

EDITORIAL COMMENTS

The 1980/1981 budget wrangle

The Community suffers from a multitude of organizational and institutional problems, it must cope with the current economic crisis, it has to “digest” the Greek accession, etc. In addition to these problems, it is confronted with a rather unfortunate dispute: the 1980/1981 budget quarrel.

One of the most pressing problems the Community must solve in the near future is the implementation of changes in the way its whole system of income and expenditure is organized. The British budget problem has now been (provisionally) resolved but clearly there remains a great need for structural measures aimed to secure a more balanced development of common policies and a better balance in the budget between agricultural and non-agricultural expenditure. In this connection, attention should also be given to the problem of streamlining and improving the Community’s budgetary procedures.

To both the uninitiated and the initiated the budgetary system laid down in Article 203 of the EEC Treaty and the Community’s financial regulations is of a bewildering complexity. Unfortunately, the Treaty’s system of judicial remedies does not give the Court of Justice adequate jurisdiction to review budgetary decisions of the European Parliament. As a result, disputes in connection with the exercise of budgetary authority are left to be settled by political haggling. From a legal point of view this method is open to criticism, especially in cases where member States contest the legality of budgetary acts of the European Parliament and threaten to withhold funds needed to finance the budget adopted by the Parliament. Such a situation has arisen in connection with the second Supplementary and Amending Budget for 1980 which the European Parliament passed on 23 December 1980.

The 1980 pre-Christmas budget wrangle was quite different from the budgetary battles fought by the Council and the European Parliament in 1978 and 1979. In November 1978, Parliament on its first reading of the draft Budget for 1979 raised appropriations for non-obligatory expenditure relating to the Regional Development Fund by some 500 million eua, thus taking the total sum of non-obligatory expenditure well beyond the permissible maximum rate of increase for such expenditure. The Council was unable to reject the Parliament’s amendments to the draft Budget. However, since the Council had not been prepared to agree to a new maximum rate to cover the increase in commitments for the Fund, the Parliament,

whose President on 14 December 1978 declared that the Budget had been finally adopted, could not be said to have validly adopted the Budget for 1979. The legal dispute was finally solved by a Supplementary and Amending Budget (No. 1) for 1979. This was clearly a compromise solution: the expenditure for the Regional Fund was lower than the appropriations included in the Budget adopted by Parliament on 14 December 1978, but higher than the figure laid down in the draft Budget. The Council explicitly agreed to a new increased maximum rate.¹

In December 1979, the Council having failed to accede to the Parliament's request for substantial increase in the appropriations for priority sectors (regional and social policy, energy), the European Parliament rejected the Budget for 1980. As a result the Community was forced to operate on the system of Provisional Twelfths for six months.

With respect to the Budget for 1981, the European Parliament was not keen on repeating its performance of the two previous years. Nevertheless, many Euro MP's felt dissatisfied with the limited concessions the Council was willing to make with regard to increases in proposed non-obligatory expenditure. At this point, an unexpected solution offered itself. On 24 November 1980 the Council had approved a Draft of Supplementary and Amending Budget (No. 2) for the year 1980. Additional funds were needed for aid to Italian earthquake victims and also for increased spending of the European Social Fund. The Parliament's Committee on Budgets suggested that Parliament should insert in the 1980 Supplementary Budget the proposed regional and social expenditure that the Council refused to include in the Budget for 1981. It so happened that the maximum rate of increase for payment appropriations in the 1980 Budget had not been fully utilized. The margin that remained for increasing non-obligatory expenditure, after deduction of the 100 million eua earmarked by the Council for aid to Italy and for the Social Fund, was 280 million eua. These amounts could not be spent in 1980. Since they would have to be carried forward, the extra money would be available for supplementing regional and social expenditure in 1981. This would permit Parliament to let the Council have its way with regard to the Budget for 1981.

Parliament indeed voted on 18 December as its Budget Committee had proposed. It let the 1981 Budget go through with only minor increases and approved the draft Supplementary Budget for 1980, adding 266 million eua to the 100 million eua envisaged by the Council. At the Council meeting of 22 December it became obvious that the British, Italian and Irish Ministers supported the Parliament. Certain delegations considered the proposed

1. *Cfr.* the recent article by Sir Charles Sopwith, "*Legal Aspects of the Community Budget*", 17 C.M.L. Rev. 1980, 315, at 333-340.

amendments to the draft Supplementary Budget No. 2 for 1980 to constitute a distortion of the budgetary procedures. No vote was taken and the Council's President advised the President of the Parliament that the Council had not been able to pronounce itself on these amendments. On 23 December the Parliament's President finally declared the second Supplementary Budget for 1980 and the general Budget for 1981 adopted.

By making use of its leeway to increase non-obligatory expenditure in the 1980 Supplementary Budget, the European Parliament has thus outmanoeuvred the Council. Its course of action was supported by several Member States and the Commission showed sympathy. Though the way in which a link as forged between the 1980 and the 1981 budgets may be described as rather ingenious and unexpected, there is no reason to doubt the validity of the Supplementary Budget for 1980. At any rate, the Parliament's President has declared this Budget to have been adopted in accordance with Article 203 of the EEC Treaty and the corresponding provisions of the other Treaties. Therefore, the Supplementary Budget for 1980 is an existing act which will have to be implemented, unless the Court of Justice were to declare it invalid.

Reactions to the adoption of the Supplementary Budget for 1980 as amended by the European Parliament have ranged from Italy's, Britain's and Ireland's clearly favourable attitude to intransigent criticism on the part of France. The latter country has decried the Parliament's move as a "*détournement de droit*" which jeopardizes France's "essential interests". France has therefore announced, and Belgium and Germany have followed suit, that it will ignore the Commission's call for the funds needed to pay for the extra expenditure added by the Parliament to the draft Supplementary Budget for 1980.

Obviously, as mentioned before, disputes over the interpretation of the Treaties' budgetary provisions and questions concerning the lawfulness of budgetary acts of the European Parliament ought to be resolved by the Court of Justice. In earlier issues of this Review² suggestions have been put forward for facilitating access to the Court, in particular by extending the scope of Article 173 of the Treaty in such a way that legally binding acts of the European Parliament can be subjected to judicial control. The present difficulties with the budget confirm the need for such a step. The absence of *direct* means to obtain a Court ruling on the validity of the Community budget may induce the Member States to resort to unilateral action, *e.g.* by refusing to pay part of their contributions. However, as the

2. 16 C.M.L. Rev. 1979, 175-177 (Editorial Comments); see also the article by Sir Charles Sopwith (note 1, above), 17 C.M.L. Rev. 1980, at 345-346, P. Pescatore, *Reconnaissance et contrôle judiciaire des actes du Parlement Européen*, Rev. Trim. dr. eur., 581 *et seq.*

Court stated as long ago as 1964, the basic concept of the Community requires that the Member States shall not take the law into their own hand.³ Of course, under Article 169 the Commission can take the matter to the Court if Member States refuse to pay up. They are obliged to credit the Community in January 1981 for the Supplementary Budget No. 2 for 1980, and from February 1981 on for the Budget for 1981. Those Member States which do not fully implement the Supplementary Budget No. 2 for 1980 are therefore in breach of the Treaties since January; with respect to the 1981 Budget the breach will occur as of February. The Commission may therefore be expected to start infringement procedures soon. If the row over the budget is not resolved shortly, this may heavily mortgage the Community's business in 1981. It is of fundamental importance that the discussions on the restructuring of the EC budget and policies are not encumbered by an unsolved dispute over the Supplementary Budget No. 2 for 1980.

3. Cases 90-91/63, *EEC Commission v. Grand Duchy of Luxembourg and Kingdom of Belgium*, (1964) ECR, 631.