

The Purse and the Power

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Articles Draco I-52 ff., III-308 ff.¹

Purse power has been a hot item throughout the Union's history and was again much fought over during the Convention and the Intergovernmental Conference. The Constitution has indeed produced a number of significant changes. What makes the subject so hot? It is not just the money. The Union's budget is no more than that of a single smaller Member State. Most of the expenses are, moreover, fixed. That the budget should be so hot is probably because fighting over money is a good test of strengths generally (with a neat and immediate outcome). This explains the role the purse has always played in constitutional history. True to the grand tradition then, as soon as the European Parliament was given powers in the matter (1975) and got directly elected (1979), it had fights over the EU budget. This was mainly a wedge to break a share for itself in the legislative process. In the years that followed, it has in fact gained more legislative than financial powers. And the Union has been kept short, not on legislative powers but on money.

If, as Hamilton wrote in *The Federalist XXX*,

'Money is with propriety regarded as the vital principal of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions',

then the Union, with its mere 100 million euros annually for 450 million citizens, can not be very alive politically. Now Hamilton may have saved his young

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¹ All references in the text are to the Convention's Draft Constitution of 18 July 2003 (here Draco) unless identified otherwise. The Constitution's provisions have been renumbered upon its conclusion. The final numbering was not yet established at the time of printing.

Republic from breaking down under money problems; he was a man with a money bias, somewhat like Jean Monnet. In the Union's political development, the purse often counts for other things than for the money it contains.

Purse power can be broken down into two main chapters: one concerning revenue and one concerning expenses. Historically these were intimately related. A ruling prince would ask his nobles for a certain sum to finance a specific (military) project. Presently the two sides of the balance have each developed their own constitutional logic and history. The remaining links are technical and political. Technical: that there must be a certain balance between revenue and expenses. This is well established for the Union. Political: that the spending institutions, the administration supervised by the legislature, should be involved in the funding. This is in order to generate a sense of responsibility in the spending branch. In this aspect, the Union structure is flawed as revenue and spending lie with different bodies.

At the side of revenue what counts is *who decides* on revenue raising, on the *amount* of revenue sought and on *the sources* from which it is drawn. In the EU it is the Member States that have run this show traditionally, on the basis of the provision on 'own resources', lately in Article 269 EC.

The budget, on the other hand, detailing spending allowances lies with the Union institutions, including the European Parliament. Implementation of the budget lies chiefly with the Commission. As a check on the Commission the Parliament must sign off on the budget's execution afterwards. This power of discharge was used to force down the Commission in 1999, again to prove that budget matters are also about other things than just money.

The Convention and the Intergovernmental Conference in most of the areas mentioned have innovated and consolidated.

1. REVENUE

Raising revenue is where the Member States keep their closest grip on the Union budget. As most international organisations, the Union (EC) was originally funded by Members' contributions. In 1962 responsibility for financing the Common Agricultural Policy went to the Community. In 1965 a proposal from the Commission to grant the Union its own full funding led to the Luxembourg crisis. In 1970, after the instigator of that crisis, General De Gaulle, had left power, things could go ahead. On the basis of the budgetary Treaties of 1970 (Luxembourg) and 1975 (Brussels), the EC got its financial autonomy. Funding came from imports duties and VAT levied in the Member States. The system broke down in the eighties under disagreement about Britain's share in financing the CAP. From that time, roughly, the Members' slipped back in as

fundings of the Union (EC). The contributions were fixed periodically, together with the other sources of funding (such as VAT) in the ‘Decision on own resources’. Based in the EC-Treaty, this decision needed unanimous adoption by the Member States jointly and then domestic approval in each separately. This is not a recipe for liberal funding. ‘Own resources decisions’ have been adopted recently by the Council in 1988, 1994 and 2000, respectively, upon previous high political agreement inside the European Council in 1986 (Brussels), 1992 (Edinburgh) and 1999 (Berlin). As can be seen, they run for around six years. The next deal (to run from 2006) is presently under discussion.

To sum up, EU revenue is characterized by the need of ‘double unanimity’ among the Member States for any funding and by the fact that most of the money is put in by these Member States. Together these two factors can be trusted to keep funding down.

In the Convention the issue of revenue was picked up by advocates of a greater public involvement in the raising of Union funding.² If, somehow, the European citizens would see their own money leave for Brussels in the form of a tax, however unpopular at first, this might lead to their greater awareness and to the accountability of the institutions over the long run. It would necessarily involve the European Parliament in raising revenue. The idea did not fly but it is not wholly suppressed, witness the text of Article I-53(3) (Draco) on the Union’s own resources:

‘A European law of the Council shall lay down the provisions relating to the system of own resources of the Union; *in this context it may establish new categories of own resources or abolish an existing category...*’.

A less revolutionary move was to suggest some degree of majority voting for the Union’s resources. Article I-53(3) (Draco), granting this act the form of a ‘European Law’, still requires ‘double unanimity’ (i.e., including domestic approval in all Member States):

‘The Council shall act unanimously after consulting the European Parliament. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.’

Majority rule then foundered on British fears of losing its privileges (rebate). Only for strictly implementing purposes, the weighty requirement is lifted, witness paragraph 4:

² For the debates in the Convention’s budgetary discussion circle, see <http://european-convention.eu.int/doc_CIRCLE.asp?lang=EN>.

A European law of the Council shall lay down implementing measures of the Union's own resources system *in so far as this is provided for in the law adopted on the basis of paragraph 3*. The Council shall act after obtaining the consent of the European Parliament.

To conclude: in the area of revenue no great inroads have been made on the principle that Member States jointly are in control, but innovations have not been excluded.

2. EXPENSES

A modern state's funding and budgeting lie, roughly, with the same authority. It is the legislature that imposes taxes for funding and also approves the budget allowing expenditure. In the Union, while funding remains in the hands of the Member States jointly (as above), budgeting is for the institutions. This split has called forth both conflict and original constitutional development.

At first the Union (EC) developed a complex procedure for the yearly budget (lately Article 203 EC) which has been the theatre of repeated conflict and stalemate between the European Parliament and the Council in the '80s. The bone of contention was that Parliament did not have the last word on 'compulsory expenditure', i.e., expenses based on obligations from legislative measures. This rule was meant to keep the Parliament away from interfering in legislation and especially from agricultural policy. Agriculture, draining over 50% of the budget, was part of the EC's founding deal between France and Germany and should be safeguarded. The quarrels ran high and ended in a common declaration of '82 between the three institutions. Since then constitutional practice has taken over from formal treaty rules. From the mid '80s, and under the drive of Jacques Delors' Commission, more money was needed for 'structural funding' allowing Spain and Portugal to catch up with the northern countries. But the Member States were reluctant to grant it unless they could keep their hand on the purse. This led to the above series of decisions on own resources (1988, 1994, 2000), which gradually made a mockery of the name 'own resources', as the Member States were restored as the main contributors. On the other hand, it moved the weight of spending decisions away from the yearly budget procedure to periodic agreements between the institutions, called in the jargon 'inter-institutional agreements'. Like the funding decisions, these agreements would follow up on the great financial deals struck in the European Council. They came to be called 'financial perspectives' or, informally, multi-annual budget.

It is this periodic budget which has been codified in the New Constitution. Coined 'multi-annual financial framework', it is to be found in Article I-54. The contentions around this provision were about what should be Parliament's

involvement and whether to allow majority voting in the Council. As to the latter, it was originally proposed in the Convention to vote by majority. In the last week of the Convention, it was obtained by Spain (hedging its structural allowances) to keep unanimity for the first period after the entry into force of the Constitution. This would put off majority voting another five years (to 2011 or so).

It was remarkable that in the final run Holland, one of the main ‘net contributors’ to the Union’s funding, made itself the staunchest defender of unanimity voting. Not in order to hedge existing budget allowances, like Spain, but to prevent new allowances to be created against its will. The IGC found agreement on another ‘passerelle’ (gangway). Articles 54(2) and (4) now read:

‘2. A European law of the Council shall lay down the multi-annual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.’

‘4. The European Council may adopt, by unanimity, a European decision allowing for the Council to act by qualified majority when adopting the European law of the Council referred to in paragraph 2.’

The Multi-annual financial framework is further elaborated in the Third part.

Once the weight of budgetary decisions switched to this new periodic agreement (under stage-management by the European Council), it was a logical move to cut back drastically the annual budgetary procedure and roughly assimilate it into normal legislative procedure. Most importantly the notorious distinction between obligatory and non-obligatory spending has been dropped, exposing agriculture to the European Parliament’s involvement.

3. RESIDUE AND CONCLUSIONS

Apart from Union funding and spending, the Purse chapter is about discharge and about Union fiscal legislation applicable to and in the Member States. As to discharge, a very strong constitutional weapon (see above), little has changed. It alone presently carries the full weight (at the level of the Union) of representation needed to redeem taxation. The provision of Article 276 EC has proved sufficient and is moved to the Constitution under the heading Implementation of the Budget and Discharge.

As to fiscal legislation in and for the Member States it is to be noted that limited shifts to majority voting as found in the Convention Draft III-62 and 63 were successfully fought by the UK, Sweden and Ireland and have simply disappeared. The matter is left to unanimity in the Council with a negligible consultative role for Parliament.

To conclude: developments in the fiscal and budgetary spheres are extremely hesitant. The links between funding and spending, essential in a modern democracy, are poor though they have improved. Most of the money presently comes in as a membership fee and the Constitution makes no change to this. At first sight this may be the reason for scepticism about the Union's political capacity. Now look at the US. Article I of the US Constitution contains a provision apportioning taxes to the different states according to their number. This system, quite similar to one of contributions, was only undone in the XVIth Amendment:

'The Congress shall have power to lay and collect taxes ... without apportionment among the several States ...'.

This entered into force in 1913, more than a hundred years after the Constitution. So if it takes a while to get the funds to flow more freely through the European body politic also, this need not be fatal.

Two last points need to be made. It is a good thing that the great deals of funding and of spending in the Union should be brought under a single institutional framework, around the financial perspectives. This allows constitutional interaction between the Member States and the Union institutions, notably EP. What counts also is that the crucial deals are given a five-year interval to synchronize with the Union's central political interval of five years (for EP, Commission and now European Council-president). Such rhythms are essential to the development of political life.

QUESTIONS FOR SCHOLARSHIP AND PRACTICE

1. How to characterize the relationship between the European Council and the European Parliament in budgetary matters.
2. What brought France to drop insisting on the distinction between obligatory and non-obligatory expenses?
3. Compare the budgetary evolutions of EU and US.

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