espace de liberté, de justice et de sécurité sont soumis à la procédure législative générale (codécision). En matière de politique étrangère, la création du poste de Haut représentant de l’Union pour les affaires étrangères et la politique de sécurité permettra d’accroître l’influence du Parlement car la personne désignée à ce poste est également vice-président de la Commission.

Recours devant la Cour de Justice de l’Union européenne
Le Parlement a le pouvoir de présenter des recours devant la Cour de justice en cas de violation du traité par une autre institution.
Dans le cadre du recours en carence (article 265 du TFUE), il peut poursuivre une institution devant la Cour pour violation du traité, comme dans l’affaire 13/83, dans laquelle le Conseil a été condamné pour avoir omis de prendre des mesures relatives à la politique commune des transports.
Dans le cadre du traité d’Amsterdam, le Parlement pouvait présenter un recours en annulation uniquement lorsqu’il s’agissait de protéger ses prérogatives. Le traité de Nice a modifié l’article 203 du traité CE: le Parlement n’est pas tenu de faire état d’une préoccupation particulière; il est désormais à même d’engager des procédures au même titre que le Conseil, la Commission et les États membres. Le Parlement peut être partie défenderesse en cas de recours contre un acte adopté selon la procédure de codécision ou lorsqu’un de ses actes est destiné à produire des effets juridiques vis-à-vis de tiers. L’article 263 du TFUE confirme ainsi la jurisprudence de la Cour dans les affaires 320/81, 294/83 et 70/88. Il est enfin en mesure de solliciter l’avis préalable de la Cour de justice sur la compatibilité d’un accord interinstitutionnel avec le traité (article 218 du TFUE).

Pétitions
Lorsque les citoyens de l’Union exercent leur droit de pétition, ils adressent leurs pétitions au président du Parlement (article 227 du TFUE).
2. EXTRAIT DU SITE DES DEMOCRATES ET LIBERAUX 25/11/2011

Le Conseil ne peut échapper à l'examen parlementaire pour la bonne gestion de son budget

Les démocrates et libéraux européens se félicitent que le Parlement européen, réuni en session plénière à Strasbourg, ait refusé de donner quittance au Conseil pour l'exécution de son budget en 2009. La commission du contrôle budgétaire (CONTR) avait à une large majorité recommandé de voter contre la décharge pour le Conseil, arguant que le Traité et la pratique conféraient une compétence exclusive au Parlement en matière de décharge, compétence contestée de fait par le Conseil qui refuse toute transparence dans la publication et la justification de ses dépenses.

Theodoros SKYLAKAKIS (Dimokratiki Symmachia, Grèce), rapporteur fictif de l'ADLE pour la décharge 2009, a déclaré lors du débat: "Le Parlement européen est la seule Institution à être élue au suffrage universel et qui a seule compétence pour donner décharge aux autres Institutions. Le Conseil doit se soumettre à cette règle. En refusant de venir s'exprimer devant notre commission parlementaire, le Conseil refuse en fait d'informer nos concitoyens sur la manière dont il gère l'argent que lui ont confié les contribuables européens. Pour sortir de cette impasse, il reste la saisine de la Cour de justice et le Parlement ne craint pas cette épreuve pour trancher une fois pour toute de son bon droit".

Jan MULDER (VVD, Pays-Bas), président de la commission du Contrôle budgétaire, a ajouté: "Selon le Traité, le Parlement européen est l'autorité de contrôle budgétaire et seul habilité en dernier ressort à donner la décharge. Dès lors le Conseil doit fournir au Parlement toute information qu'il juge utile et il est déplorable qu'il refuse de s'y soumettre".

Jorgo CHATZIMARKAKIS (FDP, Allemagne), coordinateur de l'ADLE au sein de CONT, a conclu: "Le Conseil doit désormais instamment se conformer à ce vote et abandonner sa position jusqu'au-boutiste. Le Parlement ne veut pas couler le Conseil au pilori. Mais pour accorder la décharge, nous devons avoir accès aux comptes et c'est en vain que nous avons à maintes reprises fait des demandes en ce sens au Conseil. Tant que le Conseil refusera de se soumettre aux questions de notre commission parlementaire, le Parlement européen ne pourra accorder la décharge. Il se pourrait être que le Parlement et le Conseil se retrouvent bientôt devant la Cour Européenne de Justice."

Source:
3. EXTRAITS PERTINENTS DE LA JURISPRUDENCE EUROPEENNE CEDH

CEDH
AFFAIRE MATTHEWS c. ROYAUME-UNI

(Requête n° 24833/94)

Extraits de la décision

52. Quant au contexte dans lequel le Parlement européen fonctionne, la Cour estime que cet organe est l'instrument principal du contrôle démocratique et de la responsabilité politique dans le système communautaire. Légitimé par son élection au suffrage universel direct, le Parlement européen doit être considéré, quelles que soient ses limites, comme la partie de la structure de la Communauté européenne qui reflète le mieux le souci d'assurer au sein de celle-ci un « régime politique véritablement démocratique ».

53. Même compte tenu du fait que Gibraltar se trouve exclu de certains domaines de l'activité communautaire (paragraphe 12 ci-dessus), il demeure des secteurs importants où cette activité a un impact direct à Gibraltar. De surcroît, ainsi que la requérante le fait observer, les mesures prises au titre de l'article 189 B du traité CE et qui touchent Gibraltar ont trait à des questions importantes telles que la sécurité routière, la protection des consommateurs, la pollution atmosphérique due aux émissions provenant de véhicules à moteur et l'ensemble des mesures relatives à l'achèvement du marché intérieur.

54. La Cour estime en conséquence que le Parlement européen se trouve suffisamment associé au processus législatif spécifique conduisant à l'adoption d'actes au titre des articles 189 B et 189 C du traité CE, ainsi qu'au contrôle démocratique général des activités de la Communauté européenne, pour que l'on puisse considérer qu'il constitue une partie du « corps législatif » de Gibraltar aux fins de l'article 3 du Protocole n° 1.

Piste à creuser : Théorie de l'apparence ou l'apparence d'une exécution budgétaire sans contrôle/
4. EXTRAITS PERTINENTS JURISPRUDENCE NATIONALE

Conseil constitutionnel

Extrait de la décision du 20 décembre 2007 sur le Traité de Lisbonne, à propos de l’importance de l’exercice démocratique par le parlement national

* - SUR LES NOUVELLES PRÉROGATIVES RECONNUES AUX PARLEMENTS NATIONAUX DANS LE CADRE DE L’UNION :

28. Considérant que le traité soumis au Conseil constitutionnel accroît la participation des parlements nationaux aux activités de l’Union européenne ; que le 12) de son article 1er fait figurer à l’article 12 du traité sur l’Union européenne la liste des prérogatives qui leur sont reconnues à cet effet ; qu’il y a lieu d’apprécier si ces prérogatives peuvent être exercées dans le cadre des dispositions actuelles de la Constitution ;

29. Considérant que le 7 de l’article 48 du traité sur l’Union européenne, dans sa rédaction résultant du 56) de l’article 1er du traité de Lisbonne, qui reconnait au Parlement français le droit de s’opposer à la mise en œuvre d’une procédure de révision simplifiée des traités, reprend les dispositions de l’article IV-444 du traité établissant une Constitution pour l’Europe ; qu’il appelle une révision de la Constitution pour les mêmes motifs que ceux énoncés par la décision du 19 novembre 2004 susvisée ; qu’il en va de même des articles 6, 7 paragraphes 1 et 2, et 8 du protocole sur l’application des principes de subsidiarité et de proportionnalité, auquel renvoie le traité de Lisbonne, qui reprennent les dispositions figurant aux articles 6 à 8 du protocole n° 2 annexé au traité établissant une Constitution pour l’Europe, tout en allongeant le délai dans lequel le Parlement français pourra, le cas échéant selon des procédures propres à chacune de ses deux chambres, formuler un avis motivé ;

30. Considérant, en outre, que le 3 de l’article 81 du traité sur l’Union européenne, dans sa rédaction résultant du 66) de l’article 2 du traité de Lisbonne, reconnait à un parlement national le droit de s’opposer, dans un délai de six mois, à une décision du Conseil tendant à soumettre certains aspects du droit de la famille ayant une incidence transfrontière non plus à une procédure législative spéciale prévoyant l’unanimité au sein du Conseil après consultation du Parlement européen mais à la procédure législative ordinaire ;

31. Considérant que le 3 de l’article 7 du protocole précité sur l’application des principes de subsidiarité et de proportionnalité confère aux parlements nationaux, dans le cadre de la procédure législative ordinaire, des moyens nouveaux, par rapport au traité établissant une Constitution pour l’Europe, pour veiller au respect du principe de subsidiarité ; qu’il résulte de cette disposition que, lorsque la Commission décide de maintenir une proposition à propos de laquelle une méconnaissance du principe de subsidiarité a été dénoncée par une majorité des voix dont disposent les parlements nationaux ou, le cas échéant, chacune de leurs chambres, tout parlement national détenant deux voix et chacune des chambres d’un parlement bicaméral une seule, l’avis motivé de la Commission et ceux des parlements nationaux sont soumis au Conseil et au Parlement européen ; que si, en vertu d’une majorité de 55 % des membres du Conseil ou d’une majorité des suffrages exprimés au Parlement européen, le législateur de l’Union est d’avis que la proposition de la Commission n’est pas compatible avec le principe de subsidiarité, son examen n’est pas poursuivi ;

32. Considérant que le droit reconnu au Parlement français de s’opposer à la soumission à la procédure législative ordinaire de certains aspects du droit de la famille rend nécessaire une révision de la Constitution afin de permettre l’exercice de cette prérogative ; qu’il en va de même des moyens nouveaux qui lui sont conférés, le cas échéant selon des procédures propres à chacune de ses deux...
chambres, pour contrôler le respect du principe de subsidiarité dans le cadre de la procédure législative ordinaire (…)

Cour constitutionnelle de Karlsruhe

Extrait du site Lemonde.fr sur la décision de la Cour de juin 2012

La Cour constitutionnelle allemande a imposé, mardi 19 juin, au gouvernement une participation accrue du Parlement dans les futures décisions qui renforceraient l'intégration européenne, une décision sans conséquence sur la mise en place actuelle du Mécanisme européen de stabilité (MES).

Alors que la chancelière, Angela Merkel, s'est faite l'apôtre d'une intégration européenne plus poussée, la décision rendue mardi sonne comme une mise en garde : plus d'Europe ne pourra se faire qu'avec non seulement l'aval, mais aussi la participation en amont des représentants du peuple. La participation accrue du Parlement sera la contrepartie au transfert accru de compétences à l'Union européenne, ont argumenté les juges de Karlsruhe.

Le groupe parlementaire des Verts, plus petite force en présence au Bundestag, avait porté plainte l'an dernier auprès de la Cour constitutionnelle de Karlsruhe contre la procédure d'adoption du Mécanisme européen de stabilité (MES).

Ce mécanisme de prêts et de garanties mis en place par les pays de la zone euro pour venir en aide aux plus fragiles en cas de crise est en cours de ratification, et doit entrer en vigueur début juillet. Le verdict des sages de Karlsruhe est sans conséquence sur ce processus en cours. Les députés du Bundestag doivent se prononcer le 29 juin.

VERS UN RENFORCEMENT DES PRÉROGATIVES DU PARLEMENT

Pour les Verts, au vu des sommes qu'il engage – rien que cette année, l'Allemagne devra verser près de 9 milliards d'euros à son capital –, les députés devraient avoir été consultés en amont et eu une influence sur l'élaboration du texte, et pas simplement se le voir soumis pour ratification. Le gouvernement s'est défendu en arguant que l'Allemagne en tant qu'État souverain s'était mis d'accord avec ses partenaires sur le MES, en vertu des règles du droit international.

Au terme d'une audition publique au mois de novembre, le président du tribunal, Andreas Vosskuhle, avait déjà laissé entendre que le verdict irait dans le sens d'un renforcement des prérogatives du Parlement. C'est la direction déjà prise par les précédents jugements en matière de sauvetage de la zone euro, un sujet dont la Cour a eu à se saisir plusieurs fois ces deux dernières années. Sa dernière décision en la matière, en février, a interdit que les aides dispensées par le fonds de sauvetage FESF soient soumises en Allemagne seulement à un petit comité de neuf parlementaires, exigeant que les 620 membres du Bundestag soient consultés.
Contrôle de l’exécution budgétaire par le PE

Federal Constitutional Court - Press office -

Press release no. 42/2012 of 19 June 2012

Judgment of 19 June 2012
2 BvE 4/11

Successful applications in Organstreit proceedings regarding the “ESM/Euro Plus Pact”

In its judgment pronounced today, the Federal Constitutional Court considered well-founded the applications made by the Alliance 90/The Greens parliamentary group with which the applicant asserts that the German Bundestag’s rights to be informed by the Federal Government have been infringed in connection with the European Stability Mechanism (ESM) and the Euro Plus Pact.

Legal background:

According to Article 23.2 sentence 2 of the Basic Law (Grundgesetz– GG), the Federal Government shall keep the German Bundestag informed, comprehensively and at the earliest possible time, “in matters concerning the European Union”.

The first application is aimed at what is known as the European Stability Mechanism (ESM). The European Stability Mechanism is an intergovernmental instrument of the euro area Member States to combat the sovereign debt crisis in the area of the European Monetary Union. The applicant applies for a declaration that the Federal Government infringed the German Bundestag’s rights to be informed under Article 23.2 GG by omitting to inform immediately before and after the European Council meeting of 4 February 2011 comprehensively, at the earliest possible time and continuously, about the configuration of the ESM, and that it in particular omitted to send the Draft Treaty establishing the ESM to the German Bundestag on 6 April 2011 at the latest.

The second application concerns what is known as the Euro Plus Pact, which was presented to the public for the first time at the European Council meeting of 4 February 2011. This agreement which was initially discussed in Germany under the name “Pakt für Wettbewerbsfähigkeit” (Competitiveness Pact), is intended in particular to structurally reduce the risk of currency crises in the euro area. To achieve this, the Euro Plus Pact intends, among other things, to strengthen the economic pillar of the monetary union and to achieve “a new quality of economic coordination”. In this context, the applicant applies for a declaration that the Federal Government infringed the German Bundestag’s rights under Article 23.2 GG by omitting to inform the Bundestag before the European Council meeting on 4 February 2011 about the Federal Chancellor’s initiative for an enhanced economic coordination of the euro area Member States and by omitting until 11 March 2011 to inform it comprehensively and at the earliest possible time about the Euro Plus Pact after the meeting.

Against this backdrop, the Organstreit proceedings (proceedings relating to a dispute between supreme federal bodies) have to clarify whether the rights of participation and the rights to be informed which are due to the Bundestag according to Article 23.2 GG can also apply to intergovernmental instruments of the nature described which are dealt with by the Federal Government in the context of European integration and which are related to the European Union.

The Second Senate of the Federal Constitutional Court ruled that the Federal Government infringed the German Bundestag’s rights to be informed under Article 23.2 sentence 2 GG with regard to the European Stability Mechanism and with regard to the agreement on the Euro Plus Pact.
In essence, the decision is based on the following considerations:

I. Standard of review

1. Article 23 GG confers on the German Bundestag far-reaching rights of participation and rights to be informed in matters concerning the European Union. The stronger involvement of Parliament in the process of European integration serves to compensate the competence shifts in favour of the Member States’ governments in the national structure of powers that result from Europeanisation. Matters concerning the European Union include Treaty amendments and corresponding changes at primary-law level (Article 23.1 GG) as well as legislative acts of the European Union (Article 23.3 GG). International treaties that complement European Union law or otherwise show particular proximity to European Union law are also matters concerning the European Union. There is no single characteristic that is at the same time final and clearly delimited according to which it can be ascertained whether such proximity exists. What is important instead is an overall consideration of the circumstances, including planned contents, objectives and effects of legislation, which, depending on their weight, can prove decisive individually or in their combination.

2. The Federal Government’s duty, laid down in Article 23.2 sentence 2 GG, to keep the German Bundestag informed comprehensively and at the earliest possible time intends to make it possible for the German Bundestag to exercise its rights, anchored in Article 23.2 sentence 1 GG, to participate in matters concerning the European Union. The information must make it possible for the Bundestag to influence the Federal Government’s opinion-forming early and effectively; information must be provided in such a way that Parliament’s role is not reduced to merely exercising indirect influence. Apart from this, the interpretation and application of Article 23.2 GG must take into account that the provision also serves the publicity of parliamentary work, a requirement which is derived from the democratic principle laid down in Article 20.2 GG.

   a) In accordance with its function, the requirement of comprehensive information is to be construed in such a way that the more complex a matter is, the deeper it intervenes in the legislative’s area of competences and the closer it gets to formal decision-making or to a formal agreement, the more intensive the required information will be. From this, requirements result with regard to the quality, quantity and timeliness of the information. Thus, the duty to comprehensively inform encompasses not only initiatives and positions taken by the Federal Government itself and the subject-matter, the course and the result of the meetings and deliberations of organs and bodies of the European Union in which the Federal Government is represented. The duty to inform also entails an obligation to make available official materials and documents of the organs, bodies and authorities of the European Union and of other Member States.

   b) To inform in time is as important as the quantity of the information. The indication “at the earliest possible time” in Article 23.2 sentence 2 GG means that the Bundestag must receive the Federal Government’s information at the latest at a point in time that enables it to deal with the matter in a substantiated manner and to prepare a statement before the Federal Government makes declarations which have an effect on third parties, in particular binding declarations concerning legislative acts of the European Union and intergovernmental agreements.

   c) With a view to the requirements placed on its clarity, continuity and reproducibility, the information must, in principle, be provided in a written form. Exception are only admissible within narrow limits; they may, however, be required if the Federal Government can ensure comprehensive information at the earliest possible time only if the information is provided orally.

   d) Boundaries of the duty to inform result from the principle of the separation of powers. Within the Basic Law’s system of functions, a core area of the government’s own executive responsibility exists that includes an area of initiative, deliberation and action which in principle has to be respected. As
long as the Federal Government’s internal formation of opinion has not come to an end, Parliament has no right to be informed. If, however, the Federal Government’s opinion-forming has evolved in such a specific direction that the Federal Government can communicate interim or partial results to the public or would like to set out on a process of concertation with third parties with a position of its own, a project no longer falls within the core area of the Federal Government’s own executive responsibility that is shielded from the Bundestag.

Source: Site internet de la Cour constitutionnelle allemande Bundesverfassungsgericht


Le Parlement attend toujours la réponse du Conseil concernant les actions et la demande de documents qu’évoquent les deux résolutions susvisées; demande au secrétaire général du Conseil de fournir à la commission du Parlement compétente pour la procédure de décharge des réponses écrites détaillées aux questions suivantes:

a) Pour ce qui est des débats antérieurs au sein de la commission compétente du Parlement concernant la décharge du Conseil, force est de constater que le Conseil n’a pas assisté régulièrement aux réunions correspondantes; il est toutefois extrêmement important que le Conseil y participe afin de répondre aux questions posées par les membres de la commission au sujet de la décharge du Conseil. Le Conseil accepte-t-il d’assister aux débats sur la décharge du Conseil qui seront organisés à l’avenir au sein de la commission du Parlement compétente concernant la procédure de décharge?

b) Pourquoi le Conseil modifie-t-il chaque année la présentation/format de l’audit interne? Pourquoi l’audit interne est-il si court, si général et si peu précis chaque année? Le Conseil aurait-il l’amabilité de présenter, à compter de la décharge 2010, l’audit interne dans une ou plusieurs langues autres que le français?

c) Un audit externe a-t-il été effectué? Dans l’affirmative, la commission du Parlement compétente pour la procédure de décharge pourrait-elle en prendre connaissance? À défaut d’audit externe, pourquoi le Conseil a-t-il choisi de ne pas procéder à un tel contrôle?

d) Jusqu’à présent, l’activité du Conseil supposait un cofinancement avec la Commission, dont le volume s’est accru depuis l’entrée en vigueur du traité de Lisbonne. Quels systèmes d’audit et de contrôle ont été instaurés pour assurer une transparence totale? Sachant que le traité de Lisbonne a fait progresser le cofinancement avec la Commission, qu’entend le Conseil par «donner suite aux enquêtes pertinentes»?

e) Dans son rapport annuel pour 2009, la Cour des comptes a relevé que, s’agissant de deux des six procédures de passation de marchés contrôlées, le Conseil n’avait pas respecté les dispositions établies par le règlement financier en matière de publication du résultat de la procédure. Le Conseil a-t-il contrôlé d’autres échantillons de procédures similaires de passation de marchés? La procédure interne a-t-elle été rationalisée de façon à éviter que des situations analogues ne se reproduisent à l’avenir?


g) Le Conseil met en relief les questions budgétaires découplant du traité de Lisbonne au point 2.2 du rapport d’activité en matière financière (11327/2010, FIN 278). Le Conseil a-t-il résolu les problèmes liés aux dépenses de M. Solana? Quelle part des dépenses relevée du budget du Conseil et quelle autre de celui de la Commission?

h) Quelles dépenses opérationnelles et administratives, et quels frais liés entre autres au personnel et à la politique immobilière, ont été prévus par le Conseil pour 2009 dans le cadre de la mise en place du Haut représentant de
l’Union pour les affaires étrangères et la politique de sécurité/vice-président de la Commission?

i) La Haute représentante/vice-présidente de la Commission a pris ses fonctions le 1er décembre 2009. Comment les coûts ont-ils été répartis entre le Conseil et la Commission (pour ce qui est du personnel, des déplacements, etc.)? Comment le Conseil a-t-il préparé le budget relatif à la Haute représentante/vice-présidente de la Commission pour 2010? Quels postes budgétaires et montants ont été réservés à ses activités?

j) Comment la libération des espaces de bureaux résultant du transfert de personnel au SEAE influera-t-elle sur les projets immobiliers du Conseil? Des dispositions ont-elles été prises pour l’utilisation ultérieure de ces espaces de bureaux? Quel est le coût prévu des déménagements? Si des appels d’offres relatifs aux déménagements ont eu lieu, quand ont-ils été publiés?

k) Quelles ont été les dépenses administratives et opérationnelles relatives aux missions relevant de la politique étrangère et de sécurité commune/politique de sécurité et de défense commune (PESC/PSDC), qui ont été financées, du moins en partie, par le budget de l’Union en 2009? Quel a été le montant total des dépenses de la PESC en 2009? Le Conseil pourrait-il répertorier, au minimum, les principales missions et les coûts y afférents en 2009?

l) Quel a été le coût des réunions des groupes de travail du Conseil sur la PESC/PSDC à Bruxelles et ailleurs, et où ces réunions ont-elles eu lieu?

m) Quelles ont été les dépenses administratives liées à l’exécution des opérations militaires de la PESC/PSDC? Quelle part du montant total des dépenses relevant d’opérations militaires a été à la charge du budget de l’Union?

n) Quelles ont été les dépenses administratives découlant du fonctionnement du mécanisme ATHENA, combien a-t-il fallu de postes pour ce mécanisme, et certains des postes concernés seront-ils transférés au SEAE? À qui les titulaires de ces postes doivent-ils rendre des comptes?

o) Le taux d’occupation des postes figurant dans le tableau des effectifs du Conseil est peu élevé (91 % en 2009 et 90 % en 2008). La faiblesse persistante de ce taux a-t-elle des répercussions quelconques sur le mode de fonctionnement du Secrétariat général du Conseil? Le Secrétariat général du Conseil est-il en mesure de s’acquitter de toutes ses fonctions avec le taux d’occupation actuel? Les faibles taux d’occupation sont-ils caractéristiques de certains services en particulier? Quelles sont les raisons de cette disparité permanente?

p) Quel est le nombre total de postes assignés aux tâches de coordination des politiques et de support administratif (telles que définies dans les rapports annuels d’évaluation du personnel de la Commission)? Quel pourcentage représentent ces postes par rapport au nombre total de postes?

q) Pour atteindre les objectifs administratifs en 2009, le Conseil a ajouté le télétravail à ses procédures de travail. Comment le Conseil démontre-t-il l’efficacité de cette procédure de travail? Par ailleurs, le Conseil est invité à rendre compte des autres mesures adoptées à cet égard et, en particulier, celles destinées à améliorer la qualité de la gestion financière, ainsi que de leurs répercussions;

r) Le tableau des effectifs du Conseil a été augmenté de 15 postes (8 AD et 7 AST) pour couvrir les besoins en personnel de l’unité linguistique irlandaise. À combien s’élèvent les effectifs des autres unités linguistiques (effectifs par langue)? Des membres du personnel travaillent-ils déjà pour les pays candidats, et a-t-il déjà été procédé à des recrutements en provenance de ces pays? Dans l’affirmative, combien de postes sont concernés (ventilés par pays et par langue)?

s) Le «groupe de réflexion» a été créé le 14 décembre 2007, et ses membres ont été nommés les 15 et 16 octobre 2008. Pour quelles raisons les crédits nécessaires n’ont-ils été ni prévus ni inclus dans le budget 2009? Un virement effectué au titre du budget 2009, à partir de la réserve pour imprévus vers un poste budgétaire destiné à financer une structure conçue en 2007, constitue-t-il un résultat strictement neutre sur le plan budgétaire? Le Conseil a alloué 1 060 000 EUR au «groupe de réflexion». Combien de postes peuvent être affectés à ce groupe?


u) Pourquoi apparaît-il encore nécessaire, dans le cadre de l’audit interne, d’ajouter «les frais de voyage des délégués et les frais d’interprétation» après les critiques sévères formulées dans les deux dernières résolutions du Parlement sur la décharge du Conseil?

v) Le Conseil n’a, de nouveau, pas épuisé les crédits prévus pour l’interprétation afin de disposer de fonds supplémentaires pour les frais de voyage des délégations. Par conséquent, les crédits effectivement engagés pour les frais de voyage en 2009 étaient nettement inférieurs au budget initial (36 100 000 EUR initialement prévus et 48 100 000 EUR disponibles après virements, contre 22 700 000 EUR d’engagements). Quelles ont été les raisons
de ce virement d'un montant de 12 000 000 EUR (voir le rapport d'activité en matière financière – 11327/2010, FIN 278 – point 3.3.2, sixième puce)? Pourquoi le virement des crédits au titre de l'interprétation vers les frais de voyage des délégations est-il estimé par le Conseil à 12 000 000 EUR à la page 12 et à 10 558 362 EUR à la page 13? À quelles fins le montant restant puisé dans le budget de l'interprétation a-t-il été utilisé (la somme totale transférée s'est élevée à 17 798 362 EUR)? Le Conseil est en outre invité à expliquer au Parlement la grande quantité d'ordres de recouvrement antérieurs à 2009 et reportés à l'exercice 2009 (12 300 000 EUR) ainsi que les recouvrements provenant de déclarations présentées en 2007 (6 300 000 EUR);

w) En 2009, comme en 2008, le Conseil a réaffecté un montant considérable de son budget à la politique immobilière, et a notamment plus que doublé l'enveloppe initialement prévue pour l'acquisition de l'immeuble Résidence Palace (17 800 000 EUR ont été réaffectés en plus des 15 000 000 EUR alloués dans le budget pour 2009). Quelles en sont les raisons? Le secrétaire général du Conseil pourrait-il présenter des chiffres concrets sur les économies réalisées de cette manière? Quel était le coût initialement prévu de l'immeuble Résidence Palace? Le Conseil estime-t-il que le coût initialement prévu sera correct ou que le coût pourrait dépasser les estimations? Quelles mesures sont envisagées pour financer cet immeuble?

x) Exécution du budget du Conseil – crédits reportés: le Conseil pourrait-il préciser le montant estimé et l'objet des factures pour 2009, qui n'avaient pas été reçues au mois de juin 2010 et qui ont été, par conséquent, reportées à l'année suivante?

y) Le report à l'exercice 2010 des crédits de recettes affectées perçues en 2009 s'est élevé à 31 800 000 EUR, soit environ 70% des recettes affectées pour 2009. À quoi est dû ce pourcentage élevé de crédits reportés? Que se passe-t-il ou s'est-il passé avec ces recettes en 2010?

z) Que signifie «provision technique de 25 000 000 EUR pour le lancement du Conseil européen de 2010?»? (voir le rapport d'activité en matière financière – 11327/2010, FIN 278 – point 3.1, quatrième puce).

aa) Quel est le degré de confidentialité du budget du Conseil selon les différentes lignes budgétaires?

ab) Le Conseil pourrait-il indiquer les mesures spécifiques arrêtées pour améliorer la qualité de sa gestion financière, notamment pour ce qui est des points soulevés au paragraphe 5 de la résolution du Parlement du 25 novembre 2009(10), qui accompagne sa décision concernant la décharge pour l'exercice 2007.

ac) Demande au secrétaire général du Conseil de fournir à la commission du Parlement compétente pour la procédure de décharge les documents suivants:
   – la liste complète des virements budgétaires concernant le budget 2009 du Conseil;
   – une déclaration écrite relative aux frais de mission du Conseil tels qu'encourus par les RSUE;
   – la déclaration des États membres pour 2007 (voir le rapport d'activité en matière financière – 11327/2010, FIN 278 – point 3.2.2, deuxième puce); et
   – le rapport du «groupe de réflexion» afin de comprendre pour quelle raison un tel rapport coûte 1 060 000 EUR (voir le rapport d'activité en matière financière – 11327/2010, FIN 278 – point 2);

15. prend note de la réponse de la Commission du 25 novembre 2011 à la lettre du président de la commission du contrôle budgétaire, dans laquelle la Commission déclare souhaitable que le Parlement continue d'octroyer, d'ajourner et de refuser la décharge aux autres institutions comme cela a été le cas jusqu'à présent;

16. rappelle que, le 31 janvier 2012, le président de la commission du contrôle budgétaire a envoyé une lettre à la présidente en exercice du Conseil, soulignant son souhait d'instaurer un dialogue politique et communiquant des questions complémentaires de la commission parlementaire concernant la décharge au Conseil; espère par conséquent que le Conseil fournira, avant le débat en plénière, à la commission compétente pour la procédure de décharge une réponse au questionnaire joint à la lettre du président;

17. regrette néanmoins que le Conseil ait refusé de participer aux réunions officielles de la commission du contrôle budgétaire consacrées à sa décharge;

Les éléments soulignés le sont par l'auteur de la présente note
The European Parliament’s Right to Discharge the Council

BRIEFING PAPER
(Preliminary Draft)

Abstract

This briefing paper examines whether the European Parliament has the right to discharge the Council. An analysis of Union provisions and principles yields the result that better reasons speak for a right to discharge. Additionally, the paper evaluates the consequences of the refusal to grant discharge as well as rights to information possibly arising from the right to discharge.

24/09/2012
EN
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EXECUTIVE SUMMARY

Through a thorough analysis of European law, this briefing paper comes to the conclusion that Parliament has the right to discharge the Council. The provision which deals with the discharge of the Commission can be interpreted in two different ways. At a first glance, the wording seems to militate in favour of a closed system in which discharge can only be granted to the Commission. However, considerations on an evolutionary approach to historical interpretation show that the provision can be read as leaving room for a separate discharge decision vis-à-vis the Council. To assess whether the system is indeed closed or leaves room to discharge the Council, a teleological interpretation is applied using principles of European constitutional law. While considerations of democratic accountability would support a right of Parliament to discharge the Council, a violation of the institutional balance could preclude such a right. A thorough assessment of both principles yields the result that better reasons can be brought in support of Parliament’s right to discharge the Council.

In more detail:
An analysis of European law shows that the provisions can be interpreted in two different ways. Art. 319 TFEU merely deals with the discharge of the Commission for the entire budget. The provision in its original state rather points in the direction of allowing only for one unified discharge decision on the Commission’s budget. However, this understanding is questionable.

Since the insertion of the discharge regime into the Treaty in 1977 the institutions have changed immensely. The Council has increasingly turned into an executive, which needs to be controlled closely due to democratic reasons. Furthermore, the Parliament has become an important player in providing democratic legitimacy. These changes in the institutional structure call for an evolutionary approach in the historical interpretation. As the wording of art. 319 TFEU is thus ambiguous, an interpretation which gives room to complementing discharge decisions by the Parliament on the other institutions is feasible.

A teleological interpretation is employed to overcome the ambiguity regarding discharge. To find out whether Union law indeed provides for a closed system forbidding a separate discharge decision vis-à-vis the Council, arguments developed from European constitutional law principles are brought forward. Democratic accountability militates in favour of a right of Parliament to discharge the Council. On the other hand, the institutional balance with its strong focus on the independence of the Council as a co-legislative institution would deny Parliament the right to take a separate discharge decision.

Democratic ex-post-control of the Council’s budget is very weak at the moment. Neither the national parliaments nor strongly democratically legitimized Union institutions are supervising the Council’s budget. This is particularly alarming as the Council is increasingly exercising executive functions. Public discourse on the Council’s budget is hardly possible in the current framework. The solution could be to grant the right to thoroughly control the Council’s budget either to the Commission or to the Parliament. The latter option is more convincing, as it does not blur responsibilities.

The Council’s independence is a principle of European constitutional law: Parliament has no direct control over the Council as a matter of primary Union law. As the Council is the co-legislator, there are strong reasons to protect that independence. However, independence of the Council in budget matters is already limited by the Treaty, as it foresees a budget discharge via the Commission. Bearing
in mind this already existent restriction, parliamentary control of the Council would not interfere with the institutional balance.

This rather narrow reading of the institutional balance is adopted for democratic reasons. If the Council was not controlled, a central part of the Union’s executive would remain unchecked which causes great concerns in view of democracy. Decisive is not whether the Council’s expenditure is operative but the partially executive character of the Council as such which requires democratic control.

The right to discharge cannot be limited to the executive action of the Council, as the expenditure is inseparable. It is, however, limited to a control of the lawfulness of the budget. This includes supervision whether expenditure does not violate the principles of economy, efficiency and effectiveness in a sufficiently serious way.

Teleological arguments hence tilt the balance towards an open interpretation according to which a separate discharge decision by Parliament vis-à-vis the Council is allowed. The ambiguous provision on the discharge of the Commission needs to be interpreted in a way which leaves ample room for a separate complementing discharge decision by Parliament. Parliament thus has an implicit right to discharge the Council in addition to its explicit right to grant discharge to the Commission.

Parliament has a broad right to information vis-à-vis the Council. The Parliament’s right to take a separate discharge decision entails an obligation by the Council to deliver the requested documents formally. According to this preliminary draft, a duty of Council representatives to attend meetings and respond to oral questions is not encompassed by this right to information.

The Council has certain limited rights to obtain those documents which are listed in the Treaty. The broader right to information of the Parliament vis-à-vis the Commission does not apply to the Council. However, the duty of sincere cooperation requires Parliament to forward sufficiently important documents to the Council in order to ensure that the Council can effectively exercise its right of proposal.

Parliament cannot refer the question whether it indeed has the right to discharge the Council’s budget in the abstract to the ECJ. An action for annulment would fail for lack of an act of the Council with sufficient legal effect. Parliament could, however, bring an action for failure to act before the ECJ if the Council did not comply with Parliament’s right to information or with the obligation to take appropriate steps recommended in the observations accompanying the separate discharge decision.

The outcome of such a case before the ECJ is uncertain. While the author of this briefing paper is of the opinion that a teleological interpretation militates in favour of a separate right to discharge of the Parliament vis-à-vis the Council, the ECJ may take the opposite stance.
INTRODUCTION AND FACTUAL BACKGROUND

The budget discharge procedures in the European Parliament (hereinafter: Parliament) have resulted in recurring institutional conflict between the Parliament and the Council. The discharge of the Council’s budget of 2007 and 2008 was delayed by the Parliament. Concerning the 2007 budget, the Parliament’s Plenary decided to postpone its discharge decision in April 2009, finally granting it not until November 2009. In 2010 it took intensive discussion until the Plenary granted discharge to the Council of 2008 in May/June 2010. The conflict took a sharper turn in 2011. It worsened with the Plenary’s refusal to grant discharge to the Council in November 2011. Preceding the decision there had been an exchange of different legal views as to whether the Parliament was indeed entitled to decide on the discharge vis-à-vis the Council. The conflict continued within the current discharge procedure for the budget of 2010. In May 2012 the Plenary again decided to postpone the decision on discharge. At the time of writing, the decision on discharge is still pending in the Parliament’s Committee on Budgetary Control (CONT). Within this year’s procedure CONT has decided to convene a workshop to “receive external expertise by academic and independent experts”. The following questions were given to the experts:

“1. Is the European Parliament entitled to grant discharge to the Council?
- from the view of the institutional architecture and its equilibrium
- from the view of democratic scrutiny and parliamentary control
- from the view of transparency and public accountability
- from the view of economy, effectiveness, and efficiency as well as sound financial management

2. Is the European Parliament, represented by its Committee for Budgetary Control (CONT), entitled to receive the documents considered to be necessary on the budgetary implementation of the Council?

3. Is the Council obliged to deliver the documents requested in a formal way, to officially attend meetings with the CONT committee and to respond to oral questions on the budgetary implementation in the framework of discharge?

4. According to art. 319 TFEU the Council gives a recommendation to the Parliament which gives discharge. Do both institutions need the same documentary basis for setting up their respective decisions?

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6 Draft Second Report on the discharge to the Council in the Committee on Budgetary Control by Rapporteur Inés Ayala Sender, 2011/2203(DEC).
5. The refusal by the Parliament to grant discharge to the Council for its 2009 budgetary implementation did not result in any legal and/or political consequences. What (other) options should the Parliament consider for future decision-making on discharge?

This briefing paper will focus on the first question posed by the workshop outline (Part A). After laying out the regulatory framework (1.), it will show that European Union law is ambiguous on the question whether Parliament can take a separate discharge decision vis-à-vis the Council (2.). The Treaties and the Financial Regulation (FR) could be read as a closed system allowing only one single unified discharge decision on the budget of the Commission. However, a reading which allows separate discharge decisions on the budget of each institution is just as feasible (2.1.). This second reading is supported by considerations on an evolutionary approach towards historical interpretation of Union law (2.2.). To overcome the ambiguity, a thorough teleological interpretation is undertaken. The paper takes guidance from principles of European law to test the different readings of art. 319 TFEU (3.). A focus in this part will be on the question whether democratic accountability or the institutional balance command to follow a certain interpretation (3.1. – 3.4.). Afterwards two minor parts address questions 2 – 5 of the workshop outline. Firstly, rights to information of both institutions and other parliamentary rights are dealt with (Part B). Secondly, the consequences of a decision refusing discharge are examined (Part C).
PART A – PARLIAMENT’S RIGHT TO DISCHARGE THE COUNCIL’S BUDGET

1. REGULATORY FRAMEWORK

The Treaties deal with discharge in art. 319 Treaty on the Functioning of the European Union (TFEU) which in its first paragraph explicitly gives the Parliament the right to discharge only vis-à-vis the Commission. This is reiterated in art. 145 (1) FR. The FR further specifies all matters concerning the budget of the European Union. Art. 146 (1) FR provides that “the discharge decision shall cover the accounts of all the Communities’ revenue and expenditure”, in so far transcending primary law. The discharge decision of the Commission hence includes the entire budget. For the case at hand this means that the Council’s budget is included in the discharge decision in respect of the Commission. This might seem unusual, especially since the budgets of the respective institutions are set out in separate parts of the budget according to art. 316 (3) TFEU. However, the discharge on the entire budget corresponds to the sole implementation of the budget by the Commission in art. 317 (1) TFEU “on its own responsibility”. As only minor parts of the budget are implemented directly by the Commission, the Treaties and secondary law provide for rules on how to delegate financial authority to Member States and the other European institutions. Art. 50 (1) FR which is of particular interest to the case at hand provides that the Commission “shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them”. The conferred powers are limited by art. 50 (2) FR which requires the institutions to act “in accordance with this Regulation and within the limits of the appropriations authorised”. Furthermore, art. 319 (3) TFEU and art. 147 (1) FR are of interest in the regulatory framework. Art. 319 (3) TFEU imposes a duty on the Commission to “take all appropriate steps to act on the observations in the decisions giving discharge”. This obligation is extended to all other European institutions in art. 147 (1) FR.

2. AMBIGUITY OF THE PROVISIONS

2.1. WORDING OF THE PROVISIONS AND SYSTEMATIC INTERPRETATION

The provisions concerning discharge are open to different interpretations.

The most obvious approach might be an argumentum e contrario: The Parliament has the right to discharge the Commission which means that it can only discharge the Commission. This line of thought can be supported by considerations on systematic interpretation. The Commission is responsible for the implementation of the entire budget. A single unified discharge decision makes sense in such a system. Additionally, the Treaty assigns the right of proposal to the Council. If further discharge decisions were foreseen originally, there would have been a provision on the question of who was in the position to propose those. For the discharge of the Council, this would mean that it was not foreseen as it would not make sense to leave the right to propose discharge to the discharged institution itself.

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7 See the Annex for the full text of all relevant provisions mentioned.
8 Art. 1(2) FR has a definition of « institution » which is not of further interest as it is clear that the Council is a European institution.
However, this reading of Union law might not be as imperative as it might seem at first glance. The law does not read, “The Parliament can only discharge the Commission”. It could, hence, be interpreted as allowing separate discharge decisions regarding every single institution, which are taken next to the all-encompassing decision concerning the Commission. The sole responsibility of the Commission would thus not be questioned but rather complemented by further discharge decisions.

2.2. HISTORICAL INTERPRETATION

While the texts of the Treaty as well as the FR indeed do not command a single interpretation, they seem to point more towards an exclusive discharge decision on the budget of the Commission. Historically, it seems more natural to imagine that the wording was supposed to regulate only one single unified discharge decision. This understanding, however, might have changed in the course of time due to an evolutionary approach towards historical interpretation of Union law.

In general, Union law is static. It has to be changed through the treaty revision procedure of art. 48 Treaty on European Union (TEU) as far as primary law is concerned, or through the legislative procedures as provided for by the Treaties (art. 289 TFEU) as concerns secondary law. This strong emphasis on the law in force is not a mere formality but protects the vertical separation of powers between the Union and its Member States as well as the horizontal separation of powers between the EU institutions, more commonly referred to as institutional balance.

This feature of European law, however, does not require an absolute rigidity. In order to fulfil its function, the law has to adjust to changing circumstances to a certain extent. It seems inadequate to always understand Union law in the same manner as at the time when it came into force. While changes in the socio-economic surroundings hence allow for a certain room of manoeuvre, this must not dispose of the difference between law-making and interpretation. Interpretation might change in the course of time as the context changes. As long as this remains in line with the text of the Treaties, it also complies with legal certainty.

These abstract considerations can be applied to the case at hand. The right to discharge the Commission’s budget was inserted into Union law by the Treaty of Brussels which came into force in 1977. The provision dealing with the discharge decision as such has not been changed ever since. There have only been amendments extending Parliament’s rights to information and concerning the obligation to act on the observations accompanying the discharge decisions (arts. 319 [2] and [3] TFEU). The development of secondary law proceeded similarly. Already in the 1977 Financial Regulation, art. 85 provided for the discharge of the Commission. No noteworthy changes were

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9 This has mostly been argued in the field of Union competences (see e.g. Nettesheim, “Europäische Union: Kompetenzen” in von Bogdandy/Bast (Eds.), Europäisches Verfassungsrecht, 2nd ed. [Springer, 2009], 389, 400 et seq.)

10 The ECJ has taken note of that need (See e.g. ECJ, Case 45/86, Commission v. Council, [1987] ECR 1439, para. 20).


12 For the history of the discharge procedure see Rossi, Europäisches Parlament und Haushaltsverfassungsrecht (Nomos, 1997), 151-152.

made to this rule until today. The regime which regulates the discharge procedure has thus remained unchanged for more than thirty years.

In contrast, the surroundings, particularly the institutional structure, have changed immensely. Democratic accountability is a major factor in discharge procedures as will be shown later. The European Parliament’s importance in legitimizing the Union democratically has largely increased since 1977. Art. 10 (2) TEU is the most visible sign of this evolution. The discharge regime was established even before the Parliament was directly elected for the first time.\textsuperscript{14} As the European Parliament has become a major factor in the Union’s democratic legitimacy its role in discharge proceedings may have changed accordingly. Less obvious but not less important for the case at hand are the changes regarding the function of the Council. As will be shown later on as well, there is a greater need for control over the Council budget when it acts as executive. While the Council always has exercised executive functions,\textsuperscript{15} these have largely increased in the last thirty years.\textsuperscript{16} While it is not easy to exactly attribute executive or non-executive character to every act within the Union,\textsuperscript{17} a few relevant examples show the enormous extent of the changes. The importance of the European Council has greatly increased.\textsuperscript{18} In the light of this paper’s focus, it is justified to treat the Council and European Council together, as the budget of the Council includes the European Council’s expenditure. The most obvious sign of the growing importance of the European Council is its inclusion among the institutions of the EU in the Lisbon Treaty (art. 13 [1] TEU). By giving the necessary impetus and steering the development of the EU (art. 15 [1] TEU), the European Council performs typical governmental functions.\textsuperscript{19} Furthermore, major policy areas in which the European Council and Council act are nowadays shaped by executive action. It suffices to point out the two most important of these areas. In the Common Foreign and Security Policy, the European Council and the Council are the main actors. Legislative action is expressly excluded in this area (art. 24 [1] TEU). In the field of economic policy within the Economic and Monetary Union, the Council recommends guidelines for a common economic policy and decides on the deficit procedure (arts. 121 [3] and e.g. 126 [6] TFEU).\textsuperscript{20} Both policy areas were only included in the Treaties by the Maastricht Treaty\textsuperscript{21} at the beginning of the 1990s.

This brief history of the institutional surroundings shows that the relevant institutional structure has immensely changed in the course of the last 35 years. This allows interpreting Union law more dynamically here. As the socio-economic surroundings have changed immensely, it is not adequate to interpret Union law in the same manner as 35 years ago.

\textsuperscript{14} Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 8 Oct. 1976, 5-11.
\textsuperscript{15} Hayes-Renshaw and Wallace, The Council of Ministers, 2\textsuperscript{nd} ed. (Palgrave Macmillan, 2006), 324.
\textsuperscript{16} Ibid.; Lempp, Die Evolution des Rats der Europäischen Union (Nomos, 2009), 319.
\textsuperscript{17} Weiler, “The Community system: The Dual Charakter of Supranationalism”, 1 Yearbook of European Law (1982), 267, 287.
\textsuperscript{18} Dann, “The Political Institutions” in von Bogdandy/Bast (Eds.), Principles of European Constitutional Law, 2\textsuperscript{nd} ed. (Hart, 2010), 261.
\textsuperscript{19} Weiler, supra note 17, 287.
\textsuperscript{20} The institutional structure in this area has changed recently with the so called Six Pack. For details see Antpöhler, "Emergenz der europäischen Wirtschaftsregierung - Das Six Pack als Zeichen supranationaler Leistungsfähigkeit", 2 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (2012), 353-393. The Commission has acquired a more important role but the Council still performs executive tasks.
One might rejoin that the legal framework has been confirmed repeatedly when the Treaties were changed or secondary law was reframed. The Treaties have undergone several comprehensive reforms in the last 35 years. The FR was newly adopted in 2002, replacing the former version of 1977. All these reforms, however, left the discharge provisions untouched. It might be argued that the legislative institutions and the Treaty reformers consciously chose to keep the discharge procedure as it was. In the legislative materials and the travaux-préparatoires to the Treaty amendments, there is no hint to a discussion on the discharge mechanism. The materials on the Convention leading to the Constitutional Treaty as well as the preamble to the 2002 FR do not contain evidence of any discussion on this question. Thus, the current regime, rather than having been conserved by a conscious decision, seems to be the result of a continuous transfer from the previous legislation or Treaty to the current one without further discussion. With the conscious decision taken back in 1975, there is therefore ample room for an evolutionary interpretation of the discharge regime.

A further argument against evolutionary interpretation might be the failed revision of the FR of 2012. The Parliament tried to include a right to discharge all institutions individually, but this was blocked by the Council and did not find its way into the eventual compromise. There is hence for the first time a discussion on whether to grant discharge to the Council's budget. However, this cannot rule out an evolutionary interpretation of Union law either, because the two legislative bodies did not decide to settle the issue. Instead, the failed revision resulted in an agreement to disagree. Neither was an express provision included which ruled out Council discharge, nor was such discharge expressly provided for. As the institutions differ on the interpretation of existing Union law, neither institution can validly use the failed revision as an argument for their position. Furthermore, if the failed revision were to exclude an evolutionary interpretation of Union law, the Council would not only be able to decide on the future law but also on the interpretation of the current law. The Council could, by refusing reform of the FR, influence the interpretation of the current FR. This would turn the attempt to specifically lay down the discharge of the Council into its opposite. By trying to include the right to discharge the Council, Parliament would have excluded the ability to take a discharge decision concerning the Council under the law in force. As this would contradict the Parliament's efforts, the amendment tabled by the Parliament cannot hinder an evolutionary interpretation of the provisions going beyond the time they were drafted in.

### 2.3. PRELIMINARY RESULT: AMBIGUITY OF THE PROVISIONS

If this evolutionary interpretation is applied, the room which art. 319 TFEU leaves for interpretation, becomes more obvious. Back in 1977 the provision might have been understood as excluding all other discharge decisions. This understanding has changed. Nowadays, the provision can either be understood as permitting only a single comprehensive discharge decision vis-à-vis the Commission, or as only dealing with this part of the discharge proceedings but leaving ample room for discharge decisions concerning other institutions.

To come to a result in this state of ambiguity a teleological interpretation is applied. European legal principles are activated to find out weather the provisions indeed foresee a closed system with a single unified discharge decision or are open for separate complementing decisions.

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22 The text awaits first reading in the Parliament at the moment. The Parliament postponed the vote on the legislative resolution as there were numerous amendments (T/-0465/2011 of 26 Dec. 2011). The original proposal can be found at COM(2010)0815 from 22 Dec. 2010. The text of the reached compromise is on hold with the author by submission of the Parliament.
3. TELEOLOGICAL INTERPRETATION: OVERCOMING THE AMBIGUITY WITH EUROPEAN PRINCIPLES

There are a number of principles of European law which can be mobilised for or against a separate discharge decision on the Council’s budget. This chapter will examine these principles in more detail, focussing on democratic accountability, sound financial management, autonomy in internal organization and institutional balance.

3.1. DEMOCRATIC ACCOUNTABILITY

Democracy lies at the very core of the European Union as expressed in art. 2 TEU. The accountability of EU institutions for every exercise of public authority is a central feature of this concept of democracy. More specifically, accountability in budget discharge procedures is of major importance, as it provides democratic legitimacy to the budget through ex-post-control. Furthermore, it is the basis for public discourse on the Union’s expenditure and hence constitutes a central element of the principle of transparency enshrined in art. 11 (2) TEU. How are these general principles implemented in the budget proceedings, and can they have an influence on the question whether to grant Parliament a right to discharge the Council?

Corresponding to the two ways Union law can be interpreted concerning the discharge of the Council, there are also two contrasting views on how accountability can be established concerning the Union’s budget.

Of course, the democratic legitimacy of the Union budget is not only based on the discharge decision. Let there be no doubt about the potential of the process of budget establishment and implementation itself to promote public discourse and enhance transparency. As this paper focuses on the discharge procedure, however, it has to concentrate on the possible ways democratic legitimacy can be assured after the budget has already been implemented.

Without a discharge decision by the Parliament on the Council’s budget, accountability could be established as follows. Democracy in the Union rests on two strands: On the one hand citizens are represented via their Member States in the Council, and on the other hand Union citizens are directly represented in the European Parliament (art. 10 [2] TEU). To achieve strong democratic legitimacy, both strands should have a say in the ex-post-control of the Union budget. The Member States in the Council are accountable to their respective parliaments (art. 10 [2] TEU). Legitimating the discharge procedure via the national parliaments is difficult. There have been efforts within the EU in recent decades to strengthen this strand of legitimacy, the most visible sign of this being art. 12 TEU. However, this provision does not affect the ex-post-control of the Council's budget. Participation rights of national parliaments focus mainly on legislative proceedings. This might not just be due to a lack of European legislation but might instead be due to systemic limits to giving a role to national parliaments in the European discharge procedure. In European law there is no role for national parliaments in budget discharge. National law can provide rights to information of national parliaments which could also affect the control of the Council’s budget. As expenditure, however, is not directly attributable to a single national government, national parliaments are less interested in control here than in legislative proceedings. In contrast to legislative actions, expenditure cannot be divided between the different governments in most cases, which makes the controlling power of each national government ineffective. For budget control to be effective, the Council in general has to come into the picture.
This leads to consideration on the second strand of legitimacy, via the European Parliament to the Union citizens. If art. 319 TFEU was conceived as a closed system allowing only a single unified discharge proceeding, and thus, the European Parliament could not control the Council’s budget directly, accountability would need to be established indirectly. While the Commission implements the budget “on its own responsibility” (art. 317 (1) TFEU) it transfers implementing powers to the Member States and to the other EU institutions (art. 50 (1) FR). The conferred powers are limited in art. 50 (2) FR as the institutions need to act “in accordance with this Regulation and within the limits of the appropriations authorised”. The institutions implementing the budget are thus bound to respect the law and the budget appropriations itself. This is an important expression of the rule of law which is capable of conveying democratic legitimacy to the Union. However, there are doubts about how effectively this provision can indeed be implemented. It provides for a prior commitment of the Council. In order to be effective, this commitment needs to be checked afterwards. The rule of law aspect needs to be complemented by accountability. As regards the Commission, accountability is established via the discharge procedure of art. 319 TFEU covering all expenditures including those of the Council. If the Commission had the right to control the Council’s budget, there would be a link from the Parliament to the Council via the Commission. The strand of legitimacy via the Union citizen would be represented in the ex-post-control of the Council’s budget. However, the FR does not deal with the Commission’s supervision of the Council’s budget. The control by the Member States is expressly dealt with in e.g. art. 53b (2) FR. Furthermore, there are moves towards an Integrated Common Control Framework.23 If the budget is implemented by third countries, art. 53c (2) FR specifies why the Commission can assume financial responsibility. This is further underlined by the agreements the Commission has to enter into with third countries according to art. 166 FR. The scope of these treaties also encompasses provisions on sound financial management. No similar provisions exist with respect to the Council. There is hence no link between the Council and the Parliament regarding ex-post-control of the budget.

Even if such a link was established, doubts might remain as to its efficiency and the subsequent capacity of this strand of legitimacy to be sufficiently represented in the ex-post-control of the Council’s budget. Inherent to accountability and closely linked to transparency is the fact that the citizen has to know which institution is responsible for a certain act. That responsibility would be severely blurred if the Council was held accountable only via the Commission. For the Union’s citizens it would be hardly distinguishable whether the Council or the Commission was held responsible in a unified discharge decision. It might be argued that this is inherent to the system Union law provides. The Commission is responsible for all of the expenditure. Then, a certain blurring of responsibility cannot be avoided. While this line of argument carries some weight, it does not rule out separate discharge decisions, however. The discharge decision concerning the Commission should reach as far as the Commission exercises public authority. The Parliament can control whether the Commission sufficiently takes into account the Union’s interest in sound financial management when conferring budget implementing powers or when exercising control after the expenditure has been spent. Beyond this the Commission is not able to influence budget expenditure. To extend its responsibility beyond its ability to act would not seem justified. This is where separate discharge procedures would come into play. Those exercises of public authority which are beyond the Commission’s reach could be controlled in these separate discharge proceedings.

One of the most important institutions in budget audit has been left out so far. The European Court of Auditors has the task to “examine the accounts of all revenue and expenditure” and in particular controls “whether the financial management has been sound” (art. 287 [1] and [2] TFEU). Could the supervision by the Court of Auditors provide a substitute for democratic accountability? The role of the Court of Auditors in acquiring democratic legitimacy for the Union’s budget is only complementary. This can already be seen by the fact that Parliament still decides on the discharge of the Commission after the report of the auditors. Furthermore, Parliament’s rights to information according to art. 319 (2) TFEU are not limited to the Court of Auditors’ report. This allows drawing conclusions as to the more general role of the Court of Auditors. It complements accountability, but cannot replace it. This set-up is indeed convincing and can be applied beyond the scope of art. 319 TFEU. As the Court of Auditors is appointed by the Council in close cooperation with the Member States (art. 286 TFEU), the Court’s democratic legitimacy is far more indirect than that of the Parliament. Thus, one cannot place too high expectations on the Court of Auditors in providing democratic legitimacy. Parliamentary control has much more capacity to enable public discourse on Union matters. Additionally, the scope of the Court’s audit is very limited. In 2011 it tested 58 transactions for all European institutions.\(^\text{24}\) It also examined the efficiency of the system which the institutions use to ensure compliance with the FR. The Court of Auditors’ report is limited to the statement that those systems are indeed effective. The facts on the institutions’ budgets are hence limited in a manner which hinders a public discourse on the overall budget. While it is illusionary to expect Parliamentarians with a high workload to scrutinise all budget details more thoroughly, the different institutional character of Parliament might yield information the Court of Auditors does not receive.

To sum up, if the Council evaded a discharge decision of the Parliament, there would be severe problems with accountability in the ex-post-control of the Council’s budget. Neither the national parliaments nor the Commission are indeed able to effectively control the Council’s expenditure. As no strong democratically legitimized institution controlling the expenditure exists, there is indeed a severe problem of accountability. While a stronger control through the Commission would somewhat alleviate this problem, it would not vanish as this control would lead to a significant blurring of responsibilities. There would be fewer democratic problems if the Parliament indeed was able to discharge the Council’s budget. The accountability would be efficiently established. The strand of legitimacy via the Union citizens would be represented strongly. The second strand would, however, still be weak since the national parliaments would still only play a role if national law so provided. However, this is – at least partially – due to systemic problems which cannot be addressed adequately. Budget control is not attributable to a single national delegation but rather to the Council in general. If this strand of legitimacy remains weak, there is even more reason to strengthen legitimacy via the European Parliament. As interests of the EU as a whole are affected, the Parliament is the place where budgetary facts should be dealt with. In conclusion, a parliamentary right to discharge the Council offers strong advantages if assessed from the viewpoint of democracy.

### 3.2. SOUND FINANCIAL MANAGEMENT

An assessment of the two possible modes of interpretation in light of the principle of sound financial management does not yield strong results in support of either position. The principle of sound financial management is laid down in art. 310 (5) TFEU and is further spelled out in Part III of the

\(^{24}\) Court of Auditors, Annual Report concerning the financial year 2010, OJ C 326, 10 Nov. 2011, 194.
Interinstitutional Agreement on budgetary discipline and sound financial management and in Chapter 7 of the FR. Sound financial management by the Council is guaranteed through an internal audit and an external audit by the Court of Auditors. Neither primary nor secondary law foresee further control by other institutions. This might be questioned in view of the principle of sound financial management. However, as already mentioned above, it seems questionable whether Parliament as a political rather than an administrative institution can indeed thoroughly check the Council’s expenditure. An additional check might offer advantages. But as these positive effects would come in terms of democratic benefits rather than contribute to sound financial management, the principle of sound financial management has no bearing on the question at hand.

3.3. AUTONOMY IN INTERNAL ORGANIZATION

Autonomy in internal organization is repeatedly mentioned in the discussion on the question whether the Parliament has the right to discharge the Council. It is used in different contexts. Parliament has used it to ascertain its right to decide on the discharge. It is argued that, as the Council is autonomous in its internal organization, the Commission cannot be held responsible for the Council’s budget since this would violate the Council’s autonomy. On the other hand, the principle of autonomy in internal organization can be used to forbid Parliament to decide on the discharge of the Council. According to this view, autonomy would entitle the Council alone to decide on the control of its own budget. Other institutions’ involvement would constitute a severe restriction of the Council’s autonomy.

The principle of autonomy in internal organization has been developed by the European Court of Justice (ECJ). Art. 335 TFEU partially codifies this principle concerning the representation of the EU within Member States. However, the principle goes beyond this field and is a principle of Union law which regulates all actions of EU institutions. The autonomy in internal organization is part of the more general principle of institutional balance and hence can be inferred from art. 13 (2) TEU which sets out that “[e]ach institution shall act within the limits of the powers conferred”. It is thus the basis for a horizontal division of powers. As to the principle’s content, the ECJ has recognized that the institutions may regulate their internal proceedings. This is “intended to ensure the proper functioning of the institution”. The autonomy of internal organization is nevertheless subject to the limits of Union law, in particular the powers conferred on the respective institution.

The principle of autonomy in internal organization cannot be used to argue for a right to discharge of the Parliament on the Council’s budget. It is argued that, as the Council is autonomous, it needs to take up responsibility for its own expenditure. While that might be true from other perspectives, it cannot be convincingly established from the principle of autonomy in internal organization. It is already doubtful whether the principle also implies obligations of the institutions and is not just limited to rights. Furthermore, the “own responsibility” of the Commission in budget implementation

26 European Parliament Resolution of 10 May 2011 with observations forming an integral part of its Decision on discharge, P7_TA(2011)0197, point 2.
27 If it is used in a context other than art. 335 TFEU, it is thus misleading to cite art. 335 TFEU as the correspondence between Parliament and Council on this point shows.
is foreseen by the Treaty. Granting discharge to the Commission also in view of the Council's budget can hence not violate the principle of autonomy as it is foreseen by the Treaty.

But can the autonomy in internal organization rule out the right of Parliament to give discharge to the Council? The doubt stems from the type of expenditure the Council is undertaking. Most of its expenditure is spent on staff, buildings, equipment and other operating expenditure. Dealing with one's own staff is central to an institution's autonomy. While this indeed limits a right to discharge Council, it cannot rule out the possibility of control. The Council has to have the right to decide autonomously on the question whether staff or a building is necessary. However, the Council has this leeway only if the expenditure spent is indeed lawful. As art. 310 (5) TFEU and the Interinstitutional Agreement on budgetary discipline and sound financial management make clear, expenditure in violation of the law affects the financial interests of the Union as a whole. The public has an overriding interest in being informed of those violations. This is underlined by the fact that the institutions' budgets are not only examined by an internal audit but also by an external one through the Court of Auditors. The institutions' autonomy can hence not be used to rule out supervision of the lawfulness of expenditure. A parliamentary right to control the Council's budget would, however, be limited to a control of lawfulness.

This supervision, however, can still turn out to be very broad. The principles of the FR are of particular importance in this regard. The principle of sound financial management which is subdivided into the principles of economy, efficiency and effectiveness could easily be raised by the discharge authority. In some cases, this might make it hard to distinguish questions of lawfulness from issues of necessity beyond the reach of supervision. To balance the interests of the Council and the budget authority, control should be limited to sufficiently serious violations. Whether Union law indeed is sufficiently seriously violated needs to be assessed based on all aspects of the individual case at hand. Most important would be the impact the violation has on the Union's finances and the obviousness of the violation. Beyond the principle of sound financial management, it would have to be assessed whether the violation of a certain provision as such is sufficiently serious or whether a breach has to pass a certain threshold.

Lastly, a right of Parliament to discharge the Council would be limited in one further respect. The Parliament can only address the Council as an institution in its entirety. While expenditure is generally spent by the Council's General Secretariat, the Parliament cannot address this organ within the Council. The Council as such is responsible. Addressing an administrative authority directly might influence this authority negatively as it lacks the political power to resist pressure the Council as such enjoys. The organization of who is in charge of dealing with discharge is part of the Council's autonomy of internal organization.

The autonomy in internal organization does not rule out a separate discharge decision on the budget of the Council. However, it limits a possibly existing right to discharge to the extent that the Parliament would not be entitled to check whether an expenditure was necessary. Instead it would be restricted to controlling the lawfulness of the spending. Additionally, the violation would have to

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32 The criterion of “sufficiently serious” has a long history in Union law. It was established by the ECJ in the field of state liability (ECJ, Joined Cases C-46 & 48/93, Brasserie du Pêcheur and Factortame III, [1996] ECR I-1029).
be sufficiently serious. Furthermore, Parliament would only be able to address the Council as such and could not distinguish between administrative authorities within the Council.

3.4. INSTITUTIONAL BALANCE

Beyond the particularities of the principle of autonomy in internal organization it might be questioned in more general terms whether the institutional balance would be upset by a right of the Parliament to decide on the discharge of the Council. The principle of institutional balance, which can be derived from art. 13 (2) TEU, is a principle of European constitutional law which has been developed by the ECJ. It reflects the division of powers between the institutions not implying a certain balanced role of the institutions, but ruling out changes that depart from the institutional structure as foreseen by the Treaties. A certain institutional practice as the right to discharge at hand may then not deprive another institution of their right provided for by the Treaties. Of particular importance to the question at hand is the following statement by the ECJ in Wybot:

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\text{In accordance with the balance of powers between the institutions provided for by the Treaties, the practice of the European Parliament cannot deprive the other institutions of a prerogative granted to them by the Treaties themselves.}
\]

Applied to the discharge procedure, this means that Parliament cannot exercise a complementary discharge decision on the Council’s budget if this would deprive the Council of a prerogative explicitly or implicitly granted to it by the Treaties. There are two points of view from which a violation of the principle of institutional balance could be alleged. First, there are some precise concerns which will be addressed in a first part (3.4.1.). Afterwards it will be dealt with the abstract notion of the Council’s independence as the major challenge for the Parliament’s right to grant discharge separately (3.4.2.).

3.4.1. Overcoming Precise Concerns

There are three precise concerns in the realm of the institutional balance which need to be addressed. A right of Parliament to discharge also the Council’s budget could alter the institutional structure within the financial provisions of the Treaty itself. Furthermore, there are two precise points which raise doubts as to the influence Parliament could exert on the Council as a legislative institutions via the discharge proceeding.

The first of these more precise concerns deals with the Council’s role in budget proceedings. It could be argued that the Treaty foresees only one single unified discharge decision on the entire budget granted to the Commission. Taking a discharge decision on the Council’s budget would then deprive the Council of its role as prescribed by the Treaty, which consists of not being controlled. However, this line of argument would be circular. It has been shown above that the wording of the Treaty is ambiguous. The teleological interpretation through the application of European principles aims at overcoming exactly that ambiguity. Art. 319 TFEU can hence not be used to argue that a discharge decision by the Parliament would upset the institutional balance. More generally, it might be argued that the Council has a leading role in all steps of the Union’s budget procedure and that the

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Parliament’s right to discharge the Council would alter this position. This argument fails to convince as well. The Treaty explicitly distinguishes between the establishment, the implementation and the discharge of the budget, so an analysis has to treat these issues separately as well. If the focus is only on budget discharge, there is no leading role of the Council. The Treaty foresees for the Parliament to be the decisive authority on discharge. This would not be altered by a parliamentary right to discharge the Council. Still, it might be questioned whether the Council would be deprived of its right to proposal according to art. 319 TFEU. A complementary right to discharge the Council and other institutions would, however, be independent of art. 319 TFEU. To grant the Council the right to propose discharge on its own budget seems to add no further advantage, as the Council will already have concluded its own internal audit and will have responded to the report of the Court of Auditors. It then seems rather far-fetched to grant the Council a right to propose discharge on its own budget. For the other institutions which the Parliaments grants discharge to, such a right could very well be argued for, but this is beyond the ambit of this study. The institutional balance as foreseen by the Treaty in the field of the Union budget would thus not be compromised by a right of Parliament to discharge the Council.

Of more concern is that the Parliament’s right to give discharge to the Council might upset the institutional balance between the Parliament and the Council in the legislative proceedings. According to arts. 289 (1) and 294 TFEU, Parliament and Council jointly adopt legislative acts in the ordinary legislative procedure. Implicit in these provisions is the idea that Council and Parliament should be on an equal footing as legislative proceedings are concerned.

The balance in legislative proceedings could be upset in two precise ways by granting the Parliament the right to decide on discharge of the Council’s budget. First, Parliament could use this right to exert influence over legislative proceedings via the discharge procedure. It could e.g. change the Council’s internal organization which is concerned with legislative proceedings. Second, Parliament could use the discharge procedure as an instrument to exert pressure within legislative proceedings. Both risks can be minimized through contagion strategies. The remaining risks do not amount to an interference with the institutional balance if assessed in light of the principle of democracy.

The first concern is that Parliament could exert influence on the Council’s internal organization in legislative proceedings and thus indirectly increase its power. An administrative section of the Council which stands in the way of Parliament’s interests in legislative proceedings could, for example, be recommended to decrease its staff. This concern seems, however, to be more of a theoretical nature. It still remains for the Council to decide whether to follow the observations accompanying the Parliament’s discharge decision according to art. 147 FR as long as it takes appropriate steps. As will be seen later, Parliament has only a limited right to judicially enforce these observations. Furthermore, as already shown above in a more general context, Parliament has to keep interference with the Council’s internal organization to a minimum. There were limits to the Parliament’s control introduced. This would rule out arbitrary interventions by Parliament on the Council’s powers in legislative proceedings. The risk of interference with internal proceedings concerning legislation can thus be kept small.

The second concern which can be specified in detail is that Parliament could use the discharge procedure to exert influence on the Council. While it is generally not objectionable for Parliament to join different acts together for negotiation, this is different where discharge is concerned. Discharge

36 ECJ, Case C-149/85, Wybot, [1986] ECR 2391, para. 23.
differs from other parliamentary proceedings, as it is more of a legal proceeding than a political one. The purpose of granting Parliament the right to discharge the Council would be to achieve accountability by a thorough control of the Council’s budget. The intent would not be to politicize discharge proceedings beyond the legal questions. Parliament is always – and rightly so – a place for political public discourse. This is what the right do give discharge to the Council is intended to seize on. There might be different political positions on the expenditure of the Council. However, safeguards should be implemented to prevent considerations not at all connected to discharge from playing a role. It should be ensured that discharge indeed focuses on the expenditure of the Council. This could be done by explicitly ruling out the connection of discharge proceedings with legislative proceedings. The existence of a separate Committee on Budgetary Control within the Parliament might already be a helpful step in that direction. The danger of Parliament exerting influence on legislative proceedings via the discharge procedure can hence be limited.

3.4.2. The Abstract Notion of the Council’s Independence as a Co-Legislator – The Major Challenge for the Parliament’s Right

While the specified concerns outlined above can be minimized, there is a more abstract notion that Parliament and Council as co-legislators should always be on an equal footing. This should be ensured by entirely ruling out even the slightest possibility that one of the institutions could exert influence over the other, the argument goes. If this idea was to be followed, Parliament could not at all interfere with proceedings of the Council or vice versa. This notion is true for most of the Treaty. There is no field where one of the institutions can directly control and hence exert influence over the other.37 Their only points of contact are the legislative proceedings. Historically, this might have been the reason to exclude an explicit provision on discharge of the Council. This would also explain why the Treaty foresees the procedure via the Commission and provides no direct link from the Parliament to the Council. The independence of a legislative body from outside influence is an important aspect. The right of a legislative body is already in abstract a value worth protecting.

This abstract notion of keeping the institutions entirely separated is the strongest argument against a right of the Parliament to discharge the Council. While a thorough comparative investigation would exceed the scope of this paper, this notion might also be the reason why in federal states budgets between both chambers are thoroughly distinguished. However, in the EU this autonomy of the institutions is not absolute. In particular within the field of the Union’s finances, it is limited. It is beyond doubt that Parliament can give discharge to the Commission on all revenue and expenditure, including the Council’s expenditure (art. 146 FR). The Council is thus – independent of the answer to the question of this briefing paper – never entirely autonomous in budget proceedings. A further budgetary obligation of the Council to “take all appropriate steps to act on the observations accompanying the European Parliament’s discharge decision” is provided for in art. 147 (1) FR. The Council’s autonomy is thus severely restricted in the field of the Union’s budget which is unique in European law. If Union law did not provide for a control of all expenditure, it would be impossible to argue for a right of Parliament to decide on the discharge of the Council. However, the detrimental impact on the Council’s position is far more limited. The question is only whether Parliament would always need to proceed via the Commission or whether the direct route of control with its further implications could be taken.

37 Lennaerts/van Nuffel, supra note 28, para. 13-010.
The Council retains thus in budgetary proceedings only minor parts of its originally all-encompassing autonomy. The question at hand is then whether an interference with this rest would amount to a violation of the principle of institutional balance. This should be assessed in light of the principle of democracy. To reach an overarching teleological interpretation, the principles cannot be assessed entirely independent of one another.

The ECJ’s interpretation of the principle of institutional balance has remained very vague. If overriding interests of democracy so required, the principle of institutional balance could – without deviation from the ECJ’s case-law – be interpreted narrowly. The Treaties provide for a control of the Council’s budget. Whether that happens via the Commission could be seen as a procedural aspect which is not part of the institutional balance. The principle of institutional balance would then not even be affected. This narrow reading ought to be applied if important aspects of democracy favoured it.

Considerations of accountability strongly militate in favour of a right of Parliament to discharge the Council. It has been shown that the EU would gain immensely in terms of democratic legitimacy if the Council was subject to the Parliament’s review. Right now democratic accountability is missing, as the Council is not checked externally and directly by any strongly legitimized institution. While the independence of the legislative body is an important aspect, it must not be forgotten that the Council is increasingly acting as an executive power. The budget procedure is a central element of controlling an executive. The partially executive character of the Council as such requires democratic control. This is independent of the Council not undertaking operative expenditure. If Parliament were not given the power to decide on the discharge of the Council, there would be an enormous part of executive public authority which would escape accountability. Granting Parliament the right to discharge the Council is the best possibility to diminish this immense deficit. The detrimental effects to the independence of the Council as a legislator are rather small in comparison. The practical effect on the functioning of the Council will probably not be big.

3.4.3. Result: Parliament’s Right to Discharge the Council
It is thus more convincing to adopt a narrow reading of the principle of institutional balance. There is hence no interference with the Council’s right. Democratic concerns justify limiting the principle of institutional balance. The direct control of Parliament vis-à-vis the Council is therefore possible. The Commission does not have to act as a mediator in the separate discharge procedure which complements the discharge of the Commission. This briefing paper thus comes to the conclusion that it is convincing to give Parliament the right to decide on the discharge of the Council. However, as Union law is ambiguous, it can and might be read differently by the ECJ.

3.4.4. No Limitation to Executive Action
It could be argued that it would be best to limit the right of Parliament to decide on the discharge to executive actions only. A clue to such a solution is included in the Parliament’s Rules of Procedure. Rule 77 allows separate discharge decisions but includes the Council only “as regards its activity as executive”. Limiting the Parliament’s right like this would indeed have positive consequences. As argued above, the need for parliamentary control is particularly pressing with regard to executive action. Furthermore, the independence of the Council would be affected less strongly than if its legislative actions were supervised as well. Provisions which this distinguishing might rely on are arts. 16 (8) TEU and 289 (3) TFEU which provide that the Council has to convene publicly if acting in a legislative function. While this distinction is theoretically convincing, it would not work in practice. Not only is there no distinction between legislative and executive action in the Council’s budget, but
also this differentiation simply cannot be made. The Council’s expenditure mainly comprises costs for staff and buildings. In particular, administrative tasks do not lend themselves to a categorization into executive and legislative tasks. The same applies to the expenditure for buildings. Neither can it be evaluated whether a certain appropriation within the budget has its focus on executive or legislative functions. Take the example of ECOFIN. Is ECOFIN mainly performing executive or legislative tasks? And does that assessment change, if one takes into account that the same room is used by other formations of the Council to convene? While a distinction between executive and legislative expenditure would hence theoretically be convincing, it is impossible in practice.

4. FURTHER POINTS

There are a few minor further points which came up in discussions and allegedly have an influence on the question whether Parliament is indeed entitled to grant discharge to the Council. All of these have no decisive influence on the outcome of the question. Parliament does not need an express provision in the Treaty to be able to grant discharge to the Council’s budget (4.1.). Furthermore, the Gentlemen’s Agreement of 1970 cannot exclude the Parliament’s right (4.2.). Lastly, the Parliament’s Rules of Procedure and the Parliament’s conduct in recent years have no bearing on the result of the question (4.3.).

4.1. NO EXPRESS PROVISION GRANTING THE RIGHT

It might be argued that the Parliament is not entitled to grant discharge already due to the fact that there is no express legal provision within the Treaties which allows it to do so. The Parliament continuously refers to art. 314 (10) TFEU in its discharge decisions. This norm, however, does not confer competences on the Parliament; it merely constitutes a duty of the institutions to exercise their existent competences in a certain manner. None of the further norms referred to (arts. 317, 318 and 319 TFEU) confer competences on the Parliament in respect of the discharge of the Council. This, however, does not preclude the Parliament’s right. The ECJ has explicitly held that for Parliament to take a decision it does not need an explicit power. Instead, it can adopt resolutions on any question. This parliamentary right is only limited by the respective powers of the other institutions. For the question at hand, it follows that the Parliament does not need an explicit competence to grant discharge. Instead it was shown above, that the decision by the Parliament does not encroach on the rights of the Council without sufficient justification.

4.2. GENTLEMEN’S AGREEMENT OF 1970

Another line of argument that seeks to exclude the Parliament’s right to discharge refers to a Gentlemen’s Agreement of 1970. The agreement provides the following:

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40 Ibid., para. 40.
41 The Gentlemen’s agreement can be found in the minutes of the Council meeting of 22 Apr. 1970. The German wording has been submitted to the author by the General Secretariat of the Council. The provision referred to is not entailed within the submitted text. It is not traceable in due time whether that is due to a failure in transfer, translation or whether such a statement is not included in the Agreement. However, as Parliament continuously refers to the statement in this form, it seems safe to use it for interpretation.
The Council undertakes to make no amendments to the estimate of expenditure of the European Parliament. This undertaking shall only be binding in so far as this estimate of expenditure does not conflict with Community provisions, in particular with regard to the Staff Regulations of Officials and Conditions of Employment of Other Servants and to the seat of the institutions.

Speculation has it that a reciprocal duty not to control the Council was agreed upon by the Parliament. There are three reasons why this does not rule out a right of Parliament to discharge the Council. First of all, the provisions are explicitly described as a Gentlemen’s Agreement. While the ECJ only had to deal with the legal effects of Gentlemen’s agreements between individuals, their effect between public authorities can be deduced from international and municipal law. Both legal sources have in common that they regard gentlemen’s agreements as non-binding. This is transferable to the regulation of the relationship between two public authorities. The Gentlemen’s Agreement has, hence, no legal effect. Secondly, there is no hint within the agreement that a reciprocal duty was agreed upon by the Parliament. To interpret the agreement in that manner would need at least some indication within the wording. Thirdly, the scope of the agreement is very limited. Already by its wording, it excludes the control of expenditure vis-à-vis “Community” provisions. As was shown above, the right to discharge concerns exactly such control. Parliamentary control is limited to examining whether the Council’s budget violates Union provisions. This legal evaluation is not dealt with in the Gentlemen’s Agreement. The Gentlemen’s agreement can, hence, clearly not forbid the Parliament to discharge the Council.

4.3. PARLIAMENT’S RULES OF PROCEDURE AND ITS CONDUCT

The Parliament’s right to discharge is explicitly granted in its own Rules of Procedure. The relevant Rule 77 reads as follows:

The provisions governing the procedure for granting discharge to the Commission in respect of the implementation of the budget shall likewise apply to the procedure for granting discharge to:

[...]
- the persons responsible for the implementation of the budgets of other institutions and bodies of the European Union such as the Council (as regards its activity as executive), the Court of Justice of the European Union, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions;
[...]

This provision, however, cannot be used to argue in favour of Parliament’s right to discharge. While Parliament has the power to determine its own internal proceedings, this right is limited to purely

42 In competition law, the ECJ gave legal effect to Gentlemen’s agreements (e.g. ECJ, Case 41/69, ACF Chemiefarma NV v. Commission, [1970] ECR 107-116). This can, however, not be transferred to the case at hand, as the decision has to be interpreted in conformity with competition law’s intention to effectively control private actions.
The autonomy of internal organization does not allow imposing duties on other institutions. Thus, the Parliament’s Rules of Procedure have no effect on the question whether the Parliament indeed has the right to discharge the Council. Conversely, this does not mean that a right to discharge is excluded.

It might be argued that the Parliament already has the right to discharge the Council, since such discharge has been institutional practice for a number of years. However, the ECJ has made clear that “a mere practice cannot override the provisions of the Treaty”. The Parliament’s practice can hence have no bearing on the question at hand.

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45 This has not been held explicitly by the ECJ but seems to follow obviously from the power being an internal one. The ECJ has only dealt with limits to decisions which do not impose legal obligations on other institutions. Those are limited by the principle of sincere cooperation (ECJ, Joined Cases C-213/88 & C-39/89, Luxembourg v. Parliament, [1991] ECR I-5643, para. 34).

PART B – COMPLEMENTARY RIGHTS OF PARLIAMENT AND COUNCIL’S RIGHT TO INFORMATION

This part deals with question 2 – 4, all of which concern rights to information of both institutions and similar prerogatives possibly held by the Parliament.

1. RIGHTS OF PARLIAMENT COMPLEMENTING THE RIGHT TO DISCHARGE

The first and second question concern rights of the Parliament. It is asked whether Parliament is “entitled to receive the documents considered to be necessary on the budgetary implementation of the Council” and whether “the Council is obliged to deliver the documents requested in a formal way, to officially attend meetings with the CONT committee and to respond to oral questions on the budgetary implementation in the framework of discharge”.

Arts. 318 and 287 (1) and (4) TFEU provide for Parliament to obtain certain documents by the Commission and the Court of Auditors which form the basis of the discharge decision. Beyond this, art. 319 (2) TFEU grants Parliament an all-encompassing right to receive the information it deems necessary to exercise budget control vis-à-vis the Commission. This right is not limited to the time during which Parliament deals with discharge but instead comprises a complimentary expenditure control while and after the budget is being implemented. As the Commission’s responsibility in budget implementation includes the Council’s revenue and expenditure (art. 317 [1] TFEU and art. 146 [1] FR), the Parliament’s right to information extends to the Council’s budget. The Commission thus has an obligation to report thoroughly on the budget implementation by the Council. To fulfil this duty, the Commission depends on the assistance of the other institutions. Because of this, the Parliament’s right to information would be rendered meaningless if the other institutions could resist cooperation. Therefore, the duty of sincere cooperation (art. 13 [2] TEU) comes in, resulting in an obligation of the other institutions to provide the necessary information to the Commission. On the other hand, an obligation by the institutions to directly inform the Parliament cannot be inferred from the Treaty and the FR provisions. It might simplify the relations between the institutions, and they can still voluntarily choose to directly approach the Parliament, but this does not change the fact that the Treaty contains no such obligation.

However, a right of the Parliament to be directly informed follows from its unwritten right to decide on the Council’s discharge. The Parliament’s right to discharge would be rendered meaningless if it could not act on a sufficient basis of information. The principle of democracy which mandates the Parliament’s right to discharge must also enshrine a right to information to be effective. However, the restrictions established above for the right to discharge must apply here as well. Thus, Parliament’s right to information is limited to those documents which give information on the question whether the Council’s expenditure has been lawful. This might coincide with the findings of the Court of Auditors. However, as argued above, for Parliament’s right to be effective it cannot be limited to the Court’s report. This is underlined by the Treaty provision which gives the Parliament vis-à-vis the Commission a right to information beyond that source (Art. 319 [2] TFEU). While the provision cannot be applied to the Council directly, its idea can be transferred. Parliament thus has a right to information which comprises all documents relevant to the question whether the Council has acted

lawfully. Parliament’s right to information corresponds to an obligation of the Council to deliver the documents in a formal way.

Art. 319 (3) TFEU obliges the Commission to report to the Parliament and the Council on the measures taken in light of the observations contained in the discharge decision. Art. 147 (2) FR extends this duty to all institutions. Parliament can hence ask the Council for a report on the implementation of the observations.

It is further asked whether Council would, as a result of the Parliament’s right to information, have to attend the proceedings of the CONT committee and respond to oral questions. The Treaties do not provide for a general right of the Parliament to ask questions or oblige the Council to attend meetings. Art. 230 (3) TFEU just gives the Council the right to be heard. The right to ask questions in art. 230 (2) TFEU only applies to the Commission. Already with regard to this right, it is disputed whether it entails an obligation to attend meetings. It might be brought forward that the right to discharge to needs to include the right to ask questions and to oblige the Council to attend the meetings in order to be efficient. The lack of provisions in the Treaty to this regard could be explained as a failure to foresee cases where Parliament can at least indirectly control the Council. While this might be argued, better reasons speak against an obligation to attend meetings. Parliament’s right to discharge interferes with important rights of the Council. The discharge procedure is the only place in the Treaties that contains an exception to the principle of the Council’s independence. To minimize these problems, the right to discharge has to be limited to the rights that are necessary for its efficient functioning. Parliament could not effectively exercise its right to discharge if it did not have the relevant documents. However, Parliament can exercise its right without the Council attending the meetings, since information can be requested in writing. Not having to attend meetings and answer questions orally protects the Council’s independence, because it is kept out of the political proceedings of the Parliament to a certain extent. For Parliament to have the right to ask oral questions in Committee and to oblige the Council to attend the meetings, an express provision either in primary or secondary law would be needed. Such a provision might be included in a communication of 1973 by the Council to the Parliament. It requires further interpretation to assess whether this communication is indeed binding on the Council, and whether it includes the right to ask oral questions and to oblige the Council to attend meetings. Due to time constraints I have not been able to attain a copy of this document. A thorough interpretation is hence beyond the scope of this preliminary draft but will be part of the final version of this paper. For now, drawing on the literature concerning the document, the following findings seem plausible: The General Court has decided that an internal decision can be relied on by a third party if it entails rights for third parties. While this decision only concerned an individual legal person, it should be transferable to Union institutions. Parliament could thus rely on the communication. As far as the scope of the rights mentioned in the communication is concerned, it would be pure speculation to draw conclusions from the short citations in the literature.

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48 Art. 36 (2) TEU codifies a special right by Parliament to ask questions in the field of CFSP and the Common Security and Defence Policy to the Council.
51 Court of First Instance, Case T-105/95, WWF UK v Commission, [1997] ECR II-313.
2. THE COUNCIL’S RIGHT TO INFORMATION

The Council’s right to information in the discharge procedure is dealt with in art. 319 (1) TFEU and art. 146 (2) FR. The Commission and the Court of Auditors are obliged to submit the same documents to the Council which form the basis of the Parliament’s discharge decision. As seen above, art. 319 (2) TFEU and art. 146 (3) FR give rise to an all-encompassing right to information of Parliament for the purposes of the discharge procedure, which extends beyond the documents explicitly mentioned in art. 319 (1) TFEU. The wording of the Treaty as well as of the FR only includes the Parliament as beneficiary. The Council thus has no general right to attain the same documents as the Parliament. However, according to art. 319 (1) TFEU the Council proposes the discharge of the Commission. The Council needs to be enabled to effectively execute this right. While Parliament is not bound to follow the Council’s discharge proposal, it is nevertheless an important procedural right of the Council. Therefore, an obligation of the Parliament to forward documents which have an important bearing on the discharge decision follows from the duty of sincere cooperation (art. 13 [2] TEU). Furthermore, Council also has the right to obtain a report on the implementation of its recommendations and on the Parliament’s observations (art. 319 [3] TFEU and art. 147 [2] FR). The FR extends the reporting obligation to all institutions. The Council can thus ask the Parliament for the report and vice versa.

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53 The ECJ has only decided the vice-versa-case for legislative proceedings. Parliament’s right in legislative proceeding even if it is only a right to be heard need to be respected. This reasoning can be transferred to the question at hand (See ECJ, Case 138/79, Roquette Frères v Council, [1980] ECR 3333, para. 33).
PART C – CONSEQUENCES OF REFUSING DISCHARGE

With its last question Parliament wants to know about the possible consequences of refusing discharge. In the last years no consequences were attached to the discharge decision. The discharge procedure has two functions. On the one hand, it has an accounting function. Upon discharge, the budget cycle is closed and all accounts are closed. On the other hand, discharge has a political function, which is more interesting to the case at hand. In the course of the discharge proceedings, Parliament has the opportunity to thoroughly evaluate the budget of the institutions. It can politically assess whether the budget has been in line with Union law. The two functions of the discharge decision can be separated, as the Parliament is obliged to close the accounts but can at the same time refuse the political part of discharge.

If Parliament refuses to discharge the Commission, this has no direct legal effect. The refusal cannot be reinterpreted into a motion of censure vis-à-vis the Commission (art. 234 TFEU). This is already due to the fact that the requirements of majority are different in the respective proceedings. Obviously, there cannot be a motion for censure vis-à-vis the Council.

Indirect legal effects of a refusal are provided for in art. 319 (3) TFEU and art. 147 FR. The Commission and, according to secondary law, all other institutions have to “take all appropriate steps to act on the observations accompanying the European Parliament’s discharge decision and on the comments accompanying the recommendation for the discharge adopted by the Council”. This is a legal obligation for all institutions. It can be relied on before the ECJ in an action for failure to act according to art. 265 TFEU. The scope of control of the ECJ on the merits is limited, however, as the institutions possess a wide margin of appreciation with regard to the appropriateness of the steps to be taken. However, an action – assuming its admissibility – will be successful if the institutions take no action at all, or if the action taken is obviously ineffective.

An identical obligation by the other institutions to act on the Parliament’s observations can be inferred from the Parliament’s unwritten right to take separate discharge decisions on the other institutions analogous to art. 147 FR. Such an obligation is needed for the effective implementation of the right. Furthermore, to exclude this right in the separate discharge decisions would only complicate the administrative proceedings without serving a greater purpose. In order for the observations to be relied on, Parliament would need to include them in the discharge decision on the Commission’s budget. If discharge of the other institutions is delayed, Parliament would need to delay the discharge of the Commission as well. This seems an unnecessary complication of matters. The unwritten right of Parliament to discharge the Council hence entails an obligation on the part of the Council to take the appropriate steps requested in the observation.

It might further be questioned whether the Parliament or the Council could rely on their respective rights on the discharge decision in Parliament. Could Parliament rely on its right in Court to discharge the Council in the abstract? One might think of an action for annulment according to art. 263 TFEU. This would require an act by the Council with legal effect. The Council has so far only voiced protest and given its legal opinion to Parliament. Neither of these actions has sufficient legal effect. Art 263

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54 For more details see Niedobitek, supra note 52, para. 2.
55 Ibid., paras. 15-16.
56 Ibid., para. 19.
57 For the criterion of legal effect see ECJ, Case C-60/81, IBM, [1981] ECR 2639, summary.
The European Parliament’s Right to Discharge the Council – Preliminary Draft

TFEU explicitly rules out opinions as the object of an action for annulment. While the form an action is cast in is generally not decisive, it is hard to see how the Council’s sole statement that the right to separate discharge decisions does not exist could bindingly interfere with the rights of Parliament. However, if the Council did not comply with the complementary rights of Parliament, an action could be brought. These complementary rights particularly concern the right to information and the obligation of the Council to take all appropriate steps requested in the Parliament’s observation. Parliament could rely on these in an action for failure to act (art. 265 TFEU). Within the proceedings the ECJ could implicitly rule on the question whether Parliament indeed has the right to discharge the Council separately. However, the ECJ would probably only decide on this matter if it had an influence on the outcome. If all complementary rights relied on by the Parliament could already be inferred from the Parliament’s right to discharge the Commission, there would be no need to decide further. I have argued that the separate discharge decision exceeds the obligation Council has within the Commission’s discharge procedure on two points. First, the Council is obliged to formally and directly deliver the documents to the Parliament. If the Council complies with this duty as it seems to be willing, there is no reason for an action. Second, I have argued that the Council needs to take all appropriate steps on the observations included in the separate discharge decision. This obligation might be relied on, and the ECJ would then need to implicitly rule on the question whether Parliament indeed has the right to take a separate discharge decision. Furthermore, if it was assumed – contrary to this preliminary paper – that the Council was obliged to attend meetings of the Committee and respond to oral questions, these rights could also be relied upon.

The possible actions by the Council are less indirect. It could bring an action for annulment against the Parliament’s decision refusing discharge. As there are legal consequences attached to it, the decision has the required legal effect. Even if those legal consequences were denied, an action would still be possible, as the ECJ has made it clear that an action claiming the violation of the principle of institutional balance can always be brought before it.58

As one can convincingly argue both for and against Parliament’s right to take a separate discharge decision, depending on whether the focus is on democratic accountability or on the institutional balance, the outcome of a case at the ECJ remains open to speculation. Due to the overriding interest in a democratic control of a partially executive institution, I would find it more convincing to grant Parliament the right to separately discharge the Council.

Beside legal consequences, the refusal to grant discharge also has political effects. It is one of the prime methods available to the Parliament to raise awareness for the Council’s action in implementing the budget. A debate on this question – whether in the Committee or in the Plenary – could enhance discussion in the more general public. Furthermore, Parliament could use the insights gained from the budget discharge in the establishment of the next budget. If Parliament is not satisfied with the Council’s information policy in discharge proceedings, it could use this to halt the proceedings for the establishment of the subsequent budget in which the Parliament decides on an equal footing with the Council (art. 314 TFEU).

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REFERENCES

Omitted in Preliminary Draft
ANNEX

Treaty on European Union

Article 2
The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 10
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

Article 11
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

Article 12
National Parliaments contribute actively to the good functioning of the Union:
(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality; [...]

Article 13
1. [...] The Union’s institutions shall be:
— the European Parliament,
— the European Council,
— the Council,
— the European Commission (hereinafter referred to as ‘the Commission’),
— the Court of Justice of the European Union,
— the European Central Bank,
— the Court of Auditors.
2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation.

Article 16
8. The Council shall meet in public when it deliberates and votes on a draft legislative act. [...]
Treaty on the Functioning of the European Union

Article 230
The Commission may attend all the meetings and shall, at its request, be heard. The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members. The European Council and the Council shall be heard by the European Parliament in accordance with the conditions laid down in the Rules of Procedure of the European Council and those of the Council.

Article 287
1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination. The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity. The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union. The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made. These audits may be carried out before the closure of accounts for the financial year in question.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Union and shall be published, together with thereplies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union. The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union. […] It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget. […]

Article 289
3. Legal acts adopted by legislative procedure shall constitute legislative acts.

Article 310
5. The budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with this principle.
Article 314
10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union’s own resources and the balance between revenue and expenditure.

Article 316
In accordance with conditions to be laid down pursuant to Article 322, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.
Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the regulations made pursuant to Article 322.
The expenditure of the European Parliament, the European Council and the Council, the Commission and the Court of Justice of the European Union shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 317
The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.
The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.
Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 322, transfer appropriations from one chapter to another or from one subdivision to another.

Article 318
The Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Union.
The Commission shall also submit to the European Parliament and to the Council an evaluation report on the Union’s finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article 319.

Article 319
1. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts, the financial statement and the evaluation report referred to in Article 318, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 287(1), second subparagraph and any relevant special reports by the Court of Auditors.
2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to
hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter’s request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

Article 335
In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.

Financial Regulation

Article 50
The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.

Each institution shall exercise these powers in accordance with this Regulation and within the limits of the appropriations authorised.

Article 53b
2. Without prejudice to complementary provisions included in relevant sector-specific regulations, and in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the legislative, regulatory and administrative or other measures necessary for protecting the Communities’ financial interests. To this effect they shall in particular:
(a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;
(b) prevent and deal with irregularities and fraud;
(c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors;
(d) ensure, by means of relevant sector-specific regulations and in conformity with Article 30(3), adequate annual ex post publication of beneficiaries of funds deriving from the budget.

To that effect, the Member States shall conduct checks and shall put in place an effective and efficient internal control system, according to the provisions laid down in Article 28a. They shall bring legal proceedings as necessary and appropriate.

Article 53c
2. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.
Article 145
1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 15 May of year \(n+2\) give a discharge to the Commission in respect of the implementation of the budget for year \(n\).
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

Article 146
1. The discharge decision shall cover the accounts of all the Communities' revenue and expenditure, the resulting balance and the assets and liabilities of the Communities shown in the balance sheet.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements referred to in Article 275 of the EC Treaty and Article 179a of the Euratom Treaty. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 276 of the EC Treaty.

Article 147
1. In accordance with Article 276 of the EC Treaty and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament’s discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.
2. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of these observations and comments, and, in particular, on the instructions they have given to those of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on these observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.

Article 166
1. Actions carried out shall give rise to:
   (a) a financing agreement drawn up between the Commission, acting for the Communities, and the beneficiary third country or countries or the bodies they have designated, hereinafter: ‘the beneficiaries’;
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L’Union européenne et les Etats membres après le traité de Lisbonne, Sénat 25 novembre 2011 (coorganisé avec le pr PY Monjal, Paris 13)
Les soixante ans de la Convention européenne des droits de l’homme, Sénat 9 mai 2010
En préparation au Sénat, en collaboration avec le pr Verpeaux Paris I : l’Etat partenaire des collectivités territoriales

Publications (ouvrages et revues d’accueil des articles)
Ouvrages individuels et collectifs :

1. CHALTIEL (F), Le processus européen de décision après le traité de Lisbonne, La Documentation française, 2010, 2e ed.
2. CHALTIEL (F), VERPEAUX (M), Manuel de droit constitutionnel, PUF, 2010 (Partie sur l’Union européenne)
3. CHALTIEL (F), ANGEL (B), Quelle Europe après le traité de Lisbonne ? Bruylant/Lextenso, 2008
4. CHALTIEL (F), Naissance du peuple européen, Odile Jacob, 2006
5. CHALTIEL (F), La prise de décision européenne, La Documentation française, 2006
6. CHALTIEL (F), Droit de l’Union européenne, PUF, Manuel, 2005
7. CHALTIEL (F), DEUBNER (C ), RACINE (B), Les coopérations renforcées en Europe, Commissariat général du Plan, La Documentation française, 2004
8. CHALTIEL (F) (Collab. Avec MATHIEU (B), VERPEAUX (M)), Droit constitutionnel, PUF, Droit fondamental, 2004.

Publication régulière d’articles dans les revues juridiques : Actualité juridique, droit administratif, Petites affiches

Plus de cent articles publiés dans des revues à Comité de lecture

Articles les plus récents :

1. CHALTIEL (F), Retour sur un an de Sommets européens, à paraître Petites affiches 2012
2. CHALTIEL (F), La décentralisation, Bilan et perspectives, à paraître, Petites affiches
3. CHALTIEL (F), Prolégomènes sur les questions préjudicielles du juge administratif vers le juge judiciaire, A propos de la décision du Conseil d’Etat du 23 mars 2012, à paraître, Petites affiches
4. CHALTIEL (F), Le passeport biométrique devant le Conseil d’Etat, Petites affiches (LPA) 14 décembre 2011, 6 p
5. CHALTIEL (F), Le secret-défense devant le Conseil constitutionnel, LPA 5 janvier 2012, 6 p
6. CHALTIEL (F), La loi relative à l’hôpital et aux patients devant le juge constitutionnel : l’occasion de préciser la procédure législative, LPA, 21 décembre 2011, n° 253, p. 7-12
7. CHALTIEL (F), Actualité de la notion de circulaire, AJDA 17 octobre 2011, p 1930-1935
8. CHALTIEL (F), Numéro spécial des PA ( dir, not avec L Guilloud, B Stim, B Mathieu et autres) un an de QPC mai 2011
9. CHALTIEL (F), L’avènement de la QPC en France : du splendide isolement à la spécificité maintenue, LPA 5 mai 2011, n° 89, p. 39-45
10. CHALTIEL (F), Les droits de la femme enceinte au travail, Petites affiches (LPA), 6 janvier 2011 p. 4-9
11. CHALTIEL (F), Introduction pour les 60 ans de la Convention européenne des droits de l’homme, Petites Affiches, numéro spécial 22 décembre 2010, 2 p
12. CHALTIEL (F), La garde à vue inconstitutionnelle, Petites affiches (LPA), 9 novembre 2010 p 3-7
13. CHALTIEL (F), Actualité du droit de l’adoption, Petites affiches (LPA) 28 septembre 2010, p. 6-9
14. CHALTIEL (F), La gestation pour autrui, réflexions avant la révision des lois bioéthique, LPA 1 septembre 2010 p 3-7
15. CHALTIEL (F), La Cour de cassation persiste et signe sur la question prioritaire de constitutionnalité, A propos de la décision du 29 juin 2010, LPA 15 juillet 2010, p. 7-12
16. CHALTIEL (F), La Cour de justice de l’Union européenne poursuit le dialogue sur les rapports entre conventionnalité et constitutionnalité A propos de la décision du 22 juin 2010, LPA 5 juillet 2010, p. 5-9
17. CHALTIEL (F), Le dialogue se poursuit sur la question prioritaire de constitutionnalité, LPA 1er juin 2010, p. 2-6

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18. CHALTIEL (F), QPC et droit européen, la Cour de cassation ouvre la boîte de Pandore, LPA 31 mai 2010, p. 4-7
19. CHALTIEL (F), La juridiction administrative au XXIe siècle, LPA 15 mai 2010, p. 6-12
20. CHALTIEL (F), Libre prestation de services et jeux de hasard, A propos de la décision de la Cour de justice européenne du 8 septembre 2009, LPA 15 janvier 2010, p. 6-9
21. CHALTIEL (F), Chronique de droit constitutionnel européen, Revue française de droit constitutionnel, avril 2010, 5 p.
22. CHALTIEL (F), Chronique de droit européen, Clunet, Journal de droit international, avril 2010, 5 p.
23. CHALTIEL (F), La loi de finances contraire au principe d’égalité, à propos de la décision du Conseil constitutionnel du 29 décembre 2009, Petites affiches (LPA) 2010 5 janvier 2010, p. 3-7

**Liste détaillée des articles publiés**

24. CHALTIEL (F), Le passeport biométrique devant le Conseil d’Etat, à paraître, Petites affiches (LPA) 2012
25. CHALTIEL (F), Le secret-défense devant le Conseil constitutionnel, à paraître LPA 2012
26. CHALTIEL (F), La loi relative à l’hôpital et aux patients devant le juge constitutionnel : l’occasion de préciser la procédure législative, LPA, 21 décembre 2011, n° 253, p. 7-12
27. CHALTIEL (F), Actualité de la notion de circulaire, AJDA 17 octobre 2011, p 1930-1935
28. CHALTIEL (F), Numéro spécial des PA (dir, not avec L Guilloud, B Stirn, B Mathieu et autres) un an de QPC mai 2011
29. CHALTIEL (F), L’avènement de la QPC en France : du splendide isolement à la spécificité maintenue, LPA 5 mai 2011, n° 89, p. 39-45
30. CHALTIEL (F), Les droits de la femme enceinte au travail, Petites affiches (LPA), 6 janvier 2011 p. 4-9
31. CHALTIEL (F), Introduction pour les 60 ans de la Convention européenne des droits de l’homme, Petites Affiches, numéro spécial 22 décembre 2010, 2 p
32. CHALTIEL (F), La garde à vue inconstitutionnelle, Petites affiches (LPA), 9 novembre 2010 p 3-7
33. CHALTIEL (F), Actualité du droit de l’adoption, Petites affiches (LPA) 28 septembre 2010, p. 6-9
34. CHALTIEL (F), La gestation pour autrui, réflexions avant la révision des lois bioéthique, LPA 1 septembre 2010 p 3-7
35. CHALTIEL (F), La Cour de cassation persiste et signe sur la question prioritaire de constitutionnalité, A propos de la décision du 29 juin 2010, LPA 15 juillet 2010, p. 7-12
36. CHALTIEL (F), La Cour de justice de l’Union européenne poursuit le dialogue sur les rapports entre constitutionnalité et constitutionnalité A propos de la décision du 22 juin 2010, LPA 5 juillet 2010, p. 5-9
37. CHALTIEL (F), Le dialogue se poursuit sur la question prioritaire de constitutionnalité, LPA 1er juin 2010, p. 2-6
38. CHALTIEL (F), QPC et droit européen, la Cour de cassation ouvre la boîte de Pandore, LPA 31 mai 2010, p. 4-7
39. CHALTIEL (F), La juridiction administrative au XXIe siècle, LPA 15 mai 2010, p. 6-12
40. CHALTIEL (F), Libre prestation de services et jeux de hasard, A propos de la décision de la Cour de justice européenne du 8 septembre 2009, LPA 15 janvier 2010, p. 6-9
41. CHALTIEL (F), Chronique de droit constitutionnel européen, Revue française de droit constitutionnel, avril 2010, 5 p.
42. CHALTIEL (F), Chronique de droit européen, Clunet, Journal de droit international, avril 2010, 5 p.
43. CHALTIEL (F), La loi de finances contre au principe d'égalité, à propos de la décision du Conseil constitutionnel du 29 décembre 2009, Petites affiches (LPA) 2010 5 janvier 2010, p. 3-7
44. CHALTIEL (F), La loi Hadopi II de nouveau censurée (Loi relative à la protection pénale de la propriété littéraire et artistique sur internet), LPA, 25 novembre 2009
45. CHALTIEL (F), La censure des cavaliers législatifs par le Conseil constitutionnel (À propos de la décision du 14 octobre 2009 sur la loi tendant à favoriser l'accès au crédit des PME et à améliorer le fonctionnement des marchés financiers), LPA 29 octobre 2009, p 3-8
46. CHALTIEL (F), Libre prestation de services et jeux de hasard (À propos de la décision de la Cour de justice des Communautés européennes du 8 septembre 2009), LPA 16 octobre 2009, p. 5-9
47. CHALTIEL (F), Réflexions sur la bioéthique d’après l’étude du Conseil d’État remise au Premier ministre, LPA 9 octobre 2009, p 3-9
48. CHALTIEL (F), Les principes constitutionnels de la loi de règlement, LPA 29 septembre 2009, p 5-9
49. CHALTIEL (F), Le travail le dimanche conforme à la Constitution, LPA 14 septembre 2009, p 5-9
50. CHALTIEL (F), Les apports du traité de Lisbonne, Actualité juridique, droit administratif (AJDA), 8 septembre 2008, p. 1575 à 1579
51. CHALTIEL (F), La loi portant réforme de l'hôpital et relative aux patients, à la santé et aux territoires devant le Conseil constitutionnel (À propos de la décision du 16 juillet 2009), LPA, p 3-7
52. CHALTIEL (F), Le Traité de Lisbonne devant la Cour constitutionnelle allemande : conformité et démocratie européenne, LPA 10 août 2009, p 3-7
53. CHALTIEL (F), Le Traité de Lisbonne devant la Cour constitutionnelle allemande : conformité et démocratie européenne, LPA 23 juillet 2009, p. 2-6
54. CHALTIEL (F), Acte de gouvernement ou acte mixte ? L'acte national non détachable d'une décision européenne, LPA 7 juillet 2009, p 2-7
55. CHALTIEL (F), La loi Hadopi devant le Conseil constitutionnel, LPA 24 juin 2009, p 3-6
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57. CHALTIEL (F), codir. Avec L Guilloud, Trente ans d’élections européennes, numéro spécial, Petites affiches, juin 2009, 70 p
58. CHALTIEL (F), Constitution et intégration économique européenne, LPA 4 juin 2009, p 12-19
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63. CHALTIEL (F), L'affaire de l'Erika devant la Cour de cassation. Le droit communautaire bienfaiteur de l'environnement (À propos de la décision de la troisième chambre civile du 17 décembre 2008), LPA 25 décembre 2008, p 5-9
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79. CHALTIEL (F), Les homosexuels et l'adoption devant la Cour européenne des droits de l'homme : une première qui fera date (A propos de la décision de la Cour EDH, 22 janvier 2008, EB c/ France), LPA 7 février 2008, p 2-7
80. CHALTIEL (F), Le traité de Lisbonne : le processus de décision, Petites Affiches, 18 janvier 2008, p. 3-8
81. CHALTIEL (F), Le Comité des Sages, réponse au déficit démocratique de l'Europe ?, Revue du Marché commun et de l'Union européenne, janvier 2008, p. 5-8
82. CHALTIEL (F), La décision du Conseil constitutionnel sur le traité de Lisbonne, LPA 4 janvier 2008, p. 3-10
83. CHALTIEL (F), Le traité de Lisbonne, de l'élaboration à la signature et la structure, LPA, 9 janvier 2008, p. 5-9
84. CHALTIEL (F), Le juge administratif, juge européen, AJDA 2008, 12 p
85. CHALTIEL (F), La Constitution de 1958 à l'épreuve de l'Europe, Ouvrage collectif des éd. Dalloz sous la dir. de l'Association française des constitutionnalistes, sous présidence B. Mathieu, 2008, 12 p
86. CHALTIEL (F) (Dir avec B. François)), introduction de M. Rocard, Les Cinquante ans de la Constitution de 1958, numéro spécial, Petites Affiches (LPA), 70 p
87. CHALTIEL (F), Chronique de droit constitutionnel européen, Revue française de droit constitutionnel, janvier 2008 10 p
88. CHALTIEL (F), Chronique de droit européen, Ordre juridique, à paraître Journal du droit international mars 2008, 5 p
89. CHALTIEL (F), avec J. Dutheil de la Rochère, le traité de Lisbonne, quel contenu ? Revue du marché commun, décembre 2007, p. 617-620.
90. CHALTIEL (F), Les tests ADN et les statistiques ethniques devant le Conseil constitutionnel, LPA 24 novembre 2007, n° 236, p. 4-9
91. CHALTIEL (F), L'adaptation du système administratif français à l'Union européenne à la veille de la présidence française, LPA 14 décembre 2007, n° 250, p. 4-8
92. CHALTIEL (F), La loi du 29 octobre 2007 relative à la lutte contre la contrefaçon, Lexis Nexis 2008, 5 p.
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96. CHALTIEL (F), Le contrôle du contrat par le juge administratif, LPA 21 août 2007, p. 3-7
97. CHALTIEL (F), Le traité modificatif peut-il être un traité ambitieux ? A propos du Conseil européen de juin 2007, Revue du Marché commun et de l’Union européenne (RMCUE), juillet 2007, p. 413-422
98. CHALTIEL (F), La lutte contre la contrefaçon en Europe, Contrats, Concurrence consommation, Jurisclasseur, juillet 2007, p 1-5
99. CHALTIEL (F), Chronique de jurisprudence européenne, Institutions et ordre juridique, Journal du droit international, Clunet, avril-mai-juin 2007, p. 596-622
100. CHALTIEL (F), Les rapports de système entre le droit constitutionnel et le droit européen, développements récents, Revue du Marché commun et de l’Union européenne, juin 2007, p. 361-372
102. CHALTIEL (F), (Dir.) Les 50 ans du traité de Rome, impact de l’Europe sur le droit français, Petites Affiches, numéro spécial, avril 2007
103. CHALTIEL (F), Le droit du travail devant la Cour de justice européenne, Petites Affiches, 16 mars 2007, p. 3-5
104. CHALTIEL (F), Le principe de sécurité juridique et l’office du juge, Petites affiches, 1er janvier 2007, p. 3-7
105. CHALTIEL (F), La décision européenne, contribution au rapport public du Conseil d’Etat, La Documentation française 2007
106. CHALTIEL (F), D’une pierre deux coups, à propos des décisions Arcelor et Gardedieu, Petites Affiches, 28 février 2007, p. 5-9
108. CHALTIEL (F), La consécration du principe de sécurité juridique par le Conseil d’Etat, RMC, 2006, n° 500, p. 457-460
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112. CHALTIEL (F), Actualité de la politique sociale en Europe, LPA 6 juillet 2006, p. 3-7
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114. CHALTIEL (F), Les vertus démocratiques d’un référendum européen, in D. Reynié (Dir.), L’opinion européenne en 2006, La Table ronde, Robert Schuman, 2006, p. 13-26
115. CHALTIEL (F), Propos sur l’actualité de la Vème République, Revue du droit public et de la Science politique, 2006, 10 p
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119. CHALTIEL (F), Peine de mort et souveraineté : nouvelles précisions sur le principe constitutionnel de souveraineté nationale, A propos de la décision du Conseil constitutionnel du 13 octobre 2005, Petites Affiches 8 décembre 2005, p. 5-8
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126. CHALTIEL (F), Les appellations protégées en Europe, petites affiches n° 179, 7 septembre 2004, p. 5-11
127. CHALTIEL (F), Droit constitutionnel et droit communautaire, Jurisclasseur Europe, 2004.
130. CHALTIEL (F), Le Conseil constitutionnel au rendez-vous de la Constitution européenne, Les Petites Affiches, 20 juillet 2004, p. 3-7
131. CHALTIEL (F), Réflexions sur la République européenne, Les Petites Affiches, 14-15 juillet 2004, p. 3-11
132. CHALTIEL (F), L’application du droit communautaire par le juge national français, Mélanges en hommage à Guy Isaac, Economica, 2004, T II, p. 843-865
134. CHALTIEL (F), Le retrait du permis de construire, Petites Affiches décembre 2003, p. 4-9
135. CHALTIEL (F), Une Constitution pour l’Europe, An I de la République européenne, Revue du Marché commun et de l’Union européenne, septembre 2003, p. 493-497
136. CHALTIEL (F), Les appellations protégées en Europe : renforcement de l’identité des produits et de la transparence de l’information, RMCUE juillet-août 2003, p. 454-460.
137. CHALTIEL (F), La souveraineté dérivée, développements récents, Les Petites Affiches, 20 juin 2003, p. 7-9
138. CHALTIEL (F), Constitution européenne et coopérations renforcées, à propos des travaux de la Convention, RMCUE, mai 2003, p. 290-292.
139. CHALTIEL (F), Les bases constitutionnelles du droit communautaire, Mélanges Pierre Pactet, Dalloz, 2003, 551-568.
140. CHALTIEL (F), L’interdiction de rémunération des comptes à vue à l’épreuve du droit communautaire, A propos de l’arrêt Caixa du Conseil d’Etat, RMCUE, avril 2003, p. 253-256.
141. CHALTIEL (F), L’Union européenne et l’ordre public, A propos de l’affaire Olazabal, RMCUE février 2003, p. 120-123.
142. CHALTIEL (F), La souveraineté et l’Union européenne, à la croisée des chemins, Petites Affiches, 22 janvier 2003, p. 6-10.
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145. CHALTIEL (F), La boîte de Pandore des relations entre la Constitution française et le droit communautaire, RMCUE octobre-novembre 2002 p. 595-599
146. CHALTIEL (F), Devoir d’information du patient et responsabilité hospitalière, Revue du droit public et de la science politique (RDP), 2002, p. 1174-1195.
148. CHALTIEL (F), La ratification du traité de Nice par la France, RMCUE 2001, p. 442-446.
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152. CHALTIEL (F), Chasse ou nature – Développements récents – Conseil d’Etat et droit communautaire, RMCUE, septembre 2000, p. 533-541.
153. CHALTIEL (F), Le pouvoir constituant, marque contemporaine de souveraineté, À propos du refus présidentiel de révision constitutionnelle, Dalloz, chronique, 2000, p. 225-228.
154. CHALTIEL (F), Ordre juridique constitutionnel et ordre juridique communautaire, Revue trimestrielle de droit européen, -septembre 1999, p. 395-408.
155. CHALTIEL (F), La Constitution française et l’Union européenne, RMCUE 1999, p. 228-237.
156. CHALTIEL (F), Le traité d’Amsterdam et la coopération renforcée, RMCUE 1998, p. 289-293.
157. CHALTIEL (F), La décision du Conseil constitutionnel relative au traité d’Amsterdam, RMCUE 1998, p. 73-84.
159. CHALTIEL (F), Enjeux et perspectives de la Conférence intergouvernementale, RMCUE 1996, p. 514-519
160. CHALTIEL (F), Pour une clarification du débat sur l’Europe à plusieurs vitesses, RMCUE 1995, p. 5-10.
161. CHALTIEL (F), La loi française sur le droit de vote des citoyens européens aux élections européennes, RMC 1994, p. 528-532.
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