

Cercle 3
Working document 8

NOTE

from :	Chairman of the discussion circle on own resources
to :	the Members of the circle
Subject :	Questionnaire on the implications of the decision-making procedure on own resources

The questions raised by the mandate of the "Discussion circle" on own resources are twofold in nature. On the one hand, the circle is asked to examine questions which arise solely at constitutional level and which chiefly concern the decision-making procedure:

- (a) *"Should Council decisions under the Article 269 procedure continue to be unanimous? What role should the European Parliament play?"*
- (b) *"Should the Article 269 procedure uphold the requirement for adoption by the Member States in accordance with their respective constitutional requirements, or should financing be turned into a Union competence?"*

However, on the other hand and precisely in order to answer these questions, the circle must give an opinion on subjects which come under secondary legislation. The circle is not being asked to elaborate at this stage on what falls under the law but rather to examine the current situation and ascertain whether it is satisfactory or needs to be improved. On the basis of such an analysis, the circle will be in a position to judge whether the current procedure allows, encourages or conversely impedes progress towards optimal solutions for the financing of the Union in terms of legitimacy, efficiency and simplification. This concerns the last two questions of the mandate:

- (c) *"Does the existing system of own resources meet public expectations in terms of fairness and transparency?"*
- (d) *"Would the existing decision-making procedure allow substantial amendments to be made to these resources?"*

Following the logic described above, the circle should invert the order of the questions. It ought to begin by examining the existing system of own resources ¹ and answer questions (c) and (d) in the light of the objectives pursued and certain principles common to the traditions of the Member States.

1. The main purpose of the resources system is to finance the Union's policies. The final adoption of the annual budget creates the obligation for each Member State to make available to the Community the payments due under the budget. It was Member States' commitment to supply the necessary own resources that led to the establishment of the particularly cumbersome decision-making procedure under Article 269 TEC. However, the fact that the resources are "own" resources is masked by a situation whereby own resources payments are often entered in national budgets and would therefore appear to be subject to a vote in national parliaments. The role of the latter in Member States' budgetary procedure maintains ambiguity about the automatic nature of the provision of resources and consequently raises doubts about the financial autonomy of the Union. In such circumstances, does the requirement of ratification of the system constitute a genuine guarantee for the financing of the Union?
2. The main change in budget culture which resulted, from 1988 onwards, in consecutive interinstitutional agreements on budgetary discipline and the financial perspective, as well as the introduction during the same period of certain corrective elements for budgetary imbalances, enabled stable financing of the Union. However, the intergovernmental logic which informs Article 269 meant that those agreements could be concluded only at the cost of extremely complex compromises. Working Document 01 bears witness to the complexity of those compromises which ultimately enable the Union to finance its policies. Will such compromises be possible in an enlarged Union?

¹ The Secretariat has distributed a document describing the system of own resources (WD 01).

3. In addition to financing its policies, the system of financing the Union must also contribute to attaining the aims set in the Constitution. Given the kind of negotiation that takes place between Member States' Governments when renewing the system of own resources and the ensuing compromises, it is questionable to what extent the system contributes to integration, solidarity and cohesion within the Union.

In this connection, it should be recalled that draft Article 3(5) of the Constitution ², which incorporates the principle of necessary means ³, affirms that the Union's objectives "shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution". However, since the Union does not, at present, have any real competence for its own financing, it cannot decide on "appropriate means" to achieve its objectives. The question is whether provision should be made for explicit competence of the Union or its own financing, as some have proposed, which would entail in particular removing the requirement of national ratification from the legal basis of the system of own resources, thereby creating the financial autonomy of the Union.

4. Bringing the Union closer to its citizens and transparency are key elements of the Laeken mandate. The complexity and opacity of the present system of financing make it absolutely incomprehensible to citizens. This situation is all the more serious since all democracies base their public finances on the principle of taxation by consent through parliamentary representation. In theory, citizens are represented by their national parliaments which participate in decision-making through the requirement of national ratification. This could be considered indirect consent. However, in reality parliamentary participation is fairly theoretical. Since negotiations between governments are highly complex and compromise is difficult to reach, it is clear that national parliaments have practically no room for manoeuvre.

² CONV 528/03.

³ Currently covered by Article 6(4) of the TEU.

The principle of taxation by consent leads on to the question of the role of the European Parliament, which is, in the final analysis, the direct expression of citizens' votes. At present, it only gives a consultative opinion within the framework of a procedure which determines one part of the fiscal burden – that intended for the financing of the Union – which is borne by citizens. Furthermore, it is the only Parliament which has no fiscal responsibility. Should its involvement in decision-making concerning the financing of the Union be reinforced?

5. European citizens do not know how much the Union costs them. The two principal resources which finance the Union (VAT and GNP resources) are like national contributions, which means that it is the State rather than the citizen which is in practice considered to be the contributor to the Union budget. In addition, fiscal equity in the Union is always considered in terms of the relationship between States, not between citizens.

Numerous proposals have been made in the Convention for the creation of European taxes which could either be linked to the Union's activities or consist of a share of national taxation. These proposals generally respond to a desire for transparency: citizens must know how much the Union is costing them. They also respond to a desire for rationality and bringing the Union closer to its citizens: financing must be based on citizens' capacity to contribute. In a constitutional framework, these proposals seem to offer a stable alternative to regular renegotiation of national contributions, which creates a periodic disturbance to the cohesion of the Union.

We must consider whether such a development of the system is desirable and, if so, whether it is possible with the present decision-making procedure. Is it necessary to acknowledge explicitly in the Constitution the possibility of financing the Union by taxes?

6. The discussion circle on the budgetary procedure recommends incorporating the financial perspective in the Constitution. It would thus become legally binding. The Constitution must include the principle that the "financial framework" fixes the binding amounts of the annual ceilings for commitment appropriations by heading within the limits of the Union's own resources and the amount of the annual ceiling for payment appropriations which must in any event respect the ceiling for own resources.

The question therefore arises as to what should be the legal link between these various ceilings and between the acts of secondary legislation relating to them (the law on the financial framework and the law on own resources). Some people have proposed separating the question of the ceiling for resources and hence the size of the Union budget from the question of the financing procedures, i.e. the resources themselves. Should the ceiling for resources be the subject of a separate decision? Subject to a different procedure?

Currently, the ceiling for resources is legally endorsed by the "own resources" decision under Article 269 TEC. Nevertheless, it is subject to negotiation of the financial perspective. Would it be desirable, once it has become legally binding, for the multi-annual financial framework to be the act which fixes the ceiling for resources together with the ceilings for expenditure (expressed as commitment appropriations and payment appropriations)?

7. Another aspect which needs to be taken into account is interinstitutional balance. The point at issue is whether the procedure for own resources is to be considered having regard to the procedures for adopting the financial perspective and the annual budget as well, so that everything can form a coherent whole.
