



**COUNCIL OF
THE EUROPEAN UNION**

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**PE 439
BUDGET 43
INST 565
JAI 661**

NOTE

from: General Secretariat of the Council
to: Delegations

Subject: Summary record of the meeting of the European Parliament **Committee on Budgetary Control (CONT)**, held in Brussels on 27 September 2012

The meeting was chaired by Mr THEURER (ALDE, DE).

Items 1 and 2 on the agenda

The agenda was adopted and the Chair announced that the meeting would begin with the report on the trip to the Ignalina Nuclear plant in Lithuania (this item had been postponed from the meeting on 26 September 2012).

Item 3 on the agenda

Workshop on "Discharge of the Council Budget" organised by EP

CONT/7/09754

Rapporteur: Ms SENDER (S&D)

In his introductory speech, Mr THEURER (ALDE, DE) chair, recalled the outstanding problems between the EP and the Council concerning the interpretation of Article 319 TFEU. He explained that according to the Council position, since discharge was only to be given to the Commission, it did not have to reply or transmit information to the EP. He considered this approach unacceptable and damaging for both institutions.

Ms AYALA SENDER, rapporteur, recalled that the Council, in 2010, had acknowledged, under the Spanish Presidency, that the Gentlemen's agreement of 1970 was obsolete. She regretted the absence of a representative of the Council, since, in her view, this struggle was part of a larger battle that was becoming a crisis in the relationship between the two institutions.

Professor Matthias ROSSI (University of Augsburg) took the floor and stated his view that the EP position was not underpinned by primary EU law. Article 319 TFEU was clear and provided the unequivocal rule that the Commission was the only institution to be submitted to discharge. He recalled the historical changes in the discharge procedure, that had been granted by the Council alone until 1970, then by the EP and the Council between 1970 and 1977 and only by the EP on a Recommendation by the Council since 1977. He added that Article 319 TFEU was supported by Article 317 TFEU, that made the Commission the sole body responsible for the management of the budget and therefore the only one submitted to discharge.

He contested all arguments that the Council was also responsible because it managed a part of the EU budget, and argued that such reasoning would lead to granting a separate discharge to MS. He also described as nonsense the situation whereby the EP granted discharge to itself and looked forward to the day when the EP would refuse itself discharge.

In his view it was for the Commission to shoulder full responsibility for the management of the budget, including the part of the budget that was managed by other institutions or by MS. He explained that this discharge model corresponded to that applicable in federal states, whereby the area of activity of the federated entities did not overlap with the entity (the federal government) that was discharged.

He contested that the EP was the sole body with democratic legitimacy - this also went for the Council.

Concerning the right to information, he stated that the EP had a right only to information from the Commission.

The EP and the Council did not need to share the same documents, since the Council Recommendation was independent from the EP decision on discharge. Therefore, the Commission was the institution that had to provide information.

Professor CHALTIEL (University of Grenoble) recalled that the EP represented European citizens and therefore was democratically accountable to them. In her view, the EP was the ultimate authority in charge of the democratic scrutiny of the management of the budget, that was largely funded by national contributions. This did not mean that the Council was undemocratic, but it was not the high authority, in accordance with the Treaty provisions on democratic principles of Title II of the TUE. She explained that a different reading of Art. 319 TFEU from that provided by professor ROSSI was possible, since EU law, in particular primary EU law, was not always clear and transparent. Article 319 TFEU was no exception and the legal obligations it contained were ambiguous and needed interpretation. The Commission was not the only entity implementing the EU budget and indeed since 2001 the EP had started a practice of submitting other entities that managed the EU budget to discharge. In her view, this represented a 'coutûme', since the practice was supported by a dominant opinion of legal necessity. Only the Council had refused to cooperate. In her view, Council's arguments based on a strict interpretation of Article 319 TFEU were not convincing, as the new constitutional context of the EP powers had to be taken into account. She therefore considered that the Council position could be in conflict with ECJ case law (since 1983) on inter institutional balance. She also criticised the comparison between the EU's legal system and that prevailing in federal states, given the specific nature of the EU. She ended by suggesting ways other than the refusal of discharge for the EP to exercise its democratic role, such as media action, joint action with the Commission and judicial action.

Mr ANTPÖHLER (University of Heidelberg) considered that in view of the changed constitutional circumstances, Art. 319 TFEU was no longer unambiguous and could be interpreted in a teleological way. Nevertheless, he made it clear that discharge would apply to the Council and not to National delegations. In his view, the Commission had no control over Council expenses and therefore could not be accountable for them. He admitted that scrutiny could be carried out both by the Commission and the EP, but preferred EP discharge. Council discharge by the EP raised some questions, in particular the obstacle represented by ECJ case law on the principle of autonomy of the Institution. In his view, this could negate the possibility of a EP discharge of the Council. He argued that Council independence was not absolute and that the executive expenses of the Council could be scrutinised. He admitted that a clear line would be difficult to find, in particular when it came to building expenses.

Concerning the EP's access to information, he considered that neither the treaty nor the FR contain an obligation for the Council to inform the EP. He argued that Article 319(2) could be interpreted in the sense that the Council should provide the EP with documents relevant to the question as to whether the Council had acted lawfully. He told Ms AYALA SENDER, who wondered if a Communication from the Council to the EP from 16 October 1973 (Bulletin EP 34/73 from 19 October 1973) could be binding on the Council, that it was not sure that it could oblige the Council to answer oral questions and attend meetings other than in EP plenaries. Professor ROSSI considered that the communication was irrelevant when applied in relation to current constitutional battles, given that it dated back to the seventies. Mr ANTPÖHLER agreed with Mr GEIER (S&D, DE) that the EU was a dynamic construction, but recalled that only a ruling of the ECJ could settle the extent of the EP's discharge powers. In response to Mr SONDERGAARD (GUE, DK) who asked about the chances of success in appealing to the ECJ on disclosure, he insisted that the right to obtain disclosure from the Council was based on the principle of loyal cooperation. Professor CHALTIEL warned against being overly confident about a positive ruling from the ECJ, given its changing line on inter institutional matters, and considered that the Council's refusal to hand over documents would have no legal consequences. Professor ROSSI considered the chance of obtaining a positive ECJ ruling against the Council very low.

Professor ROSSI told Ms GRÄSSLE (EPP, DE) that the Council had the right to ask for information from the EP in the preparation of its Recommendation. Mr ANTPÖHLER made a distinction between Article 319(1), that referred both to the Council and the EP, and Article 319(2), as fleshed out by the FR and considered that in the latter the EP and the Council were not on the same footing.

Mr PASSOS, from the EP legal service, set out the content of the EP written opinion. He nevertheless contested the opinion of professor CHALTIEL that a 'coûtume' on individual discharges had been created.

Ms AYALA SENDER concluded that the EP had to find a way of cooperating with the Council in order to overcome the current difficulties between the two institutions.

Item 4 on the agenda

CONT delegation to Ignalina Nuclear Power Station in Lithuania (10, 11 and 12 July 2012) CONT/7/08061

Head of the delegation: Mr THEURER (ALDE)

- Presentation of the report on the delegation

Mr Theurer acknowledged that some problem still remained in the process of decommissioning the nuclear plant, because of conflicts between the actors in charge of the decommissioning. The decommissioning process was delayed, with a cost estimated at EUR 600.000 per month. He stated that the political objective of reaching decommissioning was not put into question. He also referred to a meeting with the Lithuanian ambassador, whereby the ambassador had pointed out some figures in the report that needed to be completed.

The representative of the Commission defended the figures, although he admitted that some could be better presented. He also referred to a steering committee in place and to the deadline of 2013 to complete the facility that would allow defueling of the plant. According to Ms GRÄSSLE (EPP, DE) it was urgent to clarify who was responsible for a delay that cost EUR 600.000 a month. Mr BALCYTIS (S&D, LT) focused on the role of the EBRD, which had become the administrator of the project. He stated that according to current legislation the Lithuanian authorities were only ensuring technical supervision of the project. Mr GEIER (S&D, DE) considered that the issue was not to find who was at fault, but to speed up the process of decommissioning the plant.

The representative of the Commission considered that a clear cut responsibility for the delay was difficult to assess. In any case, the Commission had acted in line with the conclusions of the donors' meeting of last June. He also promised that further information would be sent to the CONT in writing. Mr THEURER concluded that a meeting between groups' coordinators was needed and that the report would be finalised after the reply in written from the Commission.

Item 5 on the agenda

Next meeting(s)

- 8 October 2012, 15.00 – 18.30 (Brussels)
- 9 October 2012, 9.00 – 12.30 (Brussels)
- 15 October 2012, 15.00 – 18.30 (Brussels)