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THE ROLE OF THE EUROPEAN PARLIAMENT UNDER THE FINANCIAL PROVISIONS OF THE LISBON TREATY

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Authors:

Dr Giacomo Benedetto
Centre for European Politics
Royal Holloway
University of London

and

Dr Johannes Lindner
Winterbachstr. 12a
60320 Frankfurt am Main

Responsible Official:

Fabia Jones
Administrator
Policy Department on Budgetary Affairs
ATR 02 K 067
B-1047 Brussels
Tel: +32 (0)2 283 1280
Fax: +32 (0)2 284 4907
E-mail: fabia.jones@europarl.europa.eu

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THE ROLE OF THE EUROPEAN PARLIAMENT UNDER THE FINANCIAL PROVISIONS OF THE LISBON TREATY

A briefing prepared for the European Parliament by Giacomo Benedetto, Centre for European Politics, Royal Holloway, University of London

1. INTRODUCTION

The changes made to Articles 268 to 280 of the Treaty Establishing the European Community (EC) amended at Lisbon¹ are the most significant since the Budget Treaties of 1970 and 1975. These effects will be felt most strongly with regard to Article 272 EC on the Annual Budgetary Procedure (BP). Contrary to wider perceptions, the new BP is not a form of Codecision. Under the new Article 314 of the Treaty on the Functioning of the European Union (TFEU), the EP will have rather less power than under either the EC Treaty or that which it possesses in the legislative field under Codecision or the Ordinary Legislative Procedure (OLP). The Commission, Council, and EP, however, will all benefit from what political scientists view as a collective efficiency and legitimacy gain. The new procedures are easier to understand, establish equality between the two arms of the budgetary authority, and partly compensate the EP with new powers in certain fields to match a loss of powers in others.

This paper is organised as follows: section 2 summarises the gains and losses in power and the new opportunities for the EP across the fields of own resources,² the Multiannual Financial Framework (MFF),³ *provisional twelfths*,⁴

¹ Renumbered as Articles 310-325 TFEU.

² Articles 269 EC; 311 TFEU.

³ Article 312 TFEU.

and implementation and discharge;⁵ section 3 analyses the changes made to the BP; and some conclusions are offered in section 4. Thereafter, two appendices propose the changes that will be necessary to Annex IV of the EP's Rules of Procedure in the light of the Treaty. Finally, two further appendices summarise the existing and new BPs in diagrammatic form.

2. POWER CHANGE FOR THE EP IN THE NEW FINANCIAL PROCEDURES

These changes are illustrated in the table overleaf.

2.1. Own Resources

The EP gains the power of consent over implementation measures of any change to own resources.⁶ This is not a power to reject changes to own resources, only to reject their implementing measures. The Council will only be able to act after the EP has granted its consent. This allows the EP to develop Annex IV of its Rules of Procedure so that it becomes a *de facto* initiator of such measures. Since own resources are not amended on a regular basis, this new provision is likely to have no impact on the agenda planning of the EP or its Budget Committee.

Article 311 TFEU also transfers from the Commission to the Council, acting unanimously, the monopoly of initiative in changing own resources. This increases the power of the Council and makes it more difficult for discussion even to be held on reform of own resources, thus having an indirect impact on the influence of the EP in this field.

⁴ Articles 273 EC; 315 TFEU.

⁵ Articles 275-280 EC; 318-325 TFEU.

⁶ Article 311 TFEU.

GAINS AND LOSSES IN POWER OF THE EP UNDER THE FINANCIAL PROVISIONS OF THE TREATY OF LISBON (TFEU)

Gains	Losses
<p>OWN RESOURCES (Art. 311) Council QMV and EP consent for implementation of own resources</p>	<p>Commission monopoly of initiative on reform of own resources replaced by that of Council</p>
<p>MULTI-ANNUAL FINANCIAL FRAMEWORK Duration at least five years (can coincide with EP and Commission mandates) (Art. 312.1)</p> <p>Council decides after EP grants consent (<i>de facto</i> EP initiative), Commission no longer initiates (Art. 312.2) Passarelle for QMV in Council (Art. 312.2)</p>	<p>Constraining framework is constitutionalised, including new ceiling on expenditure (Art. 312.3) and removal of power of Commission and EP to vary the annual rate of increase</p>
<p>ANNUAL BUDGETARY PROCEDURE (Art. 314) Increasing CE EP power to reject at conciliation by failure to agree</p>	<p>Amending NCE Cutting CE Council power to reject at conciliation by failure to agree</p>
<p>PROVISIONAL TWELFTHS (Art. 315) Initiative to increase provisional twelfths transferred from Council to Commission</p> <p>EP can cut provisional twelfths by an absolute majority</p>	<p>EP loses power to overrule Council on increases to provisional twelfths in non-compulsory expenditure by three-fifths majority</p>
<p>IMPLEMENTATION AND DISCHARGE EP and Council to receive evaluation report from Commission, besides accounts and financial statement (Art. 318) OLP replaces consultation power for financial regulations and procedures to establish and implement the budget and auditing accounts, as well as rules for financial officials (Art. 322.1) Triologues between EP, Commission and Council on financial matters constitutionalised (Art. 324) Supremacy of EU anti-fraud measures decided by OLP over national criminal law and administration of justice (Art. 325.4)</p>	<p>Risk of comitology: Commission implements budget no longer on its own but "in cooperation with Member States" (Art. 317)</p>

2.2. The Multiannual Financial Framework (MFF)

This will last for ‘at least five years’⁷ and could be made to coincide with the mandates of the EP and Commission. The EP would therefore have greater legitimacy in seeking to influence the content of successive frameworks.

The MFF will be decided after the EP grants its consent.⁸ According to how the EP chooses to reform its Rules of Procedure, this provision could give the EP *de facto* power of initiative. The *passarelle* for the Council to move to qualified majority voting, if adopted, would allow the EP greater scope as a negotiator with a smaller group of member states than is the case under unanimity in the Council.

The *constitutionalisation* of the MFF makes it more difficult to amend and excludes the Commission from the negotiations. It also extends ceilings on revenue to the field of expenditure,⁹ thus further constraining flexibility in the annual budget. Rather than reducing the power of the EP specifically, this provision reduces the power of those who wish for some budgetary flexibility, increasing the power of those who wish for more rigidity in budgetary policy. Failure of the Council and EP to agree a new MFF will result in the continuity of the previous MFF and its ceilings, again adding to greater rigidity and continuity, rather than favouring one institution over the other.¹⁰ This accompanies the deletion of Article 272(9) EC, which allowed for a maximum and actual rate of increase in the budget to be proposed annually by the Commission, subject to the amendment and approval of the Council and EP.

The changes to the provisions of the MFF will not have any impact on the agenda planning of the EP or its Budget Committee, other than reducing their workload through the deletion of Article 272(9) EC.

⁷ Article 312(1) TFEU.

⁸ Article 312(2) TFEU.

⁹ Article 312(3) TFEU.

¹⁰ Article 312(4) TFEU.

2.3. Provisional Twelfths

Article 273 EC (315 TFEU) details what follows if the annual budget is rejected: 'a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter...'. The initiative for altering the so-called *provisional twelfths* mechanism is transferred from the Council to the Commission, thus compensating the Commission for its loss of initiative concerning own resources and the MFF. This represents an indirect increase in power for the EP, since the Commission may pitch proposed increases at a level that is more acceptable to a qualified majority in the Council and the EP, than a proposal tabled by the Council Presidency.

Under the EC Treaty, the EP held the power to overrule the Council by a three fifths majority on proposed increases in non-compulsory expenditure (NCE) under provisional twelfths. The EP could vote in favour of a further increase or a decrease. Under Lisbon, this power is reduced to blocking increases or voting for decreases only, but is extended to areas of expenditure that were compulsory. Meanwhile the three fifths majority requirement is reduced to an absolute majority.

These changes will have no impact on the agenda planning of the EP or its Budget Committee.

2.4. Implementation and Discharge

The EP and Council gain power by receiving evaluation reports from the Commission on its expenditure.¹¹ This is in addition to the receipts of accounts and financial statements that were the case under the status quo.

The OLP replaces the consultative power of the EP for financial regulations and procedures to establish and implement the budget, as well as for the auditing of

¹¹ Article 318 TFEU.

accounts, and establishing rules for financial officials of the institutions.¹² This makes the EP an absolutely equal partner of the Council, where it previously had no power other than the right to be heard. It offers the EP an opportunity to influence the implementation of changes to the MFF that will be agreed before the Treaty of Lisbon comes into force.

Trialogues between the presidencies of the EP, Council, and Commission on financial matters are *constitutionalised*.¹³ This compensates the EP to some extent for loss of power in the BP, and involves the EP at the highest level in negotiations concerning own resources and the MFF. Within the EP, this may result in a shift of power from the Budget and Budgetary Control Committees to the Presidency. The EP may wish to revise its Rules of Procedure to maximise the *de jure* and *de facto* effects of this change to its advantage.

National criminal law and the national administration of justice will no longer be exempt from the supremacy of anti-fraud measures decided by the OLP.¹⁴ This extends the power of the EP, Commission, ECJ, and Court of Auditors over national administrations.

The Commission will no longer implement the budget on its own, but ‘in cooperation with the Member States’.¹⁵ This turns the *de facto* practice into *de jure* reality and should not necessarily result in a loss of power by the Commission and EP. At one level, it compensates national governments for their relative loss of power in matters raised in the preceding paragraphs. However, the EP should be wary of the opportunities for comitology that this provision poses.

Each of the changes highlighted in this subsection will require greater use of the time of the EP, its Presidency, and its Budget and Budgetary Control Committees.

¹² Article 322(1) TFEU.

¹³ Article 324 TFEU.

¹⁴ Article 325(4) TFEU.

¹⁵ Article 317 TFEU.

3. THE ANNUAL BUDGETARY PROCEDURE

The old and new procedures, respectively, are summarised in Appendices III and IV at the end.

3.1. The Procedure of 1975

Under the old procedure, a decision taken by simple majority in the EP to increase compulsory expenditure (CE) had to gain the acceptance of a qualified majority in the Council to succeed. However, a simple majority in the EP combined with the 91 votes in the Council necessary to block a qualified majority was sufficient to modify CE that either reduced or shifted spending.¹⁶

The EP also had the power to force through amendments to NCE by absolute majority, regardless of the views of the Council. Although Article 272.6 EC specified that the EP may only force such amendments 'by a majority of its Members and three fifths of the votes cast', the three fifths requirement was to all intents and purposes the same thing as an absolute majority. Given an average attendance at the EP of 80 percent of members, an absolute majority of 51 out of 80 percent is already higher than three fifths of votes cast, which would be 48 of 80 percent. The old procedure also gave the EP the opportunity to reject the annual budget, but by the rather high requirement of two thirds. Since this is higher than the three fifths requirement needed for overruling the Council on NCE, the EP's *nuclear option* of rejection could only be imagined if the EP were to lose on CE and were prepared to sacrifice its gains in NCE. However, the EP's gains in NCE could be regained through the EP's unlimited right to amend it under provisional twelfths in Article 273 EC, as discussed above.

¹⁶ Article 272(5)b EC; Benedetto, G. & Hoyland, B. (2007) 'The EU Annual Budgetary Procedure: The Existing Rules and Proposed Reforms of the Convention and Intergovernmental Conference 2002-04', *Journal of Common Market Studies* 45(3): 565-87.

3.2. The Lisbon Procedure

The BP as amended at Lisbon is similar to Codecision, but denies the EP a first reading before the Council. It also abolishes the distinction between CE and NCE in determining different powers of amendment for the EP. First of all, it exempts the European Central Bank from drawing up an estimate of its expenditure,¹⁷ thus reducing the power of both the EP and Council. As under the old procedure, the Council adopts or amends the Commission's proposed budget by qualified majority.¹⁸ However, the previous requirement of the Council to consult the other institutions on their own shares of the budget during its first reading is abolished, thus reducing their power, while the Commission gains the power to amend the draft budget at any time prior to Conciliation.¹⁹ The net loser here is the EP. The EP may then amend by absolute majority²⁰ in a single reading, otherwise the budget is adopted. A Conciliation Committee will convene if in second reading the Council rejects any of the EP's amendments.²¹ If the Conciliation Committee adopts a joint text, the budget is adopted unless at least one of the institutions actively rejects that text, while the other institution fails to act.²² If the Conciliation Committee fails to agree on a joint text or if such a text were rejected, the Commission is given the explicit power to submit a new proposal,²³ while resorting temporarily to provisional twelfths. The old procedure did not empower the Commission in this way.

The Treaty of Lisbon makes it more difficult for the EP to cut what was CE or to amend (upwards or downwards) what was NCE. These amendments will require the active consent of the Council. The EP gains only by sharing power with the Council to increase what was CE. Finally, the EP loses power through the equality of the new Conciliation Committee. Here, 91 of the 345 votes in the

¹⁷ Article 314(1) TFEU.

¹⁸ Article 314(3) TFEU.

¹⁹ Article 314(2) TFEU.

²⁰ Article 314(4) TFEU.

²¹ Article 314(5) TFEU.

²² Article 314(7)a TFEU.

²³ Articles 314(7)b; 314(7)c; 314(8) TFEU.

Council are sufficient to reject the budget through preventing a qualified majority in favour of a joint text. In the old procedure, following the EP's first reading, the only equivalent power of rejection that the Council held pertained to the need to actively approve increases to CE.

The final stages of the new procedure are unrealistic. Following the successful conclusion of the Conciliation Committee, the EP and Council are given the option to approve or reject the text in final sittings. If the Council approves the text, it can still be rejected by an absolute majority in the EP.²⁴ If the Council rejects the text, while the EP approves it, not only would the joint text pass, but the EP would gain the right to re-impose all of its original amendments by a three fifths majority,²⁵ which as mentioned above is equivalent to an absolute majority. 'When can the Council be expected to find a qualified majority to reject a text that a qualified majority had just agreed at Conciliation? Why would this qualified majority in the Council ever prefer the EP's re-imposed amendments, which it previously rejected, to the outcome of the Conciliation Committee, which a qualified majority in the Council had already accepted?'.²⁶

Ignoring this latter and unrealistic scenario, the procedure adopted at Lisbon increases the power of the Council with regard to the EP, yet provides a collective benefit by simplifying the existing rules, rendering them more efficient. Precisely for the reasons laid out in Article 314(7)d TFEU, analysed above, the Council is likely to do everything it can in order to avoid rejecting a joint text after Conciliation. Therefore, Council's delegation to the Conciliation Committee is likely to be less flexible than a Council delegation to the Conciliation Committee under the OLP. Under Codecision's successor, it is easier to imagine the Council's delegation accepting a joint text provisionally, knowing that post-Conciliation rejection would not result in the EP's re-imposition of its original amendments. Besides the absence of a first reading for the EP, this is the other, more notable difference between the new BP and the OLP.

²⁴ Article 314(7)c TFEU.

²⁵ Article 314(7)d TFEU.

²⁶ Benedetto & Hoyland (2007: 585-6).

3.3. Timetabling and competence internal to the EP

How will Article 314 TFEU, replacing Article 272 EC, affect the timetabling and rules of the EP?

The Council has until the 1st rather than the 5th October to pass its first reading.²⁷ Next, the EP has 42 rather than 45 days to pass its reading.²⁸ A decision period that is three days shorter and the Commission's new power to amend its proposals until Conciliation mean that the EP and its Budget Committee will need to maximise their efficiency between the 1st October and 12th November.

Following the first reading in the EP, the Council's second reading, when it used to accept or reject the proposed modifications or amendments, would last for 15 days. This was followed by a further 15 days for the EP's second reading at which it could re-impose its amendments to NCE or vote to reject the budget. The new provisions replace this with Conciliation. Following the EP's reading, the Council has 10 days for its second reading to accept all of the EP's amendments;²⁹ otherwise Conciliation takes place for up to 21 days.³⁰ Following this, the EP and Council have 14 days to accept or reject the joint text.³¹

Within the EP, there will be less work for the Budget Committee after the EP's only reading prior to Conciliation, since there will no longer be a second reading. Instead, more work will be required for the Conciliation Committee, and for the President and Vice-Presidents of the EP during the budgetary dialogues of Article 324 TFEU. The power to approve or reject the budget, and under which conditions, is transferred from the plenary of the EP to the EP's delegation to the Conciliation Committee. Unless the EP approves a joint text that is rejected by the Council, its work will finish with the conclusion of the Conciliation process.

²⁷ Article 314(3) TFEU.

²⁸ Article 314(4) TFEU.

²⁹ Article 314(4)c TFEU.

³⁰ Article 314(5) TFEU.

³¹ Article 314(6) TFEU.

4. CONCLUSIONS

The changes to the financial provisions of the EU under the Treaty of Lisbon are complicated. In some fields, the EP, Council, and Commission each lose power, being compensated with gains in power in other areas. There appears to be a collective gain in simplifying most of the procedures. The institutions will need to adapt to new timetables, in the case of the EP requiring revision to its Rules of Procedure.

The EP loses power and has to work to a tighter timetable in most aspects of the BP. Apart from what were proposed modifications to increase CE, the EP loses its relative power vis-à-vis the Council to amend the annual budget. While the power of rejection is made easier, it is also extended to the Council. In the field of provisional twelfths, the EP's gains in power match its losses. The *constitutionalisation* of the MFF introduces greater rigidity in budgetary policy, allowing less room for manoeuvre in the annual budget. The losses of the EP are compensated by clearer gains in acquiring the right of consent to implementation of changes to own resources, and, more significantly, by the extension of the OLP to regulations for implementing the budget, which will need to be jointly agreed by the EP and Council before approval of a new MFF. The latter measure will increase the legislative workload of the EP's Budget Committee.

The Commission will lose power to propose changes to own resources and the MFF, while it gains greater influence over the BP and provisional twelfths. Given the *constitutionalisation* of budgetary dialogues, which should work to the advantage of both the EP and Commission, the changes to the Commission's financial powers will also affect the internal organisation of the EP.

APPENDIX I: ANNEX IV

In Annex IV of the Rules of Procedure, all reference to 'proposed modifications' to CE should be deleted.

Article 1(1)a, b, d, and e should be deleted.

Article 1(1)f should be redrafted to replace 'new draft budget drawn up', with 'joint text', and replace reference to 'Article 272(8)' with 'Article 314(6)'.

Article 2 on the Rate should be deleted and replaced with a new Article 2 on the MFF, inspired by Rule 75, as appears in Appendix II.

Article 3(9) should be deleted.

Article 5 should be replaced by a new Article 5 entitled: 'Conciliation Committee', similar to the EP's Rules 63 to 65 and illustrated in Appendix II.

Article 6 should be replaced by a new Article 6 entitled: 'Acceptance or Rejection' illustrated in Appendix II.

Article 8(2)c, reference to Article 272 of the EC Treaty to be replaced by Article 314 of the Treaty on the Functioning of the EU.

APPENDIX II: PROPOSED CHANGES TO THE RULES OF THE EP

Annex IV, Article 2: The Multiannual Financial Framework

1. In granting its consent to the regulation establishing the multiannual financial framework, Parliament shall take a decision on the basis of recommendation from the committee responsible to approve or reject the regulation.

Parliament shall take a decision on the regulation requiring its consent under Article 312(2) of the Treaty on the Functioning of the EU by means of a single vote and no amendments may be tabled.

2. The committee responsible may decide, in order to facilitate a positive outcome of the procedure, to present an interim report on the Multiannual Financial Framework to Parliament with a motion for a resolution containing recommendations for the content of the proposal.

If Parliament approves at least one recommendation, pursuant to Article 324 of the Treaty on the Functioning of the EU the President shall request discussion with the Council and the Commission.

The committee responsible shall make its final recommendation for the consent of Parliament in the light of the outcome of the discussion with the Council and Commission.

3. If the Multiannual Financial Framework is proposed for a period longer than five years, Parliament will hold a vote to reject the regulation. This paragraph takes effect on 1st July 2019.

Annex IV, Article 5: Budgetary Conciliation

1. Where the Council informs the Parliament that it is unable to approve all Parliament's amendments to the draft budget, the President shall, together with the Council, agree to a time and place for a first meeting of the Conciliation Committee. The three-week deadline provided for in Article 314(5) of the Treaty on the Functioning of the EU shall run from the time at which the Committee first meets.
2. Rule 64 shall apply as to the Delegation to Conciliation Committee.
3. Where agreement on a joint text is reached within the Conciliation Committee, the matter shall be placed on the agenda of a sitting of Parliament to be held within two weeks of the date of approval of the joint text by the Conciliation Committee.

The chairman or another designated member of Parliament's delegation to the Conciliation Committee shall make a statement on the joint text, which shall be accompanied by a report.

No amendments may be tabled to the joint text.

The joint text as a whole shall be the subject of a single vote. The joint text shall be approved if it secures a majority of the votes cast.

Where no agreement is reached on a joint text within the Conciliation Committee, the chairman or another designated member of Parliament's delegation to the Conciliation Committee shall make a statement. This statement shall be followed by a debate.

4. Upon completion of the procedure provided for in this Article, and subject to the provisions for Article 6, the President shall declare that the budget has been finally adopted. He shall arrange for its publication in the Official Journal.

Annex IV, Article 6: Acceptance or Rejection

1. Where agreement on a joint text is reached within the Conciliation Committee and is approved by Parliament, but rejected by the Council, the joint text shall be referred to the committee responsible.

Subject to the conditions set out below, any Member may table and speak in support of amendments passed by the Parliament under Article 314(4)c of the Treaty on the Functioning of the EU that were modified in the joint text by the Conciliation Committee.

Such amendments shall be admissible only if they are presented in writing, bear the signature of at least forty Members or are tabled on behalf of a committee. Rule 46(5) shall not apply. Draft amendments shall be admissible only if they refer to the texts modified by the Conciliation Committee.

The President shall set the time limit for the tabling of amendments.

The committee responsible shall pronounce on the texts modified by the Conciliation Committee and deliver its opinion on the amendments to the joint text.

Draft amendments to the joint text shall be put to the vote in Parliament without prejudice to the provisions of Article 3(4) second paragraph. Within two weeks of the date of rejection of the joint text by the Council, Parliament shall act by a majority of its component Members and three fifths of the votes

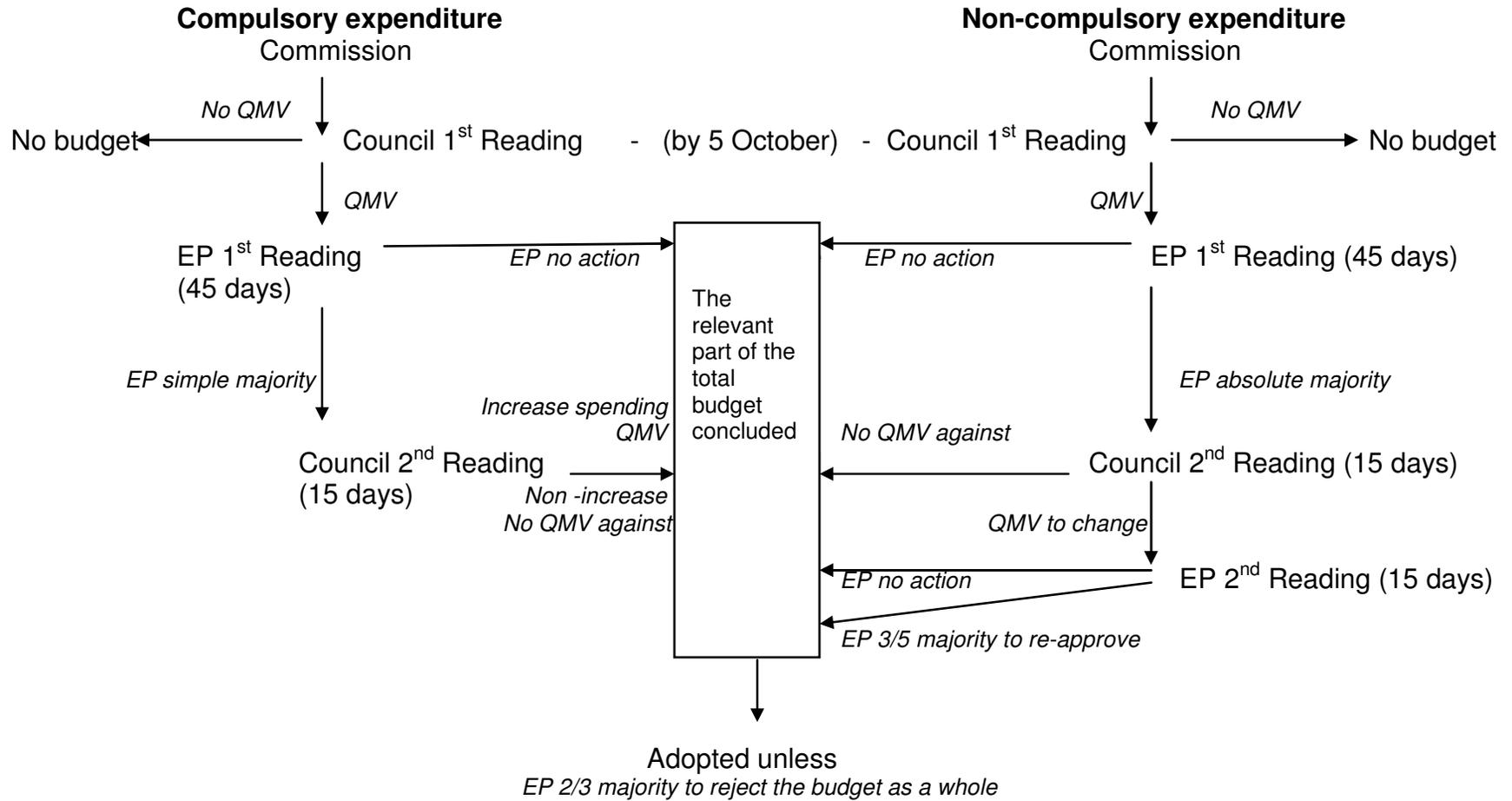
cast. If the amendments are adopted, the texts modified by the Conciliation Committee shall be deemed rejected. If they are rejected, the texts modified by the Conciliation Committee shall be deemed adopted.

2. Where agreement on a joint text is reached within the Conciliation Committee, a committee or at least forty Members may, for important reasons, table a proposal to reject the joint text. Such a proposal shall be admissible only if it is accompanied by a written justification and tabled within the time limit set by the President within two weeks of the approval of the joint text by the Conciliation Committee. The reasons for rejection may not be contradictory.

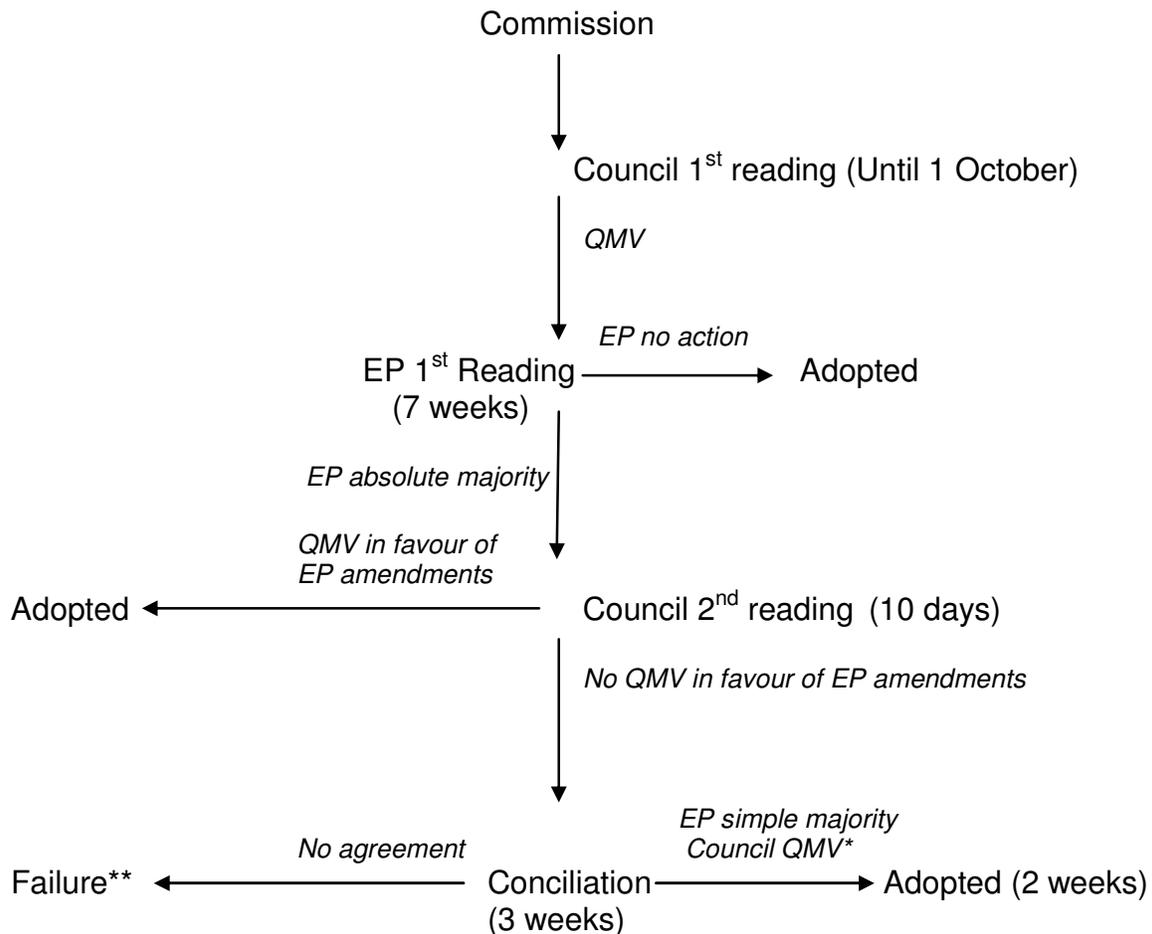
The committee responsible shall deliver its opinion on such a proposal before it is put to the vote in Parliament.

Parliament shall act by a majority of its component Members. If the proposal is adopted, the draft budget as a whole shall be referred back to the Commission.

APPENDIX III: THE BUDGETARY PROCEDURE OF 1975



APPENDIX IV:
THE ANNUAL BUDGETARY PROCEDURE OF THE TREATY OF LISBON



* If QMV in Council subsequently rejects the agreed outcome of the Conciliation Committee and the EP still accepts with a simple majority, the joint text is adopted and EP can re-impose its first reading amendments by 3/5 majority within two weeks.

** Returns to the Commission if there is no agreement in Conciliation, or the joint text is rejected by an absolute majority in the EP or by QMV in Council while the EP fails to act.

Johannes Lindner¹
European Central Bank
March 2008

The role of the European Parliament under the financial provisions of the Lisbon Treaty

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How can the EP use the new procedures?

Introduction

At its fiftieth birthday, the European Parliament can look back at five decades of successful struggle for full involvement in decision-making at the European level. In this respect, the EP's budgetary powers have played a special role. They were granted to the EP long before it got a real say in legislative decision-making and the EP has skilfully explored and expanded them over the years. A body of rules and procedures has evolved outside the Treaty which makes the EP a strong player in the adoption process for the annual budget. It also changed the nature of budgetary decision-making: the heydays of conflict and fierce political debates in the 1970s and 1980s have now been replaced by calmer and more constructive exchanges that are interrupted only every seven years when the Financial Perspective and the accompanying Interinstitutional Agreement are reviewed. Recognising the relevance of these additional rules and procedures, the drafters of the Lisbon Treaty² brought the main elements of the current practices into the Treaty.

This paper seeks to assess the impact that the Lisbon Treaty will have on the role of the EP in budgetary decision-making. As the Lisbon Treaty by and large introduces elements that are already current practice, there might be little change for Parliament. At the same time, the new provisions might pose unexpected challenges and

¹ The opinions expressed in this paper are those of the author and do not necessarily reflect those of the European Central Bank. I would like Theodor Martens for valuable comments.

² The Lisbon Treaty is currently undergoing the ratification process in the Member States.

opportunities just as the original Budget Treaty of 1970 did. While it is difficult to project the exact consequences of a new Treaty, knowing the possible impact of the new provisions is certainly in the interest of the EP as it allows the EP to fine-tune its strategies and to adjust accordingly those rules and procedures that will remain outside the Treaty.

In providing a close assessment of the possible challenges and strategic options for the EP, this paper does not take a normative stance on whether the drafters of the Lisbon Treaty have done the right choices or on how the EP should be involved in budgetary decision-making. The paper provides an analysis on what is likely to happen and how the EP and in particular the Committee on Budgets could prepare itself best for the implementation of the Lisbon Treaty.

1. The EP and the budget: from Brussels to Lisbon

Although the Lisbon Treaty constitutes the first reform of the Treaty provisions on the European budget for over three decades, it largely institutionalises a body of rules and procedures that evolved over the years outside the Treaty. These rules and procedures were instrumental in overcoming deep-seated conflict which dominated budgetary decision-making in 1970s and 1980s.

a) The Brussels Budget Treaty

The Brussels Budget Treaty, which was adopted in 1970 and slightly revised in 1975, granted the European Parliament significant budgetary powers. It introduced financial provisions which, in principle, are still in place. The Treaty distinguishes between compulsory and non-compulsory expenditure: compulsory expenditure covers all spending that follows directly from Treaty obligations, while non-compulsory expenditure encompasses the rest. Decision-making for both types of expenditures proceeds simultaneously but follows two different procedures (see annex 1). The Council can overrule parliamentary modifications for compulsory expenditure, but has to accept parliamentary amendments to non-compulsory expenditure. Yet, non-compulsory expenditure has to stay within a maximum rate of increase, which limits the extent to which Parliament can exceed the previous year's amount of non-compulsory expenditure.

The years after the inception of the new budgetary procedures were a period of intensive conflict (see annex 2; Lindner 2006). In addition to tensions among Member States, the Council and the European Parliament clashed fiercely during the negotiations for the annual budgets. The EP sought to use its budgetary powers to compensate for the fact that it had very limited legislative powers. The EP was helped by the fact that the Treaty provisions were vaguely defined (especially concerning the classification of expenditure as compulsory or non-compulsory and the need for a legal basis) which left elements in the budgetary procedure open for rivalling interpretations.

More fundamentally, two different concepts of budgetary decision-making were underlying the conflict: while the EP saw itself as an equal part of the budgetary authority with the vision of creating new European policies via the budget, the Council regarded the EP as providing suggestions that would alter a small part of the overall expenditure and it viewed the budget mainly as a planning tool for implementing legislative decisions.

b) The Financial Perspective and the Interinstitutional Agreement

In 1988, a far-reaching reform ended the period of intense budgetary conflict. Since then annual budgetary decision-making has been supplemented by an institutional framework for multi-annual budget planning. The two pillars of the framework are the Financial Perspective and an Interinstitutional Agreement. The financial perspective is a multi-annual budget plan for originally five and now seven years which lays down the maximum amounts of both total annual expenditure and annual expenditure on specific policy headings. It also ensures a balance between the annual expenditure amounts and the overall revenue ceiling. The Financial Perspective is negotiated within the Council and adopted by Heads of State or Government. An Interinstitutional Agreement between the Council, the EP and the Commission subsequently translates the Financial Perspective into a binding structure for annual budgets. During the negotiations for the Interinstitutional Agreement, the European Parliament has the opportunity to review the proposed multi-annual budget plan. Most of the time, the EP accepts by and large the Council's budgetary figures and receives in exchange institutional concessions regarding its role in the budget procedure. As a

result, the Financial Perspective and the Institutional Agreement, which were renewed in 1992/3, 1999 and 2006, have significantly altered the annual procedure without changing the rules of the Treaty. In fact, they do not even have the status of enforceable law. Except for the decisions on the revenue ceilings, their binding character stems chiefly from the political willingness of actors to adhere to the jointly agreed institutional and distributive framework.

c) The draft Constitution and the Lisbon Treaty

While there had been intensive debates during the Convention and at the Intergovernmental Conference over the budget, the drafters of the Constitution settled in the end on a less far-reaching reform of the budgetary procedure than some had expected. The new provisions were an introduction of existing rules and procedures from outside the Treaty into the Treaty (Enderlein/Lindner 2005). The Lisbon Treaty confirmed this taking over the financial provisions of the draft Constitution.

Concerning the Financial Perspective, the Lisbon Treaty institutionalises the existing multi-annual budgetary framework. This affects the way the Financial Perspective is legally codified. Under the Lisbon Treaty, the binding force of the Financial Perspective will not anymore be based on the political willingness of actors to cooperate, as laid down in the Interinstitutional Agreement, but on the legal force of the Treaty.

With regard to the annual budgetary procedure, the distinction between compulsory and non-compulsory expenditure is eliminated. The Council and the European Parliament meet at a Conciliation Committee to agree on a joint text that is then adopted by the Council and the European Parliament in separate readings (see annex 3). This is in fact, largely an institutionalisation of the current practice. Already the Interinstitutional Agreement gives the EP some say over compulsory expenditure through the *ad hoc* conciliation procedure and the equivalent to a Conciliation Committee is already in place. Most of the time, the annual budget is *de facto* adopted in a conciliation meeting between the Council and the EP shortly before the second reading in Council. The agreement is then adopted by the two institutions in their respective readings.

Does the fact that the Lisbon Treaty is mainly an institutionalisation of current practices mean that there will be very little change in budgetary decision-making? The history of Treaty reforms suggests otherwise. Many times a new Treaty initiated new rounds of institutional evolution and interpretation. What might have appeared as a straight-forward legal text turned out to have unexpected consequences. Against this background a thorough assessment of the new Treaty provisions is warranted.

2. A strategy for the future

A closer look at the new Treaty provisions reveals that they may pose some challenges for the EP. It is therefore in the interest of the EP to use the upcoming review of the rules and procedures that remain outside the Treaty for addressing possible consequences of the Lisbon Treaty.

a) The Multiannual Financial Framework

Challenges

In the current institutional set-up the Financial Perspective is largely determined by the European Council; the EP is usually compensated on the institutional side for consenting to the budgetary figures. If an agreement on a new Financial Perspective and an Interinstitutional Agreement is not achieved, the ceilings of the old Financial Perspective continue to apply. However, the EP has at any moment in time the possibility to denounce the Interinstitutional Agreement and to return to the annual procedure as laid down in the Treaty. The threat of denouncing the Interinstitutional Agreement is particularly credible when the application of the Treaty (i.e. the maximum rate of increase for non-compulsory expenditure) promises the EP higher spending increases than the ceilings of the Financial Perspective.

Under the provisions in the Lisbon Treaty, the EP will not any longer have the possibility to return to the Treaty provisions. Once adopted, the Multiannual Financial Framework (MFF) will become binding law. Even if the EP does not consent to a new MFF, the ceilings of the last MFF continue to apply until new ceilings are adopted. This introduces a significant *status quo*-bias and strips the EP of an important weapon.

In view of the stronger binding force of the MFF, the EP will thus have an interest in increasing the flexibility between the headings of the multi-annual budget plan. It may also prefer to have MFF that are five rather than seven years, because – in addition to the institutional arguments in favour of a five year MFF (i.e. the link to the legislature period of the EP and the term in office of the Commission) - a five year MFF offers more frequent renegotiation points.

Losing the threat of denouncement does not mean that the EP cannot be effective in the negotiations over the MFF. Most likely the EP will continue to be able to gain institutional compensations for accepting the multi-annual budget plan as set by the European Council. Moreover, the Lisbon Treaty strengthens role of the EP for the adoption of the ‘Financial Regulation’ which follows the co-decision procedure.

Options

The transformation of the current Financial Perspective and International Agreement into the MFF will provide the opportunity for the EP to shape how the Lisbon Treaty provisions will be applied:

- Given the difference in the adoption procedures (i.e. co-decision versus consent), the EP will have an interest in having many of the elements of the current Interinstitutional Agreement placed into the ‘Financial Regulation’ rather than the MFF Regulation.
- While it is widely believed that the introduction of the first MFF will just be a confirmation of the current Financial Perspective and its institutional set-up, the EP could make its consent to the MFF Regulation dependent on distributive and institutional changes. On the spending side, the EP could link the adoption of the first MFF to the mid-term review of the Financial Perspective for which the Commission is expected to present proposals soon. On the institutional side, the EP could request significant increases in the flexibility which would allow moving funds between headings or years (Buti/Nava forthcoming).³ Such a reopening of the current Financial Perspective would of course be easier for the EP to demand,

³ In the medium-term, it will be in the interest of the EP to put pressure on the European Council to decide that it will henceforth adopt the MFF by qualified majority. This is an option that is provided for in the Lisbon Treaty.

if the Council itself asked for a revision (for example, in order to accommodate expenditure for the new external action service).

b) The annual budgetary procedure

Challenges

The new procedure simplifies the adoption process for the annual budget but may also pose some challenges for the EP.

Although the Interinstitutional Agreement provides for the negotiations between the EP and the Council to cover both, compulsory and non-compulsory expenditure, there is still a sense of ownership in each institution for 'their' respective side of the budget. Under the Lisbon Treaty, the negotiations, especially in conciliation, will be more far-reaching and more time-consuming. They will not anymore concentrate on the few essential issues where one institution would like to influence the respective other part of the budget. This poses the question of who will be represented at Conciliation Committee level and how often the Committee will meet during the three week conciliation period. It is unlikely that Budget Ministers will be able to spend more than three or four days in Brussels. Both arms of the budgetary authority will need to find new means of settling divergences.

Negotiations in the Conciliation Committee will play a central role in the new budgetary procedure. This will have a major effect on the first and second reading of the respective institutions.

The Council and the EP will in their second reading have the possibility to adopt or reject the 'joint text' that is agreed in conciliation or not to take a decision, which means an automatic adoption. Votes on individual amendments will take place in the EP only, if the Council rejected the conciliation agreement. But such a case seems quite unlikely because the Council will probably have all 27 Member States represented in its delegation for the Conciliation Committee. Why should ministers reject in second reading a budget that they have adopted shortly before in the Conciliation Committee? Such a situation could only occur if the representatives in the Conciliation Committees significantly diverted from the mandate which had received from their respective national governments. Therefore, structural advantage

that the EP has in case the Council rejects the proposed budget will, in practice, not be so relevant.

As the plenary will in second reading be faced with a take-it or leave-it situation, the Committee on Budget and the political groups will need to fulfil the challenging task of ensuring sufficient support in the plenary vote. There will not anymore be any leeway for individual amendments or marginal changes in the final vote.

Moreover, the dominant role of the Conciliation Committee may also pose questions concerning the accountability and transparency of the process: the EP delegation in the Conciliation Committee will negotiate behind closed doors and agree by simple majority with the Council on a budget that plenary can only adopt or reject. A key function of the EP, namely to provide a democratic forum for debate and informed choices, may therefore lose some prominence.

The nature of the first reading in Parliament will also change. On the one hand, it seems advisable to use the first reading to make far-reaching requests and thus to establish a strong bargaining position vis-à-vis the Council in the Conciliation Committee. On the other hand, it will be difficult for the Committee on Budgets in the second reading to explain to the specialised committees and the plenary that most their budget requests from the first reading had in fact been mere bargaining chips. Adoption in plenary could become very difficult. Moreover, for the unlikely case that the Council rejects the 'joint text' from the Conciliation Committee, the Committee on Budgets could hardly ask the plenary not to endorse its first reading amendments even if they were meant to be extreme positions. It is therefore likely, that the Committee on Budgets will want to focus in the first reading mainly on the key strategic choices and to make a realistic proposal for the negotiations in the Conciliation Committee. This would facilitate finding an agreement within the prescribed three weeks and make the negotiations less far-reaching and conflict-ridden.

Options

The EP may, in fact, have an interest in opening up the debate on the budget in order to address the challenge that non-public conciliation negotiations poses for

transparency and accountability. At the same time, the EP will not want these measures to make the new procedure unmanageable.

Close coordination between the Committee on Budgets and the specialised committees, as well as within and among the political groups will become a key task.

- One way of achieving this is by granting the political groups and the relevant specialised committees representation in the EP delegation for the Conciliation Committee.
- Another way is to have meetings of the Committee on Budgets with representatives from specialised committees in parallel to the conciliation negotiations. These meetings could be in public and the Council could be asked to present its point of view.

Also early and intensive dialogue between the EP and the Council will be important.

- In order to manage the meetings of Conciliation Committees well and to ensure the appropriate level of representation, the Committee meetings need to be thoroughly prepared by trialogues and technical meetings.
- Moreover, dialogue between the EP, the Council and the Commission should start at an early stage of the procedure in order to use the conciliation period as effectively as possible and to prevent a situation whereby the Parliament is forced to accept an agreement only because the three weeks are approaching their end.
- However, the provisions in the Lisbon Treaty concerning a possible supporting role of the Presidents of the EP, the Council and the Commission do not seem to offer such a promising idea and may be useful only in case conflict is seriously escalating.

At the same time, the EP also needs to see how it can strengthen its bargaining position during the negotiations.

- If the EP could make a credible threat that it would indeed reject a budget in case certain spending proposals were not included, this would strengthen its bargaining position.⁴ Credibility is gained by either setting precedent (like the

⁴ Of course, the rejection of a draft budget is not a viable option that can be used often. The resulting enactment of the provisional twelfths-rule is an undesirable outcome for both arms of the budgetary

rejections in the 1980s) and/or by making a strong *ex ante* commitment, for example, by including an explicit rule on automatic rejection in the Rules of Procedure of the EP, as it did for the old co-decision procedure (Rule 78, in the 1994 Rules of Procedure).

- Another possible option would be for the EP to insist on delegations in the Conciliation Committee that are significantly smaller than 27 representatives. This may not only facilitate the negotiations in the Committee, but may also have the possible side-effect that an agreement in the Conciliation Committee is subsequently not accepted by the Council in second reading; this would in turn allow the EP to reinstate its original amendments.
- In terms of spending priorities, the EP should look at fields of expenditure where it can build alliances with certain Member States in the Council.

c) The legislative procedure

Challenges

The financial provisions in the Lisbon Treaty should not be read in isolation. The Lisbon Treaty also introduces changes in the legislative realm. Most importantly, it extends the co-decision procedure in a number of policy fields, for example in agriculture and home and justice affairs. While, in principle, this strengthens the role of the EP, it could have a more ambivalent effect on the Committee on Budgets.

Already now, most expenditure is pre-committed by legislative decisions, mainly multi-annual programmes. If these decisions are taken without close involvement of the respective budgetary authority, they can have a negative effect on financial planning and expenditure control (van Hagen 1992). In fact, the Lisbon Treaty recognises this by stressing that ‘the Union should not adopt any act which is likely to have appreciable implications for the budget’. However, there is a tendency that the final legislative decisions under the co-decision procedure are already taken in the first reading. This reduces accountability and weakens the coordination between legislative and budgetary realm. With the further extension of the co-decision procedure, this tendency may be reinforced.

authority. The fact that the Lisbon Treaty increases the role of the Commission and the EP for the adoption of the provisional does not change this.

Closer cooperation between the legislative and budgetary fields could have an additional positive consequence: it may strengthen the impact of the EP in terms of setting political priorities. In isolation, Parliament's political priorities in the budgetary field may often be less effective than if they are coupled with focused legislative initiatives.

Options

Reinforced co-ordination between the legislative activities of the specialised committees and the budgetary function of the Committee on Budget would be useful.

- The EP could internally review the tendency of settling co-decision procedures already in first reading.
- Moreover, the Committee on Budgets could seek to get a permanent seat in the legislative Conciliation Committees for legislative decisions with financial implications.
- Political priorities in the legislative and in the budgetary fields could be co-ordinated more closely. One example could be the field of agriculture where the EP has gained new legislative competences.
- The Committee on Budgets may want to intensify the monitoring of the multi-annual programmes in order to gain further expertise and knowledge vis-à-vis the Council and the specialised committees.

d) Revenue side

Challenge and Option

The Lisbon Treaty only marginally changes provisions that govern the EU's own resources. The anomaly that the EP has a full say on the expenditure side and limited influence on the revenue side will remain.

- However, the EP could explore to what extent the fact that the adoption of the implementing measures for the own resources will now require the consent of the EP may provide some leeway for a serious debate with the Council on a review of the revenue side.

4. Conclusions

Once ratified, the financial provisions of the Lisbon Treaty will provide the EP with opportunities and challenges. For making full use of the new Treaty, the upcoming negotiations over the implementation rules and the review of the EP's own Rules of Procedures will be an important occasion for Parliament.

The Lisbon Treaty stands in the tradition of the developments that have taken place in the budgetary field since the late 1980s. A 'budgetary community' of politicians and officials in the EP, the Council and the Commission has emerged that accepts the prerogative of the multi-annual budget plan and works closely together in the adoption process for the annual budget (Lindner 2006: 153). Moreover, co-operation mechanisms have been developed that facilitate decision-making and strengthen the role of the EP. The Lisbon Treaty confirms and reinforces this by abolishing the distinction between compulsory and non-compulsory expenditure, by institutionalising the Financial Perspective and by making the conciliation negotiations the central step in the annual procedure.

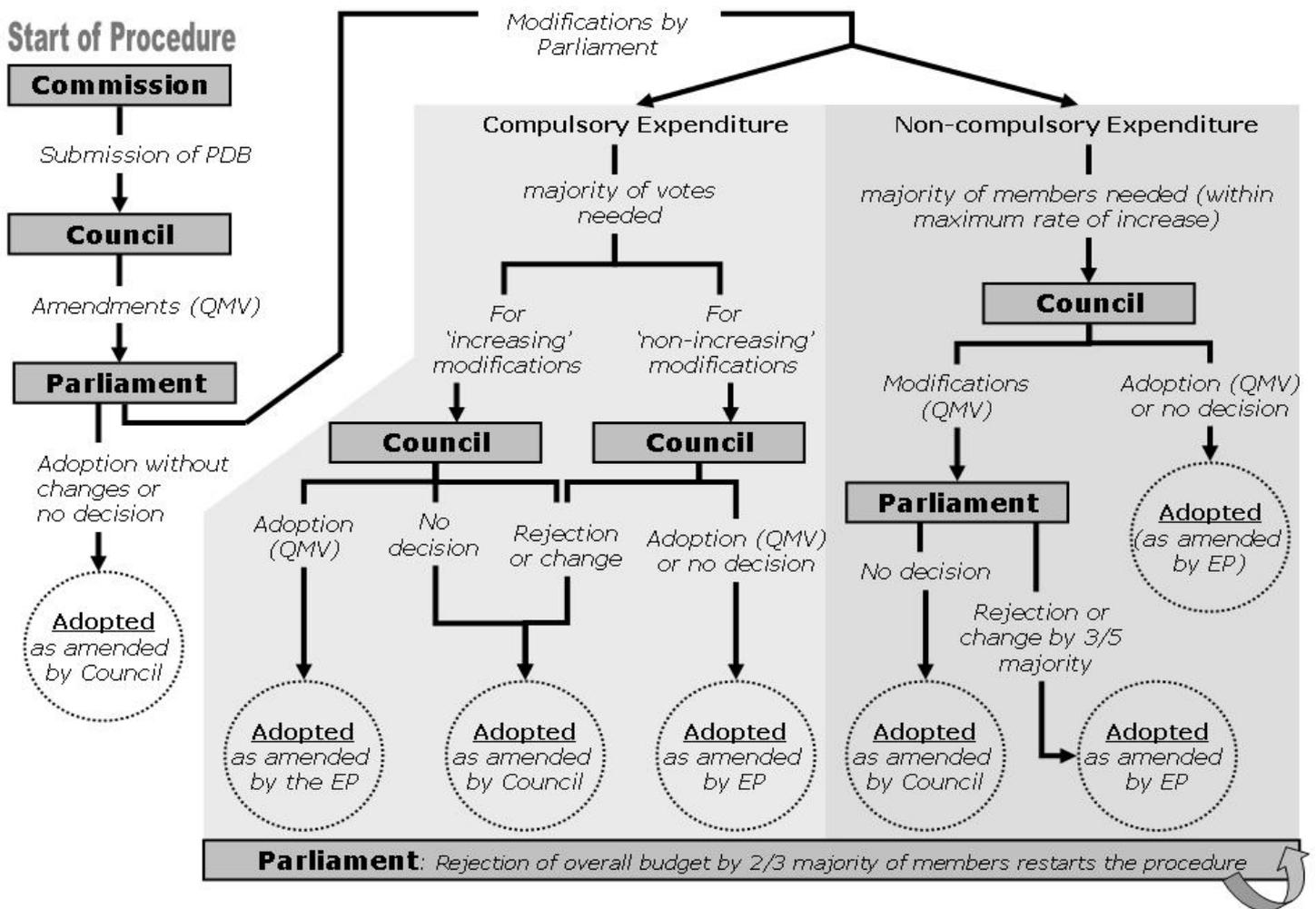
An interesting question is, however, to what extent it would perhaps be desirable to open-up budgetary decision-making a bit more. A stronger politicisation of the negotiations could possibly increase the visibility and accountability of spending decisions. Some of the options outlined in this paper go a bit in this direction, namely public debates in parallel to the conciliation negotiations, requests for an increase in the flexibility between its headings of the multi-annual budget plan, and a stronger co-ordination between budgetary and legislative decisions.

Taking the changes in the legislative and the budgetary realm together, the Lisbon Treaty is an adequate 50th birthday present to the EP. Overall, Parliament has been strengthened. European citizens will therefore expect MEPs to use the new powers of the Lisbon Treaty to make the EU fit for the Lisbon objectives.

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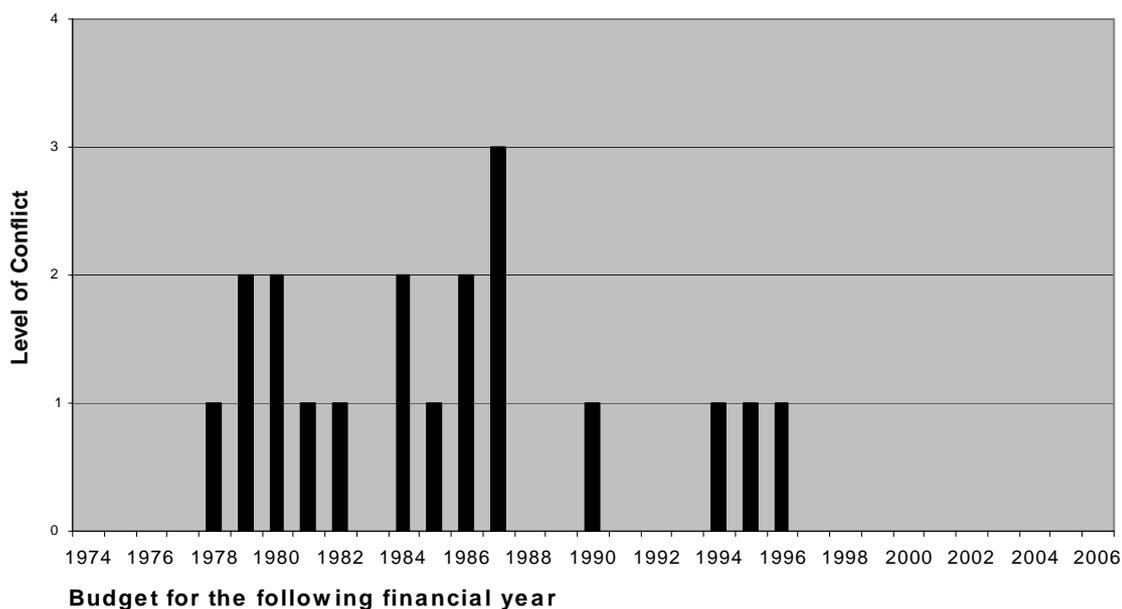
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Annex 1: The annual budgetary procedure in the current Treaty



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Annex 2: Conflict in annual decision-making

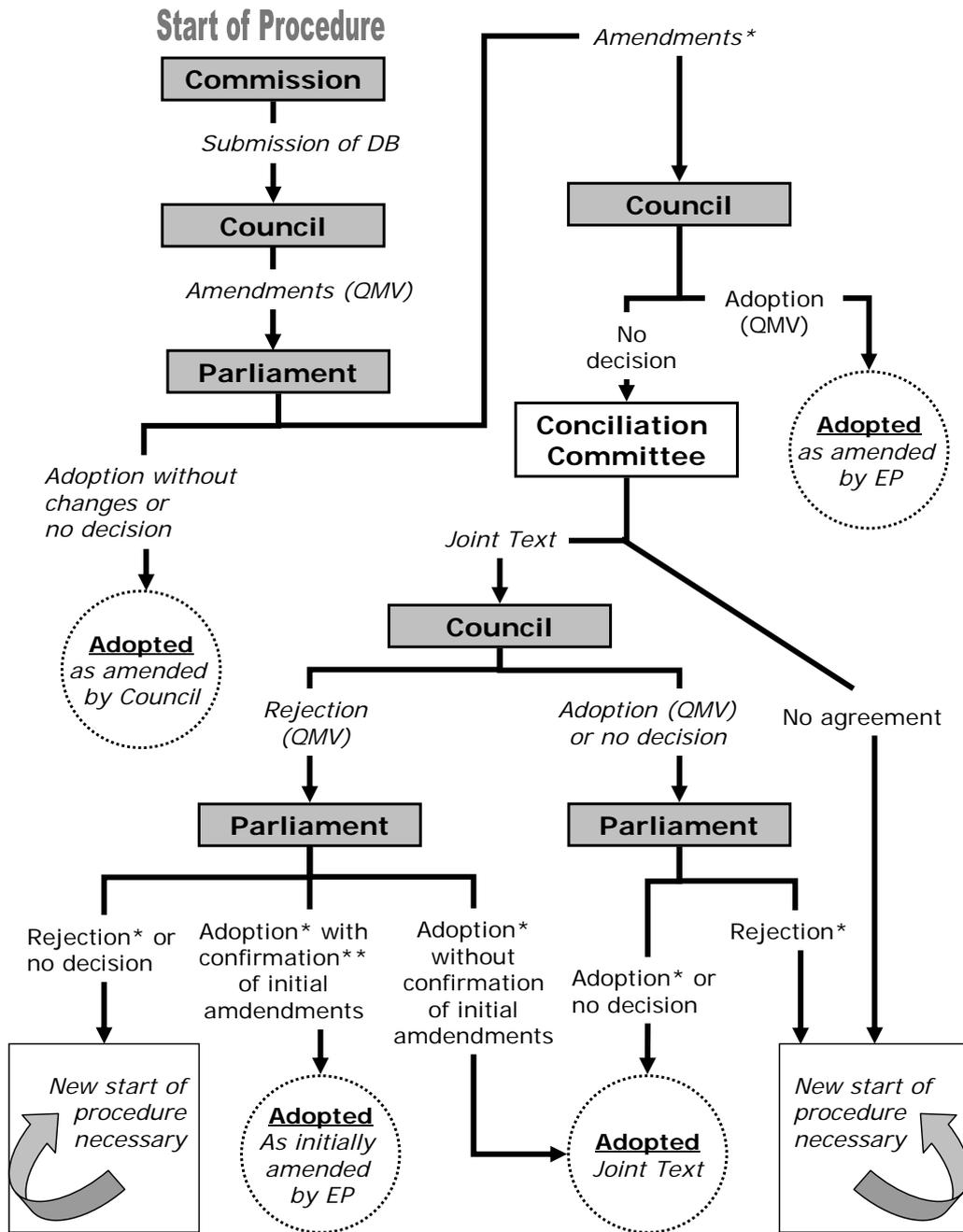


The figure measures the number of incidences in which actors failed to come to a joint budgetary decision within the given timetable. The measurement builds on four indicators:

- actors' inability to abide by the budgetary timetable, as laid down in the treaty (including the enactment of the provisional twelfth rule),
- actions taken before the European Court of Justice (against the EP),
- rejection of the general budget or a supplementary and amending budget by the EP, and
- member states' refusal to pay their share of the enacted budget.

If all four incidences occurred during a given budgetary procedure, that procedure is given a value of four for that year; conversely, a value of zero is assigned when none of these incidences arose.

Annex 3: The annual budgetary procedure in the Lisbon Treaty



* With the majority of members
 ** With 3/5th of votes and majority of members

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