Public Funding of Parliaments in Europe:

Financial Autonomy up for Debate(s)

Acts of the 2nd International Symposium on Comparative Public Finance

held on March 22-23, 2018 in Luxembourg

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under the auspices of the European Court of Auditors

Under the direction of
Ms Danièle LAMARQUE, *Member of the European Court of Auditors*
Prof. Michel LASCOMBE, *Professor of Public Law at Sciences Po Lille*
And **Prof. Aurélien BAUDU**, *Professor of Public Law at the University of Lille*

in collaboration with the:
- Société française de finances publiques (French Public Finance Society)
- Société de législation comparée (French Comparative Law Society)
- Gestion et Finances Publiques (Management and Public Finance) journal

and in partnership with the:
- University of Lille
- Sciences Po Lille
- University of Lille Public Law Research Team (EA n°4487)
- University of Lille Centre for Rights and Prospects of Law

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Mr Klaus-Heiner LEHNE
President of the European Court of Auditors

Opening remarks
of the 2nd International Symposium on comparative public finance

Ladies and Gentlemen,

Welcome to the European Court of Auditors and welcome to this international symposium on comparative public finance. I am delighted that my colleague Ms Danièle Lamarque has taken the initiative to hold this meeting here in Luxembourg. Away from the spotlight of adversarial politics, with our independence enshrined in the European treaties, I think we are a suitable "neutral ground" to discuss and debate such important and sometimes difficult issues for our parliamentary democracies.

Reading the title of the Symposium I immediately recalled my activities more than 10 years ago in the European Parliament when I was the shadow rapporteur for the Statute for Members of the European Parliament. This was an extremely difficult exercise in attempting to harmonise to an extent the rights and duties of MEPs. We had to base ourselves on a comparative analysis of the different situations applicable in the Member States to get to an acceptable result. What we discovered was an enormous variety of situations, linked to national traditions and sensitivities. Even just looking at the salaries or the "indemnity" of Members, some parliamentarians earn ten times more than their neighbours in another Member State. And I remember a similar experience a few years later when we decided to create a specific statute for Parliamentary Assistants.

Ladies and Gentlemen, the topic for your discussions goes to the heart of what our democracies are and what the free mandate of a parliamentarian means in practice. It is difficult to see how the legislative branch can be truly independent if it depends on others for the adoption and execution of its budget. But such autonomy also raises delicate questions: to whom are these parliaments accountable concerning their internal financial management? I trust that your discussions today and tomorrow can feed into practice both at a national - I understand that the French assembly, for example, has set up a working group to reform its practices - and at European level. As a lawyer by training, you do not need to convince me of the added-value of comparative law – it's essential ! I therefore find it excellent that you will hear over the next two days from so many different national contexts. I wish you a very successful conference.

Prof. Xavier VANDENDRIESSCHE, *President of the University of Lille Foundation*
Mr Benoit LENGAIGNE, *Director of Sciences Po Lille*
Prof. Xavier CABANNES, *President of the French Public Finance Society*
and Mr Dominique HASCHER, *President of the French Comparative Law Society*

Presentation
of the 2nd International Symposium on comparative public finance

1 A 2nd International Symposium led by the Lille School of public finance

Let me first welcome, with some emotion, the dignitaries present, first and foremost President Klaus-Heiner Lehne, *President of the European Court of Auditors* : thank you very much for your hospitality, thank you for giving the University of Lille the opportunity to organise this symposium in this magnificent room in this prestigious European institution. It is a great honour for us, and a form of recognition; it is also a sign of our university's willingness to open itself even more to Europe, to be more what it often claims to be: "at the heart of Europe." Danièle Lamarque, thank you very much for everything you have done to contribute to the successful organisation of this symposium; I don't think the organisers could have done it without you, and we owe it all to you. Let me also welcome the venerable Mr Francis Delpérée, an old accomplice from Lille. Baron, member of the European Parliament, senator, I'm not sure which title to use, though the most important is certainly "Professor," for everything it means in terms of academic positioning. I welcome all of you, all the dignitaries present. In addition to those I have already mentioned, I would like to express my warm and sincere thanks to:

First and foremost, Aurélien Baudu and Michel Lascombe, who were the linchpins of this symposium and without whom it would not have been possible, who gave a tremendous amount of energy, time, and intelligence to convince the necessary individuals and create this academic event; we are greatly beholden to them for what they have accomplished, with the help of doctoral students from the University of Lille's School of Public Finance (Centre for Rights and Prospects

of Law – Public Law Research Team) who contributed to this event.

Thank you to the chambers of the European Court of Auditors. My thanks to your office, Ms. Lamarque, who proved to be a great help to us during all the months of preparation. Thanks to the French Public Finance Society and its dynamic president, Professor Xavier Cabannes, whom I warmly welcome and who so proficiently supports and promotes the study of public finance, which, as all of those present here will agree, is vitally important, especially to democracy. Thanks to the French Comparative Law Society, a prestigious intellectual organization that has existed since 1869; I sincerely thank its secretary general, Mr. Timothée Paris, and its president, Mr. Dominique Hascher, an adviser to the Court of Cassation. As you know, the French Comparative Law Society now comprises a public finance law branch, which was created four years ago and is chaired by Michel Lascombe and led by Aurélien Baudu. Thanks also to the *Revue française de finances publiques* and its two main leaders, Marie-Christine Esclassan and Michel Bouvier, who unfortunately cannot be with us today but who, for many years, have supported in-depth studies, essential studies in public finance law, and who also systematically publish the works presented at the French Comparative Law Society's seminars. Thanks again to the *Revue international de droit comparé*, which publishes short summaries of these seminars to inform the entire community of comparative lawyers about current research in comparative financial science and law. Finally, thanks to the *Gestion et Finances Publiques* journal and its editor-in-chief, Mr. Michel Le Clainche, who will publish the acts of this symposium.

I don't know if I am the right person to be speaking to you today. When Aurélien Baudu asked me to take part in the introductory session, I was still the president of my university. I no longer hold that position, but the current president asked me to represent the University of Lille, which I do with pride and humility. As I said earlier, it is a privilege for the University of Lille to organize this major event in collaboration with Sciences Po Lille.

Now let me quickly move on to the heart of the matter: the second international symposium on comparative public finance dedicated to "public funding for parliaments." My attention was first drawn to the word "symposium." A bit of research into its etymology revealed that it derives from Ancient Greek and designates a banquet. The most famous of all of which is Plato's *Symposium*, which, let me remind you, was dedicated to love! I therefore imagine that our symposium will also turn into a banquet of love of financial autonomy, and comparative public funding of the parliaments of the European Union.

Next, we come to the title: the "public funding of parliaments." I pondered about the use of the word "public." Lawyers enjoy using a contrario reasoning: might "private" funding of parliaments exist, thus giving a hidden meaning to the title chosen for this symposium? Beyond these witty remarks, this comparative approach, which has structured the entirety of this colloquium, is an absolute necessity: the study of comparative law in the field of public finance is an integral part of the discipline. Admittedly, such studies are too rare, particularly in France, because they require a methodology of absolute rigour: you not only have to know your home country's law, you also have to understand the law of the country your comparing it to just as well. That is why I can only congratulate the organisers for having chosen the method of systematically pairing a "native" of the parliament being studied with a scholar or law professional.

The aim of this symposium is clear, and President Lehne did not fail to point it out. Namely, to shed light on the public funding of parliaments in the uni- and bi-cameral systems of Europe: what are the rules for the adoption and implementation of the budgets of the assemblies? Is the financial autonomy of parliament the norm? What are the applications of this principle? What checks are or should be applied?

More than twenty years ago in Lille, Michel Lascombe and I organised a symposium on the financial autonomy of parliamentary assemblies. At the time, I presented research on the foundations of the financial autonomy of parliamentary assemblies, in French law, of course. There were two avenues for reflection: the oft-mentioned principle of the separation of powers, which posed specific questions in relation to a two-chamber system; or the illusion of the legal personality of such assemblies which supposedly explained or justified their financial autonomy. Neither of these theoretical foundations stood up to analysis; the conclusion I reached was weak indeed since it consisted of saying that this financial autonomy was meant to be ascertained or measured rather than justified theoretically. Twenty years later, I wonder if, thanks to the insight of comparative law, we will reach a more fundamental

answer to this question of the theoretical foundation of the principle of the financial autonomy of parliamentary assemblies.

I'll conclude with a few short words to express what a great honour this is for me, both as a simple professor of public law but also as the former president of this university, and, once again, I would like to express our warmest thanks to President Lehne and Ms Lamarque.

Prof. Xavier VANDENDRIESSCHE

2 An international Symposium supported by Sciences Po Lille

It is with great emotion and pleasure that I take the floor in this prestigious amphitheatre of the European Court of Auditors. Three years ago, when the organisers of this 2nd International Symposium on Comparative Public Finance asked if Sciences Po Lille would like to participate, I immediately said yes. Taking the financial dimension into account when making political and administrative decisions, which our leaders and administrators must do, is an obligation that can no longer be avoided. For too long, the efficiency of administrative and political decisions has primarily been measured by the increase in public expenditure earmarked for them: a minister was effective if his budget was up; an administration was important when it was able to increase expenditure from one year to the next. The time of the continuous and infinite increase in public spending is a thing of the past. From now on, we must no longer strive to spend more to resolve a political or administrative problem, but rather spend more wisely. It is true that this idea is not new, as Emperor Hadrian himself spoke of it, but it was somewhat forgotten during the heyday of the "Glorious Thirty." This is a thing of the past, and our future leaders must be aware of it.

Our institute, which forms the future members of the European and international civil service, therefore has a duty to raise awareness of these key issues among future decision-makers. This amply justifies the fact that our school's curriculum offers students a significant number of courses and seminars in public finance, or, to use the term preferred by the Lille School of Public Finance, a significant number of courses and seminars in public finance law.

This policy is paying off; many our students have successfully passed the competitive public administration exams, including those in which public finance law plays an essential part. Thus, in recent years we have been pleased to see many of our students join the courts and financial administrations. However, this trend would only be a passing fad if it were not supported by outstanding academic research. We have the chance to have nationally, and even internationally, recognised specialists in these matters among our faculty. Our school is unique in that the curriculum is not limited strictly to budgetary matters, as is often the case in our universities. Thanks to our teachers and their research team, issues relating to the efficiency of public spending, the responsibility of public administrators and the control of budget implementation and accounting are also widely covered.

This tradition of financial science is essential for us, especially as it is an aspect of the multidisciplinary nature of the education we provide. Indeed, these issues are addressed not only in legal terms, but also in economic and historical terms, in accordance with the specificity of political science studies in France. Last but not least, there is the comparative dimension, which is further enhanced by our participation, through our research faculty, in the *Société de Législation Comparée*. Hence, the study of US, German and UK public financial law is central to us.

This 2nd international symposium on comparative public finance lies at the heart of these concerns. First, its comparative aspect is evident; secondly, the fact that it is being held in this prestigious place not only adds to this comparison but it makes it possible to insist on the issues of efficiency, which is now fundamental to public

expenditure; finally, the chosen topic, which is both constitutional and financial, stresses how critical the financial dimension is when making any political decisions. It is thus evident that Sciences Po Lille readily welcomes and encourages an initiative such as this. I would like to take this opportunity to tell our students, who are watching this symposium by videoconference, how important it is for them to constantly be aware of how the administrations of our Member States and the European Union function. A better understanding of what is happening in neighbouring countries inevitably leads to the wider integration of our countries and the greater convergence of our policies. This will strengthen Europe's place in the world and, if it can present itself as a model by exhibiting exemplary financial management, its influence will be even greater. Initiatives like this one are therefore essential, and I am sure that the work inspired by the discussions you will have over the next two days will definitely mark the future politicians and administrators we are educating.

Mr Benoit LENGAIGNE

3 A 2nd International Symposium for the Société de Législation Comparée

Welcome to the 2nd International Symposium on Comparative Public Finance. I would like to thank the president of the European Court of Auditors for his hospitality, the members of Parliament for their work, and the comparative professors and colleagues present for their participation in this symposium. It is a great honour and pleasure to represent the *Société de Législation Comparée* at this event, which is organised in partnership with the public finance law branch of the *Société de Législation Comparée*, chaired by Prof. Michel Lascombe and moderated by Prof. Aurélien Baudu, whom you will hear from this morning, in conjunction with the *Société Française de Finances Publiques*.

Founded in 2014 and placed under the patronage of the French High Council of Public Finance, our society's dynamic administrators and members have organised a number of seminars: on the Portuguese Court of Audits and the monitoring of public administrators, which took place at the Court of Auditors in June 2016;[1] on the US fiscal and public accounting system, which took place at the State Council in March 2017[2] ; and on the public financing of parliament in the United Kingdom and France, which was held at the Senate in September 2017.[3]

This 2nd symposium clearly illustrates the regularity and very remarkable activities of our society's public finance law branch, which I encourage you to join. Thank you for your presentations and the success of this high-quality academic event.

Mr Dominique HASCHER

4 A 2nd International Symposium for the Société Française de Finances Publiques

We would like to emphasize three points regarding these short introductory remarks "about" (rather than "on") the symposium.

First, we would like to express our thanks, congratulations and satisfaction. Our thanks to the European Court of Auditors and its president, Mr Lehne, for having welcomed us in such a prestigious setting. No other site could be more fitting to illustrate reflection on comparative public finance and management. One only has to read the works of this institution to realise how true this is. Our sincere and heartfelt congratulations to

[1] A. BAUDU, M. LASCOMBE (ed.), *RFFP*, 2017, n°137, p.231 et seq ; A. LE MOAL, *Revue international de droit comparé*, n°1/2017, pp. 258-262.

[2] A. BAUDU, M. LASCOMBE (ed.), *RFFP*, 2017, n°139, pp.99-142.; A. LE MOAL, *Revue international de droit comparé*, n°3/2017, pp. 708-711.

[3] A. BAUDU, M. LASCOMBE (ed.), *RFFP*, 2018, n°142, p. 171 et seq. ; A. LE MOAL, *Revue international de droit comparé*, n°1/2018, pp.207-210.

the organisers of this event: Ms Danièle Lamarque, a member of the European Court of Auditors, Professors Michel Lascombe and Aurélien Baudu, who have both played a prominent role in the revival of comparative public finance in French universities. Finally, I would like to express how pleased we are to see that this event is supported by two academic societies: the Société de Législation Comparée (SLC) and the Société Française de Finances Publiques (SFFP). Indeed, one must not forget that the comparative public finance research coordinated by Professors Lascombe and Baudu is carried out under the auspices of the SLC's public law branch, which was jointly established by this society, the SFFP and the University of Lille's public law research team. It is easy to draw a parallel between the SLC's public law branch, founded in 2014, and what was once the public finance branch of the Institut de Droit Comparé (or Institute of Comparative Law) founded in 1935. Initiated by Jacomet and Allix, the purpose of this public finance branch was to disseminate information about public finance ("public accounting laws, financial statistics yearbooks, budget discussion reports and summaries, financial overviews and budget explanatory statements, the final accounts of numerous countries"[4]) and reveal the general principles common to the different national public finance systems.[5] This branch was very successful thanks to Jacomet, who ran it for more than a quarter of a century. As Paul Reuter wrote, it was an "incomparable research centre whose reputation attracted specialists from the League of Nations, senior civil servants and military officials, and foreign academics; the ambiance was so cordial, so open that it was difficult to know what drew you in the most, the scholarship or the friendship."[6] Certainly, we have long needed a forum in which public finance specialists from different countries can exchange their ideas, a place where scholars can compare and, on a more pragmatic level, "retrieve" legal and statistical information, because, even in a world dominated by the Internet, financial information is not always readily available. The society's public finance law branch is a great organisation that works very well; we are all very happy with it, I think. It has revived an academic tradition, and it is probably not a coincidence that the 1st symposium, organised in March 2014, was placed under the aegis of Jèze, Allix and Laufenburger.

Next, a few quick words on the vital significance of comparative public finance. In public finance, as in all legal or economic spheres, comparison, which is never justification, is necessary. As Allix wrote in 1936, in the foreword to the first issue of the *Annales de finances publiques comparées*,[7] which, in fact, was published by the public finance branch of the University of Paris' Institut de droit comparé, "do we have to stress the value and importance that the study of comparative finance, and that of budgets in particular, has for the knowledge of social facts? Does a country's budget not reflect its public life and institutions? Studying budgets reveals the very nature of social and economic organisations (…). It reveals the trends of peoples, their good and bad fortune, their wisdom and their folly, which are ineluctably registered as debits and credits in the public accounts." As he wrote these words, Europe continued its inexorable march towards war and he drew conclusions that strongly resonate still today: "in these turbulent times, where behind all other problems (…) financial issues arise, dominating all others and demanding a solution be found (…). The danger can be felt everywhere; everywhere, State resource management rules are being revised, the financial powers of assemblies debated, the principles of public accounting more or less profoundly modified." And he concludes, "No country can disregard the lessons to be learned from foreign reforms in this area."[8] The study of comparative public finance or comparative public finance law developed in the late 19th century, but, of course, its importance increased with the internationalisation of political and economic issues – compare to better know oneself because, as Montesquieu wrote, "a difference in the manner of living, (…) gave rise to a variety of laws" (*The Spirit of Laws*, Book XIV, Chapter X) – and then with European integration and its acceleration – but in this case the comparison serves to bring countries together and harmonise regulations and procedures. Comparative public finance studies thus reveal what exists elsewhere; it can be a source of inspiration, a lesson (because everything is not necessarily better across the border), or astonishment. As Laufenburger noted, "a reconciliation which can be described as sensational" may give rise to "financial achievements."[9]

Finally, a few words about the theme chosen for this 2nd symposium, the public funding of parliaments in Europe, after the 1st on the golden rule in

[4] « Compte-rendu de l'activité de la Section des Finances publiques de l'Institut de Droit comparé », *Annales de finances publiques comparées*, 1936, Vol I, p.13

[5] The work of this branch was important and had a real impact. On this subject, see the article by Lucile TALINEAU and Stéphanie FLIZOT, "Apparition et développement du droit financier compare," *Revue du Trésor*, 2006, n°3-4, p.184, which underlines the role of this branch and the articles it published.

[6] Paul REUTER, "Le Contrôleur général Robert Jacomet (1881-1962)," *Revue internationale de droit comparé*. Vol 14, N° 3, 1962. p. 604.

[7] The editorial secretary was a young doctor of law, Paul REUTER. Although Jean COMBACAU did not mention this experience from Reuter's university years, even though he seemed to have fond memories of it (see obituary for JACOMET cited above), he pointed out that "his first works were disparate, they touched on everything: budget law and tax law, which remained the focus of his work until the late 1940s." "Paul Reuter, le juriste," *Annuaire français de droit international*, Vol 35, 1989, p.9.

[8] Edgard ALLIX, "Avant-propos," *Annales de finances publiques comparées*, Vol I, cited above, pp.8-9. This well-known forward, referred to by Lucile TALLINEAU and Stéphanie FLIZOT in the above-mentioned article, p.186, footnote 28, was also cited recently by Jean-Luc ALBERT, *Réseau Allix-Newsletter*, N° 1, 2018, p.4.

[9] Henry LAUFENBURGER, *Finances comparées. États-Unis – France – Grande-Bretagne – U.R.S.S*, Sirey, 2nd edition, 1950, p. V.

2014. My comments will be brief as Mr Lascombe and Mr Baudu will be addressing this subject in their presentation. To quote Montesquieu once again, there are "three sorts of power" (Book XI, Chapter VI): one of these powers makes the laws, corrects them or repeals them. Montesquieu scholars have turned his chapter "On the Constitution of England" into an endorsement of the separation of powers as the cornerstone of democracy, thus making him say what he probably never even considered. But that does not matter. In our western view, and, for example, in France, where the Declaration of 1789 proclaims that, "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all" (Article 16), parliament, as a legislative body, exercises a power that must be independent from the two other powers. Certainly, the rules governing the funding of parliament, the amount of funding and the checks on parliamentary finances, are all key issues for democracy, since the proper funding of the parliamentary body must contribute to the independent exercise of its power. The same applies to the way in which parliament and parliamentarians use their funds, at the risk of seeing the rift between citizens and their elected representatives widen, revelation after revelation.

Prof. Xavier CABANNES

Ms Danièle LAMARQUE, *Member of the European Court of Auditors*
Prof. Michel LASCOMBE, *Professor of Public Law at Sciences Po Lille*
and Prof. Aurélien BAUDU, *Professor of Public Law, University of Lille*

Opening remarks on debating
the financial autonomy of parliaments in Europe

1 Choosing the location to debate the financial autonomy of parliaments in Europe : the European Court of Auditors

Scholars, senior officials, and colleagues, ladies and gentlemen, I would like to echo the welcome remarks made by our president, Klaus-Heiner Lehne, to welcome those present here as well as those streaming us online. The European Court of Auditors is honoured to host this high-level meeting on the public financing of the parliaments in Europe and I am confident that these two days will provide us with high quality contributions and debates.

I would like to stress three points.

Transparency is in the spirit of the times, as we all know: citizens want to know how public money is being used, and those representing the people are not exempt from this ever more pressing demand. Article XV of the 1789 Declaration of the Rights of Man and of the Citizen, which has become the motto of the French Court of Auditors, must therefore be understood in its broadest sense: if society — directly or through its representatives — has the right to require of every public agent an account of his administration, then it is not prohibited to extend this obligation to these representatives themselves, since they receive public funding. This duty of disclosure is an essential component of the exercise of responsibility: it is therefore important to recognise, organise and respond to it in full.

My second point concerns the monitoring of this funding. This comes as no surprise, given that we are at the European Court of Auditors. This monitoring is at the core of the responsibility loop I just mentioned, the guarantee of objective and independent information, a protection against ill-controlled transparency. Public auditors need to be in a position to play this role.

Finally, I would like to broaden the scope — the professors present will forgive me for going slightly off-topic — to the question of the means, understood in the broadest sense, made available to members of Parliament to exercise their legislative and oversight function over the executive. The contribution of academic research teams, which can unite several hundred experts serving

the US Congress or European Parliament, goes well beyond the financial or human resources given to each member of Parliament. The exercise of parliamentary function, in a more complex world, requires this expertise: to analyse the impact assessments of draft laws – an international symposium held here last November illustrated the issues at stake and the difficulties involved in this role; monitor the performance of the executive; and, finally, to assess public policies. On this subject, I refer you to the report submitted on 15 March to the Evaluation and Monitoring Committee of the French National Assembly: it specifically identifies the information and expertise needs of members of Parliament, and raises the question of how to meet them.

International comparison is essential if we are to better understand these issues, reveal fundamental shifts, identify factors of success and best practices, and inspire emulation. We have the chance to cover ten European States and the European Union, thanks to the wide reach of the *Société de Législation Comparée*, the *Société Française de Finances Publiques* and the Lille School of Public Finances (*École de Lille des Finances Publiques*), which have joined forces to promote research on public finance law. Thanks also and above all to the exceptional dynamism, talent and commitment of Michel Lascombe and Aurélien Baudu, to whom I now give the floor.

Ms Danièle LAMARQUE

2 Does the financial autonomy of the parliaments in Europe need to be debated?

The public funding of the parliaments in Europe is the subject of this 2nd international symposium on comparative public finance, held under the patronage of the European Court of Auditors, in conjunction with the *Société de Législation Comparée* and the *Société Française de Finances Publiques*. If the title is traditional, the subheading then asks: "Financial autonomy up for debate(s)"? It hypothesises that parliaments have financial autonomy and that there is debate in Europe.

First of all, Financial Autonomy.

Is it not a paradox to question the financial autonomy of the parliaments in Europe (we shall insist on this geographical element but our reflection can extend to all the parliaments of democratic States; in Europe, at least as things stand, this is the case)? So, is it not a paradox to consider whether parliamentary financial autonomy exists since, in democracies, everything regarding the financing of constitutional public authorities (with the exception of the civil list for the monarchy established by the Constitution) is determined by the legislature, i.e. the Parliament. The Parliament, by way of a vote on the State budget, determines the budgetary allocations for the constitutional public authorities: governments; supreme courts of constitutional review; other constitutionally guaranteed institutions. Can financial autonomy therefore not be presumed? If Parliament decides for all constitutional public authorities, then it also decides for itself and, as the saying goes, "if you want something done right, you have to do it yourself." So it will allocate the budget it deems fit for its operation, or perhaps even its influence. If parliaments have a monopoly on budget decisions (except in periods of unrest or the voluntary failure to exercise this power), then they are necessarily autonomous; the question of autonomy is, in fact, that of the other public authorities who are subject to the parlia-mentary vote. The time when the operations of France's Estates General depended on the good graces of the King, who financed them from the proceeds of his Menus-Plaisirs, is definitely a thing of the past.

One cannot fathom for an instant that a parliament would agree to adopt a budget in which its allocations are revoked or reduced to the point that it cannot function. Since it votes for the allocations it deems necessary, it goes to follow that Parliament has the total freedom to use these allocations at it sees fit. Might one dare say, then,

that Parliament is autonomous for both its revenues and expenditure, and that this financial autonomy is enshrined in democracy?

In fact, the only real problem relating to financial autonomy does not concern parliament, but rather parliamentary assemblies in the case of multicameralist states: in such instances, does this autonomy apply to the parliament as a whole or each assembly individually? In other words, does a parliamentary assembly have a say on the appropriations and expenditure requests of the other assembly? Yet this aspect only concerns implementation, by the Parliament itself and within its autonomy, and does not in any way call into question the consubstantial nature of the principle. Since the symbiosis between democracy and the financial autonomy of parliaments is evident, how can it be debated? Such debate exists, however, otherwise this symposium would be unnecessary.

In my View, there are three areas for debate.

First, according to a well-worn phrase, "democracy doesn't have a price, but it does have a cost." As the functioning of parliaments is necessarily financed by taxation, a civilian monitoring system should be instituted to ensure that the amounts the parliament allocates to itself are not excessive. Similarly, should it be prohibited for parliament to be financed by an earmarked tax? Wouldn't such a tax be contrary to the principle of budget universality? That lies at the very foundations of democracy, too. For example, in France, Article XIV of the 1789 Declaration of Rights implements this principle: "All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution." The paradox here appears from the outset. As civilian monitoring can be carried out by their representatives, who, in our representative democracies, are members of parliament, then it logically follows that parliament is responsible for monitoring the budget … of parliament. No other form of monitoring can be envisioned without undermining the separation of powers, which also lies at the very foundations of democracy. Let us not forget the content of Article XVI of the 1789 Declaration of Rights, which states: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all." It is thus impossible to imagine entrusting a court or administrative authority, independent or not, with the task of monitoring parliament's accounts, let alone verifying the appropriateness of the allocations and expenditure requests it approves. Therefore, parliaments will generally have their own control mechanism or self-monitoring, the independence – and thus the veritable utility – of which can be called into question. This necessarily results in a paradox; the financial autonomy of the parliaments is so great that it is exercised without any real control.

Secondly, this situation leads quite logically to another debate: can parliament spend what it wants, however it wants, without limit? Indeed, the emergence of a sense of impunity and omnipotence can lead to abuse. Since parliamentarians determine their own parliamentary allowances and financial and/or in-kind advantages, which are inherent to their terms of office, they may have the tendency to misuse them. Let's take a recent example. A current topic of debate is France's funeral grant: a kind of post-mortem "bonus" awarded when an elected representative – or his/her spouse or children – dies in office. Former members of Parliament continue to benefit from this grant "for life." This grant could amount up to EUR 18,255, which corresponds to three months full pension for a former parliamentarian. In 2017, the overall total of these grants amounted to EUR 573,000.

Lastly, all of this necessarily leads to the third point of debate. The example just mentioned only serves to fuel populism and, therefore, antiparliamentarianism. For many citizens, members of Parliament are concerned only about themselves and are always ready to grant themselves benefits or exemptions while average citizens pay. Parliamentarians fatten their pockets at the expense of the people. These undue advantages (undue because the times have changed) must be hunted down and their number reduced, especially since they are even more difficult to justify in this era of budget restrictions and efforts to consolidate the public accounts. At a time when we are in pursuit of efficient public spending, is there still a place for situations that are so clearly unjust? This sounds like the discourse of populist parties, such as the Poujadist movement of France's Fourth Republic and its slogan "Sortez les sortants," or the present-day national movement in France or Italy. And all of it to the tune of their popular refrain on the worthlessness of

parliamentarians, whose absenteeism has also become a subject of harsh criticism.

So, yes, Parliament's financial autonomy is up for debate in Europe because, if it is not regulated and the transgressions we have just enumerated continue, then parliamentarianism itself is in danger. Reflecting on the public (not private) funding of parliaments in Europe is therefore critical to safeguarding parliamentary democracy itself. Knowing what is being debated in the various European democracies (Germany, Belgium, Denmark, Spain, France, Greece, Italy, Luxembourg, Romania, and the United Kingdom), how their parliaments are financed and how they spend, can help find the right balance between the necessary cost of democratic parliamentarianism and the efficiency of public spending. We are convinced that this is what our research work must strive to achieve.

Prof. Michel LASCOMBE

3 How can we solve the equation between the proper use of public funds and the regular operation of parliamentary assemblies?

Some theorems have long remained unexplained. As some present in this amphitheatre were educated at the school named after him, one could mention Pierre de Fermat, the famous 17th-century mathematician and lawyer from Toulouse, whose theorem was not demonstrated until many decades later.[1] We would like to warmly thank the European Court of Auditors as it has decided to help us solve an equally enigmatic equation: the public funding of parliaments in Europe, their financial autonomy and the difficult balance between the proper use of public funds and the regular operation of public authorities,[2] and thus parliamentary assemblies. The proper use of public funds in France is required by the Constitution,[3] and stems from Articles XIV and XV of the 1789 Declaration of Rights.[4] For example, the requirement of the proper use of public funds would not be ensured if a compensation were granted to private persons in excess of the amount of their injury or loss.[5] This allows us to point out that, although they enjoy financial[6] and administrative autonomy,[7] parliamentary assemblies do not have their own legal personality since they form an integral part of the State,[8] even if the financial reserves of parliamentary assemblies still raise questions on this point. Some authors mention a "de facto personalization of parliamentary assemblies."[9] If the appropriations allocated to parliamentary assemblies exceed the amount of their operating and investment needs and are consequently immobilised, contrary to traditional budgetary principles such as annuality and universality, could one also consider that this undermines the constitutional requirement for the proper use of public funds? This is a sensitive issue in the light of the very strong financial autonomy that parliamentary assemblies have accorded themselves (a situation that can be ascertained more than defined), in the name of the separation of powers and parliamentary sovereignty. The Constitutional Council recognises that the allocation, or *dotation*,[10] of funds safeguards the principle of financial autonomy for the public authorities concerned, a principle inherent to upholding the separation of powers.[11] It is true that the parliamentary assemblies themselves determine the appropriations they need to carry out their functions. This rule is inherent to the principle of financial autonomy which ensures the separation of powers.[12] The proper use of public funds by parliamentary assemblies can therefore only be presumed…

These issues are not new yet they endure. In September 1997, the Lille School of Public Finance initiated research in this field. In fact, on 18 September 1997, in Lille, Professor Jean Leonardelli, president of the University of Lille 2 Droit et Santé, chaired a conference on the "Funding of Parliaments," the first symposium of

[1] The term "Pierre de Fermat's theorem" is generally used to refer to several arithmetic or geometry results whose demonstration or conjecture are attributed to the Toulouse mathematician Pierre de Fermat. For example, there is Fermat's Little Theorem, which states that if p is a prime number, then for any integer a, the number $a^p - a$ is an integer multiple of p. Fermat's Last Theorem, provided but not demonstrated by Fermat in the 17th century: no three positive integers a, b, and c satisfy the equation $a^n + b^n = c^n$ for any integer value of n greater than 2.

[2] Its constitutional value is derived from Articles 5 and 16 of the 1958 Constitution. Constitutional Council Decision (CCD) N°86-208 DC, 2 July 1986, cons.10 and 11, Official Journal of 3 July 1986, *Recueil des decisions du Conseil Constitutionnel* (RDCC), p.78.

[3] CCD N°2003-473 DC, 26 June 2003, cons.18, *RDCC*, p.382; CCD N° 2003-489 DC, 29 December 2003, cons. 33, *RDCC*, p.487.

[4] CCD N°2006-545 DC, 28 December 2006, cons. 24, *RDCC*, p.138; CCD N°2009-575 DC, 12 February 2009, cons. 4, *RDCC*, p.48.

[5] CCD N°2010-624 DC, 20 January 2011, cons.17, *RDCC*, p.66.

[6] V. DUSSART, *L'autonomie financière des pouvoirs publics consitutionnels*, Paris, CNRS, 2000, pp.130 et seq.

[7] H. DESCLODURES, *Le droit administrative des assemblées parlementaires*, Thesis, Lille, 1999, 568 pp. ; L. DOMINGO, "Les actes internes du Parlement, étude sur l'autonomie parlementaire (France, Espagne, Italie)", *LGDJ*, 2008, p.496.

[8] J.-M. AUBY, "Le contentieux des actes parlementaires et la loi organique du 17 novembre 1958", *AJDA*, 1959, p.101.

[9] V. DUSSART, op. cit., p.147.

[10] This term comes from "dotare" which means "to endow". It is therefore the action of endowing and allocating appropriations. From 1325 onwards, this term referred to funds assigned to an establishment or service. It wasn't until the 19th century that this term was used to designate property and income attributed to members of a sovereign family or a head of State.

[11] CCD N°2001-448 DC, 25 July 2001, cons.25, *RDCC*, p.99.

[12] CCD N°2001-456 DC, 27 December 2001, cons.46 and 47, *RDCC*, p.180.

Lille's GERAP-GREEF research lab (EA No. 2268), held under the aegis of the *Société Française de Finances Publiques*. The amphitheatre was full and the participants were pleased to see that the first round table was chaired by Prof. Philippe Ardant from the University of Panthéon Assas, a co-founder of the journal *Pouvoirs* who was known for his *Manuel d'institutions politiques et de droit constitutionnel*, published by the LGDJ, which became a classic of the genre thanks to its many reprints. In it, one finds the following lines: "The crisis of Parliaments is universal (...) the image of Parliament and parliamentarians is not good (...) Parliament's funding is misunderstood and even parliament finds it hard to define its legal regime." However, in this work on constitutional law, as in most such works of the time, except, perhaps, that of Prof. Michel Lascombe, only five lines were devoted to parliamentary compensation and the quaestors' role in the financial and material life of parliamentary assemblies. Upon coming to this disappointing realisation, Prof. Xavier Vandendriessche and Michel Lascombe had the idea of organising a colloquium on the funding of parliaments in Lille: although the role of parliamentary assemblies to debate and vote on the state budget is commonly understood, citizens are often bewildered by the silence surrounding the finances of parliamentary assemblies. This is not only a technical question. It is important to know how the budgets of parliamentary assemblies are prepared, voted, implemented and monitored. It is necessary for democratic transparency. The citizens want to know. The parliamentarians think they know. Scholars need to know.

The 1997 colloquium primarily focused on Parliament's funding during the Fifth Republic. To better understand and assess it, France's previous constitutional experience was presented by Prof. Michel Lascombe, who was largely inspired by the work of his doctoral candidate at the time, Prof. Vincent Dussart, who will give some additional insights on this topic at this symposium. The question of the remuneration of the nation's representatives appears at the very beginnings of the French Revolution, when these representatives were obliged to abandon their jobs for several months in order to draft the Constitution. The Duc de Liancourt proposed the establishment of a parliamentary allowance at the session of 12 August 1789: "The constituents must provide for their representatives" because they are working for the benefit of all, and the community must provide for their subsistence. The parliamentary allowance was thus created, along with the question of its funding, and would continue to be challenged by the political extremes, on both the right and the left.[13]

On another note, in view of recent events and the opening provided by Prof. Lascombe, the following little bit of information will most certainly be the subject of debates with René Dosière. Long ago, France's parliamentary chambers decided that the funeral costs of their members would be borne by their own budgets. During a secret committee meeting on 14 September 1814, the Chamber of Deputies passed a resolution to this effect, provided that the death occurs during the parliamentary session; the funeral costs would be registered under a budget line for unforeseen expenditure. This resolution was applied for the first time during the Restoration, on 31 December 1814, and a sum of 617 francs was paid to the funeral home following the death of a member. It was later decided that a sum of 1200 francs would be paid, not to the undertakers but to the widows and heirs of the deceased members, at their request. These practices were revised by the Chamber of Deputies of the Third Republic at the session of 19 March 1878, and, subsequently, a resolution of the Chamber of Deputies, dated 4 December 1902, Article 2, incorporated this practice as a matter of law: "an allowance of FRF 1500 towards funeral expenses is allocated to the families of deceased members upon the family's request." This sum is allocated to the family, by order of the quaestors, at the written request of the former. The authorisation of the expenditure is carried out in the name of the widow without the need for supporting documents. Article 18 of the Senate's accounting rules lays down the same procedure. The main justification for this measure is the honour of the Nation's representatives, who are not ordinary citizens when they are in office during their parliamentary mandate. For example, in the United States, similar measures were taken at the country's very origins to raise monuments honouring deceased congressmen in the congressional cemetery.

This example underlines the need to study foreign experiences on the financing of parliaments in Europe, a methodology that serves as the keystone of this symposium. All major democracies compensate parliamentarians, in very similar orders of magnitude and manner.[14]

[13] On this topic, see E. BUGE, *Droit de la vie politique*, PUF, "Themis" Collection, 2018, 552 pp.

[14] Cf. Report from the National Assembly's Chief Ethics Officer N. LENOIR, of 20 November 2013. Reference also to earlier works, see A. BAUDU, *RFDC*, 2009/4, No 80, pp.716-723.

The US Constitution provides that senators and representatives shall receive compensation.[15] According to a motion adopted on 10 August 1911, the United Kingdom applies the principle of a parliamentary allowance. The same is true for: Germany, in Article 48 of the Basic Law; Italy, with the law of 30 June 1912, from which the principle of parliamentary allowance was later inscribed in Article 69 of the Constitution; and Spain, where Article 71 of the Constitution of 1978 stipulates that "deputies and senators will receive a stipend to be determined by their respective chambers." The principle of the parliamentary allowance is applied to ensure parliament's independence and autonomy.[16] At the last Lille colloquium on the subject, Prof. Christian Autexier pointed out the specificities of the Bundestag's funding, particularly as regards the use of budget allocations for parliamentary committees. At this symposium, Mr Damien Connil, who is working on parliamentary groups, will, in conjunction with Special Advisor Eric Theirs, address the evolution of this question of comparative law, in light of the session on Germany, led by Prof. Gröpl. Furthermore, the interesting insight into the funding of the UK's parliamentary chambers provided by Mr Michael Davies, an accountant at the House of Lords, will be very useful to Mr Ramu de Bellescize during this symposium. The presentations by Prof. Étienne Grisel on Switzerland and Ms Nathalie Van Laer on Belgium were enlightening, which is why we are anxiously awaiting to hear from Prof. Francis Delpérée during this symposium. Finally, as regards the European Parliament, Mr Jean Feidt, a former director general of its administration, had covered a number of its particularities, notably the "pact of non-aggression" between the Council and the European Parliament concerning questions about their financing arrangements. Prof. Aymeric Potteau, who attended the Lille colloquium as a doctoral student, will hold an enthralling debate with Ms Danièle Lamarque and Mr Didier Klethi, the director-general for finance of the European Parliament. The previous colloquium did not provide insight into the parliamentary financing of Spain, Italy, and other EU countries (Denmark, Greece and Romania, for instance), a lack which, in itself, justifies our presence here today to pursue this work with foreign scholars and senior parliamentary officials from all over Europe.

In an attempt to break the "wall of silence," to use the words of Prof. Xavier Vandendriessche, two French parliamentarians, Senators Alex Türk and Ivan Renar, and Member of Parliament Bernard Derosier, a quaestor of the National Assembly at the time, discussed the internal financing of the French parliament, and the financial autonomy of each chamber from the executive and the other chamber. It is clear from the debates that the parliamentarians themselves were not necessarily better informed than the citizens, which could only fuel speculation about the reality of the financial operation of the French parliament. All of those present remember the harsh criticism that Michel Charasse, former minister of the budget and current member of the Constitutional Council, expressed regarding the need for thorough checks on parliamentary finances: "there are things citizens must not know," he said. This prompted a reply from the president of the French Court of Auditors at the time, Pierre Joxe, after a terminological debate on the word "*réserve*" and its shift in meaning depending on whether it is used in the plural (such as for "the Senate's reserves," in which case it becomes synonymous with "jackpot"), or the singular (the parliamentary reserve), which, in fact, raised the question of parliamentarians' independence from the government, thanks to the excellent work of Prof. Étienne Douat, who is present here this morning and who, we hope, will not hold us accountable for not publishing the "paper" on the reserve.

The specificities of the parliamentary assembly "budget" implementation, put into perspective by Prof. Sylvie Caudal, largely derogate from public accounting law, and in particular the principle of the separation of authorising officers and accounting officers. Indeed, it is not clear how checks on the commitment of expenditure could be entrusted to an official of the Ministry of Finance, since this would constitute a violation of the separation of powers and parliament's financial autonomy.

However, the obligations of democratic transparency; the need to respect every citizen's right to know how the "public contribution" is used, as laid out in Article XIV of the 1789 Declaration of Rights (indeed, the budget of the assemblies is primarily supplied by this contribution, which implies the right of every citizen to monitor its implementation); and the necessary respect of society's right to require "any public official" to

[15] Art. 1 (6), U.S. Constitution.
[16] E. BUGE, op. cit., 552 p.

account for his administration, in accordance with Article XV of the 1789 Declaration of Rights, which is why this study was extended to the elected and non-elected members of parliamentary assemblies, and in particular to parliamentary officials: these rights explain and justify the need for the Court of Auditors to monitor the implementation of the assemblies' budgets and justify the self-monitoring of the assemblies that has prevailed thus far. For this reason, no fundamental theory of our public law can currently explain this enduring lack of financial transparency on the financing of parliamentary assemblies, as Prof. Jean Waline recalled in his synthesis report, in light of the research presented at this Lille colloquium in the late 1990s.

So, why write an introductory presentation on a colloquium held in 1997, more than 20 years ago? For the simple and good reason that one cannot find a single trace of this academic event in the university libraries because it was never published! One day, while he was working as a parliamentary assistant at the Senate, my thesis director, Prof. Vincent Dussart, a specialist on this subject, suggested I read and print out the research presented at this colloquium. It was available online via the Lille Doctoral School, headed by his thesis director, Prof. Michel Lascombe, co-organiser of the event. The research was supposed to be published by Economica, but for some unknown reason it never was. Since then, the link has become invalid and apparently no other researcher had the presence of mind to print it out, placing their full trust in the new technologies of the time. While preparing this symposium, the Lille researchers informed me that the only remaining copy is on an unfortunate floppy disk. Yes, it was the 1990s. The disk contains data that has since become irretrievable. Fortunately, the Senate printers, in the greatest discretion, set the acts of this first symposium to paper. We must thank them because they help shine light on a subject about which the Senate departments, as a matter of principle, prefer to remain discreet. In fact, they turned down our invitation to attend, citing a scheduling conflict. Does this come as a surprise? Unfortunately, no. To express our admiration for the quality of the research presented on this subject at the Lille colloquium, some attendees of which we have the pleasure of welcoming today, we would like to redistribute this "paper" document. The written documents survive while the electronic files perish! Please believe that it is a great pleasure and immense honour to be a co-organiser of this 2nd international symposium on comparative public finance, alongside Prof. Michel Lascombe and Ms Danièle Lamarque, on a key issue which is at the heart of European democratic life. We would like to express our sincerest and heartfelt thanks to the contributors to this symposium.

Prof. Aurélien BAUDU

PART ONE

Procedures for the adoption, implementation and monitoring of parliamentary budgets in Europe

▶ First round table

Chaired by Prof. Marie-Christine ESCLASSAN,
University Professor

The financial autonomy of the parliamentary assembly in unicameral parliamentary systems in Europe

A critical debate on the public funding of Denmark's unicameral system

Mr Benoît JEAN-ANTOINE,
Senior Lecturer at the University of Rouen
and Mr Peter EGEMOSE GRIB,
Chief Adviser for the Danish Parliament

I. Defining parliamentary autonomy

Denmark is a constitutional monarchy operating under a unicameral type of parliamentary regime since the constitution of 5 June 1953. The Folketing, the Danish Parliament, has 179 members, deputies elected directly to the proportional system and a staff of 440 people. Legislative elections must at least take place every four years, but the Prime Minister has the power to call elections early.

The Danish constitution contains a traditional separation/division of powers (The Danish Constitution, June 5th 1849 article 2 / The Danish Constitution, June 5th 1953, article 3).

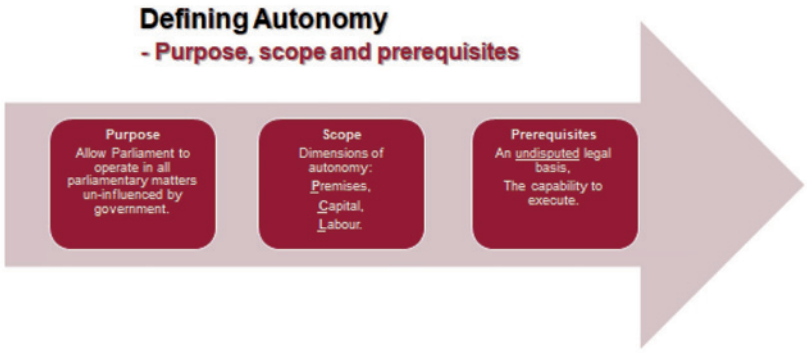
The constitution also authorizes Parliament to define its own rules of procedures in article 48 of the present Danish Constitution.

In France, the financial autonomy of the assemblies also derives from the separation of powers (Article 16 of the 1789 Declaration of the Rights of Man) and also results from a constitutional reference (Article 25) to a rule of lower rank (an Institutional Act called organic law)[1]. Financial autonomy will then be formulated very distinctly in Article 7 of organic ordinance of November 17th 1958, on the functioning of parliamentary assemblies, which provides that «*each parliamentary assembly has financial autonomy*»[2]. In Denmark, the main instrument for this is the Standing Orders. They contain rules on the conduct of Parliament, how sittings are to proceed and how votes are to be held, among other matters. More importantly, when speaking of autonomy, they also include provisions on the administration of Parliament. Many of the rules in the Standing

[1] Art. 25 of French Constitution: « *An Institutional Act shall determine the term for which each House is elected, the number of its members, their allowances, the conditions of eligibility and the terms of disqualification and of incompatibility with membership* ».

[2] In 2001, the French Constitutional Council has established one of its decisions on «the rule according to which the constitutional public authorities themselves determine the credits necessary for their operation» and affirmed that «this rule is indeed inherent in the principle of their autonomy guaranteeing the separation of powers «, CCD N°2001-456 DC, 27 December 2001, cons. 46 and 47.

Orders have been amended over the years, but some remain the same as they have always been. Some date all the way back to Parliament's first Standing Orders, adopted on 11 February 1850. Even the first standing orders empowered the Speaker of The Folketing to take charge of the Administrations internal organization, its running and economic affairs. In 1918 the Standing Orders were amended in order to reflect the de facto situation and found its current shape: Today, the Speaker acts in consultation with the Deputy Speakers, when in charge of the internal organization and Administration of the Danish Parliament as well as of its running and accounting.



The key aspects of autonomy are

- Can Parliament decide on internal matters un-influenced by Government?
- Does Parliament control its own means: Labour, Premises and Capital?
- Is the legal basis undisputed?

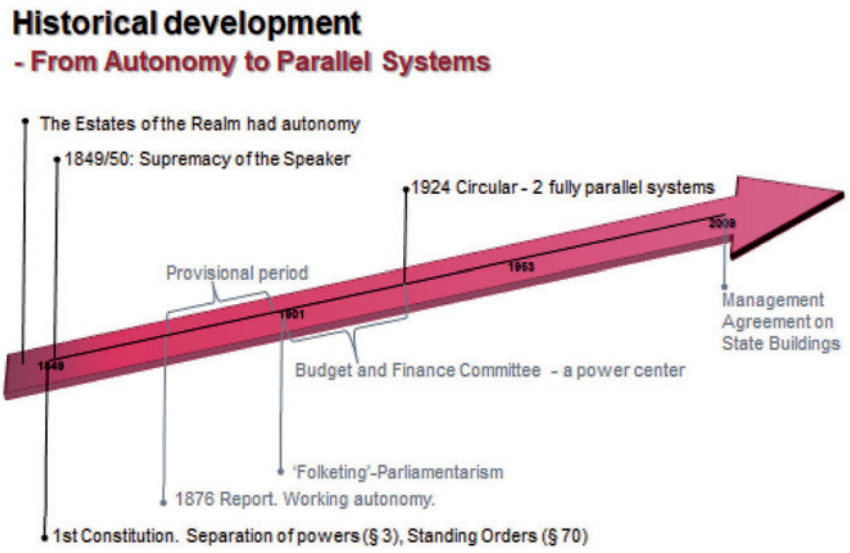
II. Understanding parliamentary autonomy from a Danish perspective

In all the above aspects, the Danish Parliament has a very high degree of autonomy

- Central features dates back to before the constitution.
- The Estates of the Realm had autonomy (Labour, Premises and Capital).
- They had the capability to execute their own budgets.
- The power to decide on internal matters was vested in their Speakers.

What gradually happened was that the parliamentary budget took a deviant path and separated from the state budget procedure. During the provisional period the Folketing, then lower chamber, refused to pass the budget every year. The Prime Minister responded by passing the budget as a provisional law. Such a situation stimulates the preference to have a special parliamentary budget procedure. Parliament needed a budget, even when the Government was denied their budget.

Later, the Budget and Finance Committee became the Folketing' instrument to adopt changes into the Governments annual budget. Large parts of the state budget was granted as supplementary appropriations from the committee. In 1924, a Government circular pushed the Ministry of Finance in to the role of gatekeeper to the committee. The side effect was the completion of the two parallel procedures we have today.



In recent years, the parallel systems have developed further, in 2008/2009 the Folketing Administration and the Ministry of Finance signed a formal agreement on the distribution of tasks and burdens of managing the building facilities of premises, which houses the Parliament and the Prime Minister's Office.

III. Financial autonomy of the Danish Parliament

The principle of separation of powers implies that the parliamentary assembly should have full autonomy, including financial autonomy. The balance of powers should be based on parliament controlling the budgets of the executive, and not on government controlling the budgets of the legislative. In Denmark the independent status of the Parliament derives from article 3 in the constitution, referring to the tripartite division of power into the legislative, the executive and the judicial, and from article 48 in the constitution (stating "The Parliament shall lay down its own rules of procedure, including rules governing its conduct of business and the maintenance of order.").

In Denmark, the State Budget is passed by Parliament as a law. By tradition, the budget of the Parliament is passed by the Standing Orders Committee. For practical purposes only, the approved budget is made public as a chapter in the State Budget when the State Budget enters the legislative procedure as a bill in Parliament. The budget of the Folketing will be, like, in France, the program included in mission «public authorities», a chapter included in the annual budget law of the State.

The most general budget rules are laid down in three sections in the constitution. Thus, Article 45 § 1 of the Constitution provides that «*A Finance Bill for the next fiscal year shall be submitted to the Folketing not later than four months before the beginning of such a fiscal year*»; the finance bill and the supplementary appropriations bill are subject to the rules of Constitution (Article 41, paragraph 2 of the Constitution), according to which no law can be definitively adopted until it has been not been examined three times by Parliament[3]. As the bill is presented in August, prior to the beginning of the parliamentary year, it has to be re-presented in October, where the new parliamentary year begins. Thus, strictly speaking, the Finance Bill has four readings.

Article 46 provides that taxes cannot be collected and expenses incurred before the adoption of the budget and Article 47, that «The Public Accounts shall be submitted to the Folketing no later than six months after the expiration of the fiscal year». Auditors elected by the Folketing will be responsible for verifying these annual accounts[4].

It is right, according to Prof. Aurélien Baudu, the «laconism» of the constitutional sources in Denmark, «in financial matters allows to leave a very large place to the institutional practice»[5]. Further, more detailed budget rules are laid down as executive regulations from the Ministry of Finance (the 'Budget Circular'). As the executive cannot give orders to the legislative, Parliament has its own regulations on budget matters and is not subject to the rules in Budget Circular. The main parliamentary budget rules are laid down in the Standing Orders. Secondary rules are laid down either by The Standing Orders Committee or by the Presidium (The collegium of Speaker and the four Deputy-Speakers). One of the notable elements of this procedure is that the same Committee and the Presidium which draws up the budgetary rules in the Standing Orders and in secondary rules are also the one which must apply them, by recommending and adopting the parliamentary budget. The adoption of internal regulations differs in France, the procedure being quite close to the ordinary legislative procedure.

Another notable element is the significant power of the President of the Folketing at the various stages of the procedure since he is at the head of the body in charge of the initiative (the Presidium) and at the head of the body in charge of the adoption (the Standing Orders Committee). In France, the budget of the assemblies is prepared by the Quaestors (3 parliamentarians, 1 of whom are under the authority of the Bureau) and then presented to the Bureau (of which they are also members)[6]. The presidency, however, seems more withdrawn than in the *Folketing* and leaves more flexibility to the Quaestors (it will be the same with the execution). The General Audit, The Ombudsman and The State Audit Committee are all institutions concerned with controlling the government, so these institutions cannot be subordinated to the Government. Thus, the three institutions are all considered as parliamentary institutions and their budgets are part of the Parliament budget chapter.

These different elements attached to the Danish parliamentary budget are reminiscent of the

[3] Website of the Inter-Parliamentary Union, www.archive.ipu.org, *Danemark, Folketinget*
[4] *Idem.*
[5] Cf. A. BAUDU, *Droit des finances publiques*, Dalloz, Hypercours, 2015, p. 726.
[6] Prorated by groups, the President, Vice-Presidents, Quaestors and Secretaries, v. Website of the National Assembly, www.assemblee-nationale.fr, summary sheet N°20, *Le Bureau de l'Assemblée nationale.*

French Senate endowment which divides itself into 3 actions (Senate stricto sensu, garden and Luxembourg Museum)[7].

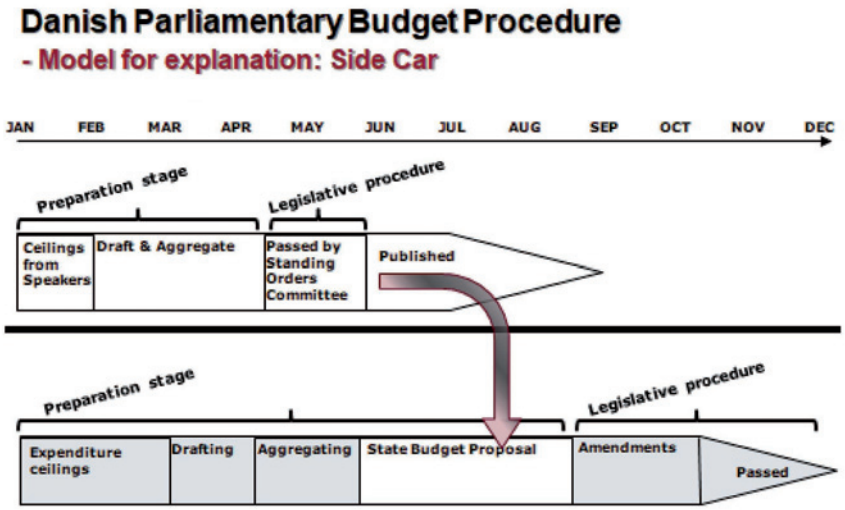
IV. Procedure of drafting the budget

Budget calendar. As the adopted Parliamentary Budget for statistical purposes only (!) becomes a chapter in the State Budget, it is convenient – from a procedural perspective – for the parliamentary budget procedure to be in line with the main deadlines from the State Budget procedure. These deadlines can be derived from the Constitution (article 45 stating "...the Financial Act for the coming financial year must be presented to Parliament at the latest four months before the start of the financial year."). Thus, as the State Budget Bill is finalized in June in order to be printed and be put forward in Parliament in late August, the Standing Orders Committee will (normally) adopt the Parliamentary Budget in May. In January, the Presidium decides on the ceilings on the Parliamentary Budget. In February, the Economic Office calls for budgets from the other parliamentary offices and from the 3 parliamentary institutions. The contributions are compiled in the Economic Office during March and April. In April, the compiled draft budget is put forward to the Board of Directors (Secretary General, Clerk and Deputy Manager). The Board considers suggested amendments. If needed the Board will recommend changes in the ceilings or order other changes. The Draft budget is submitted to the Presidency for consideration. Not later than May 10th, the Presidency submits a recommendation to the Standing Orders Committee. Not later than May 31st, the committee concludes its consideration of the size and composition of the estimates of the budget. When the Standing Orders Committee has approved the budget, the budget is forwarded to the Prime Minister's Office who will include it as a separate chapter when elaborating the State Budget Proposal (a bill) for the coming financial year.

The adoption procedure stops here in Denmark while in France, a joint commission will set the amount of the annual grant paid by the State to the functioning of each parliamentary assembly. This committee is made up of the Quaestors of the two assemblies under the chairmanship of a Chamber President at the Court of Auditors and two protractors magistrates (with advisory votes)[8]. We can see in this French joint commission (from Senate and National Assembly) the necessary coordination due to bicameralism, which is not necessary for a unicameral Folketing. Moreover, where the procedure is intra-parliamentary in Denmark, it associates in France external actors, the magistrates of the Court of Accounts (but who act in their own names and not in the name of jurisdiction). The Government (and its officials) are not in any way allowed to change or modify any part of the Parliament budget. They cannot even correct typing errors or the alike. All changes must be initiated by Parliament itself.

Parallel procedures. An important difference between the State Budget Procedure and the Parliamentary Budget procedure is that the State Budget is scrutinized by the Budget and Finance Committee and debated and voted upon in the plenary, while the Parliamentary Budget is scrutinized by the Presidency and debated and passed in the Standing Orders Committee. The Budget and Finance Committee is not according to the Standing Orders – allowed to scrutinize or ask questions on the budget and economic affairs of the Parliament. Such questions can only be put forward through the either the Standing Orders Committee or the Presidium. If a ministry requests additional funds during the fiscal year, ministers will put forward applications to the Budget and Finance Committee, which can grant fiscal authorization. All granted applications are collected and presented to Parliament in a 'Supplementary Appropriations bill' by the end of the year. If Parliament (or its institutions) has request for additional funds applications will be put forward through the Secretary General and the Speaker to the Presidency. The approved funding will be compiled by the end of the year and put forward to the Presidency. The Presidency can choose to balance any of its amendments by compensating savings or cuts in other parts of parliamentary budget. However, they can also choose to increase the ceilings as they see fit. The Presidency submits a recommendation to the Standing Orders Committee which concludes its consideration early enough to ensure that the approved supplementary appropriations can be incorporated in the Supplementary Appropriation Bill for the financial year under review – as a separate chapter. The practical purpose, again, being that the consolidated State Budget for statistical purposes will include a consolidated chapter on the parliamentary budget.

[7] V., *idem*, summary sheet N°70, *Le budget de l'Assemblée nationale.*
[8] *Id.*, summary sheet N°21, *Les questeurs.*



V. From execution to execution control

Whereas in France, the execution of the parliamentary budget is essentially the responsibility of the Quaestors[9] (on proposals of the services of the assemblies), and the exception is the delegation of powers (for small sums to the Secretary General of the Questure), the Denmark delegation of authority is the rule. The *Folketing* Secretary General incurs expenses equal or greater than 400,000 euros (with presentation to the presidency of all new projects beyond this amount), the Deputy Director commits sums committed between 133,000 euros and 400,000 euros and the heads of offices of less than 133,000 euros[10]. Each office will be informed about its budget envelopes with a «budget book» elaborated by the Economic Office. In France, Prof. Vincent Dussart showed that one of our main financial principles, the separation of authorizing officers and accountants, was - in the name of parliamentary autonomy - not applied to the Parliament (the Treasurers of the assemblies not having the status of public accountants and submitted hierarchically to the Quaestors)[11]. In Denmark, two separate, authorized persons, from the budget holding office, are responsible for confirming and certifying any payment or collection of revenue, in the Economic Office two separate persons are then responsible for the registration and execution of payment[12]. Prof. Dussart also spoke of an «endo-control» of the credits of the French assemblies. The audit and the clearance of the accounts belong to an organ internal to the National Assembly, the «special commission charged with verifying and clearing the accounts», established by the article 16 of the National Assembly Standing Orders and composed of fifteen members appointed to the proportional representation of the groups[13]. After the LOLF of august 1st 2001 (organic law relative to the finance laws) a mission of certification of assemblies accounts has been devolved since the 2013 financial year to the Court of Auditors. The certification report is sent by the Court of Auditors First President to the Presidents of Assemblies for delivery to the Chairman of the Special Committee[14]. It is the same path that seems to have been chosen by Denmark with the intervention of an actor outside the Folketing to control the accounts of the assembly. The annual accounts are therefore examined by the external auditor of Parliament. A firm of chartered accountants is appointed to carry out this work by the presidency (speaker) on the recommendation of the vice-presidents (deputy speaker).

VI. The nature of parliamentary budgeting

Public budgeting in general shares these features: Decide ceilings,

– Break down,
– Build up,
– Present proposal before (at least one) political body,
– Take further amendments in to consideration,
– Pass budget.

Parliamentary Administrations all have these same steps – but in a different pace. In Denmark, it is needed to finish before the end of the parlia-

[9] *Id.*, summary sheet, N°21, *Les questeurs.*
[10] P. EGEMOSE GRIB et al. , *"Training manual 7.3.2 - Workshop on parliamentary budget management practices of EU Member States,"*, under Twinning Project - Enhancing the role of Parliaments in Bosnia-Herzegovina in the EU integration context., may 2015, p. 8.
[11] V. DUSSART, *L'autonomie financière des pouvoirs publics constitutionnels*, CNRS Droit, 2000, p. 273.
[12] P.EGEMOSE GRIB, *art. cit.*, p. 8.
[13] Website of Assemblée nationale, www.assemblee-nationale.fr, summary sheet N°70, *Le budget de l'Assemblee nationale.*
[14] V., *idem*, summary sheet, N°21, *Les questeurs.*

mentary season (June). Because the Presidium will not have meetings from mid-June til mid-September. Because the budget must be passed prior to the State Budget, even in the case of budget denial. The Danish Parliament Budget is never debated in the plenary and never considered by the Budget and Finance Committee. The budget is recommended by the Presidium to the Standing Orders Committee. Which – according to the Standing Orders - must pass the budget before 31st of May.

The Folketing Budget is then inserted in to the State Budget Proposal as a separate chapter. The Ministry of Finance cannot change it in any way; it has the status of a conclusive Parliamentary Decision. The reason of this insertion is very practical: To have one comprehensive set of data over public budgets and spending.

The specific historical circumstances - especially that autonomy was not disputed - and the existence of the capability to execute meant that there was no need for the founding fathers to dig in to the details of autonomy. Budget denials in the provisional period enforced the benefit from a special procedure over Parliament Budget. The exclusion of the Budget and Finance Committee in this procedure in effect excluded the Ministry of Finance too. To get an idea, the amount of the Danish parliamentary budget for 2018 (adopted in May 2017) amounted to 1152.9 million kroner (approximately 154.6 million euros)[15]. For an order of idea, in France, the allocations for the Parliamentary Assemblies will globally amount to 876.16 million euros in 2018, which represents 88.35% of the credits of the mission Public authorities. These allocations are both divided between the National Assembly (517.89 million euros) and the Senate (323.58 million)[16]. In the end, the Danish system is characterized by a strong financial autonomy of the Folketing, both in texts and in practice; in spite of some differences with France (role of the presidency, absence of fact of common commission, different accounting principles) the legal bases and the actors are quite close in the process of elaboration and control of the parliamentary budgets.

[15] Folketinget, *Folketingets årsregnskab* (Annual accounts of Folketinget), 2017, p. 7.

[16] J. GIRAUD, *Rapport fait au nom de la Commission des finances, de l'Economie générale et du contrôle budgétaire sur le projet de loi de finances pour 2018*, n° 273, annexe n° 32, Pouvoirs publics, Assemblée nationale, october 12th 2017, p. 25.

A critical debate on the public financing of Greece's unicameral system

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Member of the European Court of Auditors

Introduction

The budget is a central element, showing how the State prioritises and achieves its annual and multiannual objectives. In addition to financing new and existing programmes, the budget is the main instrument for implementing fiscal policy, and thus influences the economy as a whole. In recent years, the Government and the system of public administration in Greece have faced the acute challenges posed by the global economic and financial crisis, and these challenges have been reflected in the adoption and implementation of the State budget. The general budget of the State in Greece is divided into three distinct parts. First, *the ordinary budget* comprises all State revenues, except for revenue from loans or public investment and all costs other than public

[17] Prof. Giorgos GERAPETRITIS wrote the introductory statements of this contribution.

[18] Mr Andreas KOUNDOUROS and Ms Terpsichori MANOU wrote the first part of this contribution.

[19] The second part of this contribution was written by Mr Nikolaos MILIONIS.

investment expenditure. Second, *the public investment budget* includes only debt and operating revenue from public investment and only public investment expenditure. Finally, the budget of the Greek State makes provision for *the budget of the special guarantee account for agricultural products*, which includes all the funds intended to support the agricultural sector.

Parliament's budget is, of course, influenced by the State budget, the budgetary policy followed and the course of the economy, but at the same time it is differentiated. Parliament's budget is part of the State budget. It is drawn up in accordance with the general rules and principles of fiscal policy as provided for at national level, but also corresponds to Parliament's special institutional role. In examining the issue of Parliament's budget, a central concept is that of parliamentary autonomy. Autonomy is defined, on the one hand, by non-dependence and non-subordination of the assembly in relation to the executive, and, on the other, by the possibility of the assembly being able to overcome at least some of the rules of ordinary law in order to follow its own rules. According to Article 65 of the Constitution, the fundamental expression of Parliament's autonomy is the management of the funds made available to Parliament. As far as State resources are concerned, Parliament's budget is established in accordance with Parliament's Rules of Procedure and thereafter it is included in the State budget. The resources made available to the Greek Parliament are divided into State resources, which form part of the State budget, and non-State resources, arising from projects undertaken by Parliament and the management of its private resources.

State resources are the responsibility of the Office for the disbursement of European and other credits, which is responsible for managing *Parliament's European and private resources* and *the Special Account Fund*. As regards these two financing tools of the Greek Parliament, two elements need to be highlighted. First, these are resources and activities that go beyond the State budget. Secondly, Parliament enjoys an even higher degree of budgetary autonomy, as it goes beyond the standard audit of the Court of Auditors. This diversification of resource management is such that, in certain cases, no external audit is carried out on the management of a major reserve made available to the Greek Parliament. The purpose of the Office is to cover the general expenditure related to the better functioning of Parliament and the more effective implementation of the mission of the members of Parliament in general and the management of the funds resulting from the participation of the Hellenic Parliament and the independent authorities in operational programmes of the Support Framework and other EU programmes. The implementation of the above EU programmes is monitored by a special intergovernmental committee, whose composition and operation are determined by a decision of the president of Parliament.

With regard *to Parliament's European and private resources*, the legal framework governing the operation of the Office states that: "Parliament manages an 'Office for the disbursement of European and other funds,' a department directly attached to the president of Parliament. The Office shall manage a special account to cover expenses related to the better functioning of Parliament and to the more efficient fulfilment of the membership mission, to the public, cultural and related objectives, as well as to the financing of the involvement of the Hellenic Parliament and independent authorities in the operational programmes of the Community Support Framework and other EU programmes."[20] The Parliament's private resources come from a variety of activities, including: the financing of public bodies, private enterprises, private individuals, international organisations and the State of Greece, grants from the European Union and international organisations or organisations, in the implementation of programmes and actions, donations and bequests to the Chamber and the Greek State, for the purposes of the preceding Article, the management of which has been determined by the donor or the disposer through the Account and accepted by decision of the president of the Parliament; income from interest on deposits with amounts in the Account for the Implementation of European Programmes (YEEP) under Article 98; and various income of the Chamber, such as its publications, etc.

With regard to *the Special Account*, in the framework of the Public Investment Programme, which is part of the public resources available to Parliament, which are in principle under the management of the Office for the Implementation of European Programmes, the issue of unallocated resources accumulated at the end of the year is raised. According to the Office's special rules: "The funds of the Office shall be managed by the Audit and Financial Management Unit of the

[20] Parliament Rules of Procedure (PART B — ORGANISATIONAL), Article 98B (1) and (2) "Office for the disbursement of European and other appropriations."

Office, through the Office for the disbursement of European and other appropriations (Rule 98B of Parliament's Rules of Procedure). Their management is independent of the administration of the Chamber of Economic Affairs. Any outstanding balance at the end of each financial year shall remain with the Office for the disbursement of European and other appropriations and shall be carried over to the following year in order to continue financing approved programmes, projects, studies, actions or support actions."[21]

The unallocated resources from each financial year resulting from projects and operations undertaken by the Office for the implementation of European programmes are transferred at the end of each financial year to the Office for the disbursement of European and other appropriations and are recorded in a special account. The establishment of the special account deviates slightly from the specialisation principle underlying the preparation and implementation of the budget. According to the specification principle, each appropriation must have a specific use and be used for a specific purpose in order to avoid confusion between the various appropriations when they are authorised or when they are used. The particularity of this account mainly lies in the way funds are managed and controlled. In accordance with the provisions of the Special Regulation of the Office for the disbursement of European and other credits: "the financing of the operational programmes and other European Union programmes and the annual public investment programme shall be deposited with a national financial institution, with interest, in separate bank accounts opened by the director of the office and shall inform the coordinator of the Ministry of Economic Affairs and Finance (Article 98A). The movements in the above accounts, the verification and the payment order against the Office and in favour of the beneficiaries shall be carried out in accordance with this Regulation without any reference to the provisions governing the allocation, distribution and consumption of its budget appropriations and by way of derogation from the provisions on government accounts, commissions and fees."[22] In view of the above, it is clear that the management of the content of the special account is not ordered on the basis of the general provisions on the financial control carried out by the Court of Auditors. A substantial amount is progressively added to the account managed by the Chamber's internal procedures, thus fully circumventing the state apparatus. Therefore, the forecast of this account functions not only as a complement to the State part of Parliament's budget, but is also a key element of its economic planning and activity implementation.

In conclusion of these introductory remarks, the budget is a multi-purpose tool: it defines the institution's future financial path; it is a means to carry out programming; it meets the institution's needs and contributes to the achievement of its objective in an economically and politically accountable way. It is a means of verifying digital and accounting accuracy, legality, cost-effectiveness and public funding. The guiding principles governing the adoption and implementation of the budget, as seen in the context of the parliamentary law, have a particular meaning and adapt to the institutional specificity of the Parliament. A few points emerge that need to be highlighted.

First, *the constitutional framework*. The principle of Parliament's autonomy is formally recognised by Greece's constitutional text. More specifically, the principle of the financial autonomy of parliamentary assemblies, which is based on the more general principle of the separation of powers, stems from the constitutional provision and differs in more specific provisions, and manifests itself in the budgetary field.

Then, *the budget as a demonstration of autonomy*. The Chamber, like all state institutions, is subject to rules of organisation and operation, on the basis of which the representative body exercises its constitutional powers. However, contrary to what customarily happens in the general government, according to Greece's current constitutional framework, the Chamber sets its own rules. The Chamber is organised according to rules that it itself introduces into the legislation. Indeed, this is a guarantee of parliamentary self-regulation. A common element of comparative constitutional law in the overwhelming majority of representative democracies is the enjoyment of the prerogative of self-determined parliamentary self- determination as a sovereign and directly legitimised body. This autonomy is intended to serve the following purposes: it enables the Assembly to exercise freely the powers vested in it by the Constitution. It is therefore a functional autonomy, which makes it possible for the assembly to determine the way in which it is organised and its procedures, to elect its own organs, to be convened by its president and, above all, to draw up its Rules of Procedure. Looking at the scope

[21] Art. 3 (2) and (3) of Annex 9 of the Official Journal 112/30-6-2016 "Special rules of the Bureau [Parliament Rules of Procedure (Part B - Official Journal 51/A/1997)].

[22] Art. 2 (3) and (4) of Annex 9 of the Official Journal 112/30-6-2016 "Special rules of the Bureau [Parliament Rules of Procedure (Part B - Official Journal 51/A/1997)].

of autonomy, the focus is generally on the functional dimension, which is the main one. However, administrative autonomy reinforces and strengthens the Chamber's functional autonomy, which, in the context of the representative system, constitutes a democratic requirement for members of Parliament to exercise the mandate collectively conferred on them by the people. The Greek Parliament effectively benefits from administrative autonomy characterised by an internal organisation of its own services and by the authority and control exercised over parliamentary officials. One of the fundamental aspects of the Parliament's administrative autonomy is the adoption and implementation of its budget.

Finally, *the financing of the Greek Parliament*. In particular, in the Greek parliamentary landscape, the adoption of the budget is purely internal to the Parliament, pursuant to the theory of autonomy as indicated, while its inclusion and voting with the State budget is merely a corollary of the procedure, which in no way detracts from this autonomy. The assessment of financial autonomy with regard to the Greek Parliament's private and European funds is more nuanced, and therefore more difficult to assess. However, it is an area where the rules of public accounting are applied with the greatest degree of flexibility to be found in the entire operation of the State, which indicates the body's semiology and institutional role. In a second stage, by recognising the institutional prerogatives conferred to Parliament by the constitutional legislator, the Court is responsible for compensating for the high level of freedom it enjoys. The assembly's accounts are part of the general State budget and therefore fall within the scope of the certification and auditing procedure carried out by the Court of Auditors; an external audit of the accounts has therefore been introduced. The institutional balance obtained through the audit carried out by the Court of Auditors is one-sided, since the members of Parliament must ensure the sincerity and regularity of the accounts. On the other hand, non-state resources are subject only to an internal control system to ensure the proper management of Parliament's private resources, by way of derogation from the common provisions.

I. Reflections on the financial autonomy of the hellenic parliament

The financial autonomy of the Hellenic Parliament does not exempt it from following the rules and principles of public sector accounting. The external audit of expenditure, both preventive and ex post, is accompanied by its internal audit, which also deals with performance.

A. Establishment of the hellenic parliament's financial autonomy

The Hellenic Parliament is autonomous, including financially, by virtue of a strict interpretation of the constitutional principle of the separation of powers.

According to Article 65 of the 1975 Constitution, "*1. Parliament determines the modalities of its free and democratic operation, by adopting its own Standing Orders which are voted in plenary assembly as specified in article 76 and published in the Official Journal by order of its President. (...) 6. The Standing Orders determine the organization of the services of the Chamber of Deputies under the supervision of the President, as well as all matters concerning its personnel*". In addition, both the state budget and the Parliament's own budget (Article 72 par. 1 of the Constitution) are voted in plenary session. It is the financial autonomy of the House which is thus entrenched, which elaborates, votes in plenary session, and executes its own budget, distinct from the general budget of the State.

From the two articles of the Constitution mentioned above, proceeds Article 120 of the Standing Orders of the Hellenic Parliament/ Parliamentary Part[23] according to which the House "*enjoys full autonomy, following Art. 65 par. 1 of the Constitution, as to its operation, and is not part of the «General Government». [Only] For the sake of transparency and statistical classification, the House publishes, on its Internet portal, data relating to its budget and balance sheet of financial activity* «(par. 11).

Furthermore, Parliament's budget is drawn up "*by its competent department*" for this purpose, accompanied by "*a report from the Parliament's Finance Committee[24], printed, distributed to MPs and placed first on the agenda [of the plenary]*" (Art. 120 par. 3). It is entered for debate and vote, by the President of the House, "*at least forty days before the beginning of the financial year and, in any case, before the vote of the general budget of the State*" (Art. 120 par. 4). The preparation of a draft budget of the Parliament, as well as the drafting of an introductory report, is the responsibility of the Department of Special Accounts and Budget, of the Finance Directorate of the

[23] The Standing Orders of the Hellenic Parliament include a strictly parliamentary Part, governing its legislative and control of the Government functions, and a Part relating to the administrative support to the mentioned two aspects of the parliamentary activity as such, namely legislation and parliamentary control.

[24] Art. 46 of the Standing Orders/Parliamentary Party, on the Internal Affairs Committees of Parliament: "*3. The Finance Committee of the Parliament [*not to be confused with the Standing Committee on Finance which participates in the legislative work*] includes the three Quaestors of the House, four MPs belonging to the largest Parliamentary Group and one representative of each of the Parliamentary Groups of the parliamentary Opposition*".

House (Art. 18, par. 3 of the Standing Orders/ Organizational part), following the principles and budgetary rules laid down by national and European legislation[25]. Moreover, a three-year ceiling on the appropriations to be voted is fixed by decision of the President of the House, as enabled by the art. 128 of the Standing Orders/Organizational Part, which is communicated to the Ministry of Finance. Appropriations to be voted are classified according to the Code of Classification of Income and Expenses of the State Budget, in Compensation/Wages, Supplies, Grants (for purposes of highlighting parliamentary work, cultural, of development aid for third countries etc.) and Reserve[26].

B. Budget execution of the Greek parliamentary chamber

The budget of the Parliament, adopted by decision of the House in plenary assembly, "*must be executed and is inscribed, [as is] without modification, in the general budget of the State*" (Art. 120 par. 6 of the Standing Orders/Parliamentary part). It "*contains its expenditure for the next financial year*" (Art. 120 par. 2) and its execution "*belongs exclusively to the Chamber and is independent of the execution of the general state budget, as well as conditions by it for the allocation of appropriations*" (Art. 120 par. 7), the President of the Parliament being the authorizing officer "*for Parliament's expenditure within the framework of its budget*" (Art. 11).

The Finance Committee of the Parliament and the Department of Special Accounts and Budget of the Finance Directorate follow the course of the budgeted expenditure of the House and submit quarterly reports to the President, as well as proposals for the execution or reduction of expenditure (Art. 47 of the Standing Orders/Parliamentary Part and 18 par 3 of the Organizational Part). The said Department issues payment orders and submits them for inspection to the Office of the Commissioner of the Court of Auditors in Parliament[27] (Art. 18 par. 3 and 5 par. 2 of the Standing Orders/Organizational Part).

In addition, the rules and principles of Public Accounting (law 4270/2014)[28] apply to the financial management of the Parliament (Article 124A of the Standing Orders/Organizational Part), the House making its own payments, via its own bank account held at the Central Bank of Greece and managed by the President of the Parliament through the relevant Department of the Finance Directorate of the Assembly (Art. 143 and 18 par. 3 of the Standing Orders/Organizational Part).

Moreover, the budget and the financial balance sheet of the House, as voted in plenary session, as well as quarterly tables concerning the implementation of the budget and the achievement of the objectives set[29] (Art. 164F of the Standing Orders/Organizational Part).

It should be noted that a special unit, the Unit for Strategic Planning and Reorganization of Administrative Functions, in addition to the drafting of the strategic and operational plan of the House, certifies "*the procedures for monitoring the legality and regularity of Parliament's expenditure and carries out sampling checks on the performance of all kinds of expenses, recoveries and receipts, on the risk management and on the patrimony of the House*" (Art. 26B of the Standing Orders/Organizational Part). The Internal Finance Commission and the above-mentioned Special Unit thus provide an internal audit of both the legality and performance of Parliament's expenditure.

At the end of each financial year, the unallocated appropriations in the Parliament's budget are partly returned to the general State budget and partly constitute a reserve of Parliament, a special fund managed by a Special Service (Art. 98b of the Standing Orders/Organizational Part) and, in the case of co-financing of administrative support for strictly parliamentary activity by European funds, by the European Programs Implementation Service (Art. 98A). This management is monitored annually by chartered accountants whose report is sent to the Service of the Commissioner of the Court of Auditors in Parliament[30]. By way of conclusion, the autonomy of the Hellenic Parliament, as constitutionally guaranteed, including from a financial point of view, goes hand in hand with the application of the principles and rules of Public Accounting, as well as with the external and internal audit of expenditure.

III. Checks on the implementation of the budgets of the parliamentary assembly

One of the main roles of a Court of Auditors is to assist the parliament. By presenting its various reports, the external auditor provides assurance on the reliability of the accounts, on the legality of the underlying income and expenditure, and the performance of public policies. The external auditor covers the entire State budget, including that of Parliament. The audit objectives and

[25] Law 4270/2014, Council Directive 2011/85 / EU (Art. 124A of the Standing Orders/Organizational Part).

[26] For the discharge of their duties, MPs "*are entitled to compensation and reimbursement of expenses from the State; their amount*" as well as "*the extent of the postal, telephone and transport franchise*" which they enjoy, are "*fixed by decision of the House in Plenary Assembly*" (Article 63 of the Constitution). In this context, their compensation is set at 90% of the salary received by the President of the Court of Cassation before the Law 3691/2008 (article 1 of the Parliamentary Resolution Z?/ 1975, as amended in 2015).

[27] Concerning the preventive control exercised by the Court of Auditors on the expenses of the Parliament, v. contribution by Mr Nikolaos MILIONIS.

[28] Principles of sound financial management - analyzed in economy, efficiency, cost-effectiveness - of accountability, transparency and sincerity (Art. 18 par. 1, 19 par. 1 of the Standing Orders/Organizational Part and Art. 33 of Law 4270 /2014).

[29] According to the general objectives set to the Finance Directorate of the House, any discrepancy in the implementation of the budget cannot exceed 10%.

[30] According to Parliament's Introductory Report to the 2018 Budget, the planned work to upgrade the computer and more generally the technical infrastructure of the House will be financed by the Special Fund.

methods are often similar to those for other public administrations. The case of the Hellenic Court of Auditors is of particular interest, as the institution is progressively shifting to a new audit model.

The Hellenic Court of Auditors is a long-standing and recognised institution.[31] Created in 1833,[32] it was modelled on the French Court of Auditors, which was established several years earlier under Napoleon. The Hellenic Court of Auditors is composed of magistrates who take decisions as a board or collegially. Pursuant to a law passed in 1887,[33] the Court carries out a preventive control of all the State's expenditure. This monitoring is meant to detect and block irregular expenditure before it is implemented. It is carried out almost systematically. There are some exceptions, however, in particular for small operations. The Court also intervenes retroactively in the audit of the accounts of the public sector accounting officers, whom it can sue, thus making them personally liable – with their private funds – for the payment of the irregularities found. Lastly, the Court assists Parliament in its role of discharge for the implementation of the State budget, by providing it annually with a report on the reliability of the State's accounts and a report on the results of all its inspections.

A. Control of parliament's expenditure

In addition to its usual role as an assistant to Parliament, the Court is also required to check its expenditure. The powers of the Court, as the external auditor of the State budget, are defined in Article 98 of the Constitution. Parliament's budget is no exception to this rule. However, in accordance with the principles of independence and autonomy of the legislature, Parliament lays down its own internal rules for the management of its budget. Article 8 of Parliament's Rules of Procedure[34] states that expenditure must be checked in advance by the representative of the Court of Auditors assigned to the Parliament. The decision of the president of Parliament of 25 January 2012 also stipulates that all expenditure must be checked.[35] The Court of Auditors therefore monitors Parliament's expenditure in a very similar way to the expenditure of the State budget as a whole. However, no minimum threshold is applied, as is the case for other State services.

B. The limits of preventive control

The financial crisis in Greece gave rise to a thorough overhaul of the management of state expenditure. Fundamental changes have also been made to the way the Hellenic Court of Auditors carries out its audits. The main change is the progressive abolition of preventive checks by Law No 4337/2015,[36] which came into effect on 1 January 2017 for state expenditure and will become applicable in 2019 for state-owned enterprises and municipalities. Greece is thus following the example of other Member States to improve the accountability of public authorising officers and increase the selectivity of the checks carried out by the external auditor.

By intervening *a posteriori*, the Court will release resources to concentrate its efforts where the risk of irregularity is the highest. But the aim is also to go beyond examining simple legality to question the performance of public expenditure. To compensate for the abolition of the preventive control of the Court of Auditors, the State services have had to strengthen their internal control and audit systems and develop a performance-based management culture. Law No 4270/2014[37] confirmed the authorising officer's role as initiator of the expenditure. Each ministry also has a centralised internal verification system under the responsibility of a Financial Director, as well as a service responsible for supervising and auditing the internal control system.

C. Is the financial control of parliament evolving?

In view of this major change, Parliament has not yet amended its Rules of Procedure and systematic preventive monitoring remains the norm. It is possible, and perhaps even desirable, that it may follow the same path as other institutions in the future. But one cannot forget the very specific status of Parliament, which, because of its autonomy, sets its own rules, approves its own budget and grants discharge to its administration for managing it. The Court of Auditors therefore plays a fundamental role as a counter-power. In this context, the transition to an *ex-post* external audit can only be achieved if Parliament's internal control and audit procedures are strengthened in parallel.

Finally, in this last section, I would like to discuss the subject of ethics. The public has become very aware and interested in how public money is spent, and perhaps more so when it comes to funds managed directly by its elected representatives. We all know of cases of abuse which have been taken up by the press and have often led to heavy penalties, even to the resignation of the

[31] Nikolaos MILIONIS, *Court of Auditors, modern trends and evolution*, Nomiki Vivliothiki, 2012 ; Nikolaos MILIONIS, *The institutional role of the Greek Court of Auditors*, Sakkoulas 2002, 2nd edition, 2006.

[32] Decree of 27 September/9 October 1833.

[33] AYOZ Law of 28 May 1887.

[34] Part B - Official Journal - 51/A/97.

[35] Decision of the President of Parliament of 25 January 2012 (N°520/2012).

[36] Article 10 (10) of Law N°4337/2015 (Official Journal - 129/A/17.10.2015).

[37] Article 24 (4) and (5), Article 25 (2) and Article 70 (1) (e) of Law N°4270/2014 (Official Journal – 143/A/28.6.2014).

people concerned. These are often not very high amounts. Some cases may even be permitted by very flexible legal provisions. However, the public's expectations are first and foremost ethical. Elected officials must not only comply with all the rules, but must also be aware of their role as a model and apply the highest ethical standards. For auditors, this represents an additional challenge. While the legal framework is precisely delineated, the ethical framework is less clear. Citizens' expectations may also vary over time or according to culture. It is therefore sometimes difficult for the auditor to assess these cases. The fact remains that when abuse is revealed in the press, the public will be strongly tempted to blame the administration in question first, but also the auditor. Ethical issues do not only concern administrative expenditure, but also the legislative process. Although it is recognized that legislators must obtain information from various representatives, they must also remain impartial and endeavour not to be instrumentalised by a lobby. External auditors may have a role to play in improving the relevant provisions and control system. They can work towards improving the transparency of contacts with third parties, developing codes of conduct and ethics, or so that new legislative proposals are supported by objective and evidence-based impact assessments. It is in this context that the European Court of Auditors is carrying out an audit of the ethics framework of each European institution, including that of the European Parliament.

To conclude, I would like to refer to the fundamental issue of citizens' trust in their institutions. According to the Eurobarometer of May 2017,[38] only 36 % of Europeans trust their parliament. This rate is only 13 % in Greece. Obviously, this result is partly explained by the crisis. Restoring this confidence requires strong institutions, managed in a modern and transparent way. By providing assurance on the reliability of the accounts, on the legality of expenditure or on the performance of public policies, while also addressing governance and ethical issues, the external auditor must be a key catalyst of confidence in public institutions.

[38] Standard Eurobarometer 87 – Spring 2017 – Greece.

Second round table

Chaired by Prof. Pauline TÜRK,

Professor at the University of Nice

The financial autonomy of parliamentary assemblies in the federal states and the European Union

A critical debate on the special case of European Parliament funding

Prof. Aymeric POTTEAU[1]
Professor at the University of Lille
and Ms Danièle LAMARQUE[2]
Member of the European Court of Auditors

We must first pay tribute to the symposium organisers for highlighting "the special case" of the European Parliament in the title of this debate, which clearly responds to the titles of upcoming interventions on the "financing of bicameral systems." Indeed, the European Parliament is officially the only parliamentary assembly in the Union. However, it is difficult to purely and simply ignore the Council of the European Union, which, in many respects, resembles the upper house of a bicameral parliament, in terms of some of its functions, at least. This data thus deserves to be considered, if only in light of the question of the respective autonomy of the two assemblies, a problem the two European institutions resolved early on by means of a mysterious gentlemen's agreement to which each of them periodically refers. At its origin, in fact, was a Council Resolution of 22 April 1970, by which the Council undertook, in parallel to the conclusion of the Luxembourg Treaty which reformed the budgetary procedure, "not to amend the estimates of expenditure of the European Parliament." Although unilateral, this Council statement has since been analysed as a mutual commitment of the budgetary authority's two branches not to amend the other's section. Needless to say, at the time of its introduction, this *modus vivendi* preserved the Council's interests at least as much as those of the European Parliament, since, as part of the budgetary procedure, the latter had just received the power of the last word on non-compulsory expenditure initially considered as administrative expenditure. However, the distribution of budgetary power was modified by the Lisbon Treaty. It is therefore legitimate to question the sustainability of the *modus vivendi*.

A second feature of the institutional system deserves to be presented at the outset, namely the "constitutional" financial autonomy conferred to the main EU bodies, in continuation of their just as significant administrative and organisational autonomy. Indeed, the TFEU requires, firstly, that expenditure of the main institutions be covered by separate sections of the general budget (Art. 316) and, secondly, that each institution participate in the implementation of its own expenditure (Art. 317). In line with these requirements, the financial regulations thus ensure the European Parliament and the other institutions an individualised budget, in the form of a separate section of the general budget, but also the power to implement the appropriations entered in the

[1] Prof. Aymeric POTTEAU wrote the introductory statements and the first three parts of this contribution.

[2] Ms Danièle LAMARQUE wrote the fourth part of this contribution and the final remarks.

[3] Articles 43 and 55 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, OJ L 298, 26 October 2012, p.1.

budget.[3] In application of the treaties, however, the Commission is responsible for implementing the budget, while the European Parliament is the authorising officer of its own expenditure and has its own accounting officer whom it appoints.[4] In addition, the treaties guarantee it the ability to participate in the assessment of its own needs. To begin the annual budgetary procedure laid down by Article 314 of the TFEU, each institution draws up an estimate of its expenditure for the following financial year. However, the drafters of the treaties clearly sought to combine this prerogative with the principle of the Commission's exclusive power of proposal, which also applies to budgetary matters. The Commission must therefore group the estimates drawn up by each institution into its draft budget. However, since the entry into force of the Lisbon Treaty, it now has the option of substituting its own forecasts for those presented by the institution concerned. Indeed, in its draft budget, the Commission does not hesitate to revise downwards the appropriations requested by some institutions. Thus, theoretically, this could happen to the European Parliament.

Like the other EU institutions, the European Parliament thus enjoys a rather significant degree of autonomy in the management of its finances. However, in this respect as in many others, it remains separate from other institutions since it is likely to use its budgetary, legislative and discharge authority in favour of its own finances. In the supranational context, however, the parliamentary institution is only one branch of the authorities and must therefore deal with the other, intergovernmental, branch. Yet the balance set by the treaties is subtler than it first appears in regards to budgetary autonomy (I), legislative autonomy (II), and supervisory autonomy (III). Lastly, reference will be made to the supervision of the European Parliament's financing by the European Court of Auditors (IV).

I. Budgetary autonomy

On the budget front, the Lisbon Treaty has largely changed the balance by turning the budgetary procedure into co-decision-making. Now the two parliamentary and intergovernmental branches of the budgetary authority are dependent on each other, in that they have to adopt the budget in identical terms. However, this evolution of the procedural dynamics should not significantly affect the Parliament's financial autonomy since the two institutions have agreed to refrain from amending their partner's expenditure estimates. In fact, since the entry into force of the Lisbon Treaty, the Council and the European Parliament have not only expressly reiterated their commitment to this principle, but also and above all implemented it while precisely specifying that, in doing so, they comply with it.

However, a breach appears to have occurred recently during the budgetary conciliation phase after an initial discordant reading of the draft budget. It thus falls to a joint committee to draft a joint project that both institutions can approve. According to the spirit of the *modus vivendi,* in sum the idea that "each of the branches of the budgetary authority has sole competence for its own section of the budget,"[5] Parliament's section and that of the Council should automatically be approved at the conciliation phase, pursuant to the concerned party's interpretation. The budgetary procedures for 2016 and 2017 show, however, that the parliamentary delegation to the Committee agreed that, at the conciliation phase with the Council, Parliament's position on its own section of the general budget could be discussed and even changed, which led to a reduction of nine positions in 2016 and sixty-one in 2017. This was clearly the Council's way of reminding the European Parliament of the commitments it made within the context of the multiannual financial framework. The European Parliament, together with the Council and the Commission, concluded an interinstitutional agreement on budgetary discipline, in which it agreed, in particular, to gradually reduce the staff numbers in all the institutions by 5 %.[6] However, contrary to the two co-signatories, the European Parliament has been slow in complying with this commitment. Thanks to its budgetary powers, the parliamentary assembly has granted itself significant margins of manoeuvre both in terms of substantive and temporal scope. First of all, it refused to include the positions held by political groups when calculating the positions concerned, regardless of the fact that, according to the EU budget, they are, in fact, assigned to its establishment plan. These positions account for more than 15 % of total staff (1,135 out of 6,743 posts in 2018). Parliament then deferred the application of this reduction to the point that, in a certain way, it ultimately had to be called to order. In the context of the 2016 budgetary procedure, its delegation to the Conciliation Board had to grant

[4] Id., Art. 65 and 68.
[5] European Parliament legislative resolution of 1 December 2016 on the common draft general budget of the European Union for 2017, paragraph 3.
[6] Point 27 of the Interinstitutional Agreement of 2 December 2013 on budgetary discipline, cooperation in budgetary matters and on sound financial management, OJ C 373, 20 December 2013, p.1.

a declaration by which Parliament undertook to complete the staff reduction by 2019 in accordance with a precise timetable for implementation (reduction of 60 positions per year). Consequently, its budgetary autonomy is not unlimited.

II. Normative autonomy

As a part of the legislative authority which has been largely reinforced over the last three decades, the European Parliament differs from most of the organisation's other institutions by making a decisive contribution to the drafting and adoption of the standards it must itself follow, particularly in regard to financial matters. A single significant example will be taken here. It relates to the definition of the statute of members of Parliament and therefore to the definition of a substantial part of the institution's expenditure. The Treaty of Amsterdam conferred on the European Parliament the task of laying down the statute and general conditions governing the performance of the duties of its members, in the context of a special legislative procedure, which, moreover, the European Parliament is responsible for initiating.[7] While this novation of the Treaty of Amsterdam undoubtedly favoured the unification, admittedly overdue, of the indemnity scheme for members of Parliament, it also gave the Council a right of scrutiny over all the services offered to the representatives of European citizens. Indeed, the draft of the statute envisaged by the European Parliament must be approved by the Council. However, during the negotiations on the statute ultimately adopted in 2005,[8] the Council got Parliament to incorporate the numerous other allowances and reimbursement of expenses previously regulated by Parliament alone into the Staff Regulations,[9] which has an impact on Parliament's autonomy in this area. Two main illustrations can be given here.

The first relates to the amount of the parliamentary allowance. Set by the Staff Regulations, it may not be modified by the European Parliament without the Council's approval. Conversely, the Council cannot intervene, at least directly, on the amount of the parliamentary allowance. Once again, this reveals the singular nature of the European Parliament's autonomy compared to the other institutions which, to the contrary, depend entirely on the Council for such matters. The body representing the Member States thus fixes, alone and on its own initiative, the allowances of members of the Commission, the Court of Justice and even the Court of Auditors.[10] The Staff Regulations also provide a framework for other financial allowances granted to members of Parliament by allowing, or not allowing, the institution to make provision for a flat-rate allowance. This freedom is granted for the reimbursement of overhead costs but is specifically excluded for travel expenses, the reimbursement of which can only cover "actually incurred costs"; the same rigour applies to the costs incurred for parliamentary assistance. Therefore, Parliament could only evade these rules by initiating an amendment to the Staff Regulations, which would require the Council's approval.

Nevertheless, the parliamentary institution still has significant room for manoeuvre, which is justified by Parliament's right to regulate its internal affairs in its rules of procedure, as the preamble to the Staff Regulations does indeed point out. Although, in view of their subject matter, the Staff Regulations logically define the level of parliamentary compensation, it confers on Parliament the task of defining the conditions of implementation for most of the other financial allowances. For example, it is the Parliament, through its Bureau, which independently sets the amount of the flat-rate allowance for general expenses, the type and number of journeys that can be reimbursed, and the maximum amount paid for parliamentary assistance. The arrangements adopted by the Bureau are not limited to setting amounts, as they also establish certain benefits not expressly provided for in the Staff Regulations, such as the subsistence, distance and duration allowances. The EP thus defines a substantial part of the regulatory framework governing its own expenditure.

III. Supervisory autonomy

The European Parliament also distinguishes itself from other institutions in that it has the power to grant discharge in regards to budget implementation, i.e. to release the executive from its responsibility in this area. Originally held by the representatives of the member states, this prerogative was transferred in full to the representatives of the European citizens by the Treaty of Brussels of 22 July 1975, to increase democratisation after the State financial contributions were substituted by its own resources. However, the Council continues to be associated with this final phase of budgetary control, as it has a power of recommendation to the parliamentary assembly concerning these matters. Moreover, in this

[7] Article 223 (2) of the Treaty on the Functioning of the European Union.

[8] Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament, OJ L 262, 7 October 2005, p.1.

[9] N. CLINCHAMPS, *Parlement européen et droit parlementaire. Essai sur la naissance du droit parlementaire de l'Union européenne*, Paris, LGDJ, 2006, spec. p.74.

[10] Article 243 TFEU. See also Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders, OJ L 58, 4 March 2016, p.1.

context and notwithstanding the *modus vivendi*, the Council does not hesitate to scratch away at Parliament's budgetary management based on the European Court of Auditors' very objective observations. The Council cannot draw any significant consequences for the Parliament from these incisive observations, however, since, in accordance with its institutional interest, it contests the broad interpretation the EP gives to its power of discharge and which allows the parliamentary assembly to absolve itself. Demonstrating its renowned adroitness, the European Parliament very cleverly highlighted a gap in the EU budgetary system developed by the TFEU and implemented by the Financial Regulation. Under the treaty, the Commission, "under its own responsibility," is responsible for budget implementation; it logically follows that, taken literally, the treaty only formally subjects this institution to the discharge procedure. However, at the same time, in line with the options offered by the treaty, the Financial Regulation requires the Commission, as previously illustrated, "to recognise" the powers of the other institutions as necessary to implement the sections of the budget which concern them,[11] without conferring any powers of control over the implementation of the budget carried out by the other institutions.

With this in mind, in 2002 the European Parliament introduced in its rules of procedure a provision on "other discharge procedures," applicable in particular to the other institutions, including the Council and Parliament itself. However, since 2011[12] it refuses to grant discharge to the Council, criticising the intergovernmental body for insufficient cooperation, in particular its refusal to answer all the questions put forth.[13] In this framework, Parliament does not hesitate to criticise, deploring "that the attitude of the Council obstructs democratic control as well as transparency and accountability vis-à-vis Union taxpayers."[14] Needless to say, the Council contests Parliament's power to grant it discharge, arguing that, under the terms of the treaty, the discharge is granted to the Commission in regards to the implementation of the Union budget. The fact remains, however, that, indeed, with the Commission's consent, each institution is called upon to respond to its budgetary implementation before the European Parliament, which will accompany the granting of the discharge with a substantial resolution containing a number of recommendations that will be followed up on in accordance with the Financial Regulation.[15] Nevertheless, the European Parliament evades this external political control of budget implementation, as it itself gives discharge to its secretary-general. Of course, it does so on recommendation of the Council, but, given that the latter contests this power of the Parliament, it cannot suggest a refusal of discharge without ignoring its principled position. In any case, the follow-up to the Parliamentary Committee on Budgetary Control's work and the resolutions accompanying this discharge suggest that Parliament uncompromisingly carries out this inspection through the external auditor's work on the parliamentary institution.

IV. Supervision of Parliament's financing by the European Court of Auditors

The European Court of Auditors is the European Parliament's external auditor, as it is for the other European institutions (Council, Commission, Court of Justice, Economic and Social Committee, Committee of the Regions, Ombudsman, European Data Protection Supervisor).

The observations resulting from its inspections are set out in the annual report on the implementation of the budget in the chapter on expenditure for the administration of the Union. The Court also conducts audits on regularity and performance, on its own initiative or at the request of Parliament; the conclusions and recommendations of these audits are published in special reports. Finally, it gives binding opinions on any change in the regulatory procedure which has a financial impact on the Union budget. All interventions of the Court are public and accessible on its website.

In recent years, the Court has examined the financing of political parties, the costs and allowances of members of Parliament and the statute of their assistants, and the cost of Parliament's seat in Strasbourg.

A. Supervision of the financing of political parties

A Gradually strengthened framework, which leaves some gaps

European political parties and foundations receive funding from the European budget to cover their administrative, technical assistance, information and European electoral campaign costs. The costs of staff, premises, equipment and other

[11] Article 55 of Regulation (EC) No 966/2012 referred to above.
[12] European Parliament Resolution of 25 October 2011 on the observations forming an integral part of the decision on discharge in respect of the implementation of the EU general budget for the financial year 2009, Section II — Council.
[13] Resolution of the European Parliament of 23 October 2012, §§ 14-15.
[14] Id., § 16.
[15] Article 166 of Regulation (EC) No 966/2012 referred to above.

means are directly paid by the Parliament from its budget.

The payment and use of appropriations are governed by the Regulations of the European Parliament and of the Council adopted after the Court of Auditors has given its opinion. Regulation No 1141/2014 of 22 October 2014, applicable since 2017, is currently under revision.

The funding regime for European political parties and foundations has been progressively refined and strengthened: intervention by the co-legislators, the supervision of an Authority, the establishment of a statute conferring legal personality on parties. Transparency and controls have also been developed with the harmonisation of accounting rules, the certification of financial statements, reporting obligations in an annual report before 30 June, and the publication of extensive information on the composition and functioning of parties and foundations. A new Regulation in the process of approval is continuing this development and aims, in particular, at modifying the key for allocating appropriations, specifying the arrangements for recovering amounts unduly paid, and clarifying the link between national and European political parties.

These reforms respond to a number of shortcomings identified by the European Court of Auditors in the 1990s. In the 1989 Annual Report, it reported on the findings of an audit covering the period 1986-1989, which identified a number of weaknesses in the internal management procedures, a lack of a uniform accounting system, weaknesses in the control of external auditors responsible for verifying group accounts, cases of confusion between expenditure on information and current expenditure and of ineligible expenditure linked to election campaign operations.

In 2000, the Court dedicated a special report to the expenditure of the European Parliament's political groups carried out under the arrangements applicable until 1998 (Special Report No 13/2000). The checks were carried out on 1998 transactions in each of the Parliament's groups and administrative departments for non-attached members. The Court noted the insufficient clarity of the rules: the concept of political activity and the forms it may take are not defined; there is no clear distinction between these activities and those that fall within the normal remit of a member of Parliament. The purpose of the appropriations for administrative expenditure allocated to non-attached members is not clear.

The Court has delivered several opinions on the draft regulations on the funding of European political parties and European political foundations, and made recommendations to improve the transparency and control of such funding. It does not intervene, however, on provisions that come under political decisions, such as the key for the distribution of funding between parties.

In its latest opinion of December 2017 on the draft new Regulation, the Court approved the intention of the Commission to improve the transparency of the link between European and national political parties, and called for the provisions governing parties and foundations to be merged into a single document. However, it recalled the risks linked to the search for co-financing, even reduced to 10 % of the party budget and 5 % of the foundations' budget, and noted that its 2013 recommendation was not followed up by specific rules on donations from natural or legal persons supplying goods and services to the Union institutions or other public authorities involved in the management of Union funds. Nor is there any provision for donations to entities having direct or indirect links with European political parties or with European political foundations. The issue of the regulation of loans is not dealt with either. Lastly, the Court called for the ceiling of 10 % of the party's or foundation's annual budget to be abolished, applicable to fines in the event of a quantifiable breach of the rules.

Checks by the Court of Auditors concern various irregularities.

European political parties and foundations are not bodies set up by the European Union and are not subject to review by the Court by virtue of the powers conferred on it by Article 287 of the TFEU. However, insofar as they are funded from the European budget, the Court may carry out audits based on the examination of accounting records and conduct on-the-spot visits. Funds received from other sources may also be examined when there are interactions with EU funding.

The audits carried out by the Court have led it to mention a number of shortcomings or irregularities in its annual and special reports. In response to its observations, it makes recommendations.

Every year, the Court reviews the expenditure of the European institutions, according to a principle of rotation, and reports thereon in its annual report.

In its last three annual reports, covering the financial years 2014 to 2016, before the entry into application of the 2014 Regulation, the Court found irregularities in payments made to two political groups. These payments are covered by a Regulation and a Decision of the Bureau of Parliament setting out the detailed rules for its implementation. These appropriations are managed in accordance with the principles of decentralised indirect management by analogy with Article 60 of the Financial Regulation. When the Bureau is of the opinion that the appropriations have not been used in accordance with these rules, the appropriations must be reimbursed.

For the 2014 report, one of the 28 verified payments concerned the operating grants allocated in 2013 to a European political party: the European Parliament had not sufficiently monitored expenditure related to costs reimbursed by that party to its affiliated organisations; the ceiling of EUR 60 000 was exceeded, and the Parliament did not ensure that the costs had actually been incurred. The Parliament replied that it had clarified the conditions of support for affiliated organisations, as well as the procurement rules, for which the Court identified certain weaknesses: failure to demonstrate that the contract had been awarded to the tenderer offering the best value for money, no document justifying the use of a tender procedure.

In its report on the financial year 2015, the Court found the same weaknesses; in response to its recommendation, the Parliament announced the setting up of training courses and the establishment of a working group for the group concerned by the irregularities, in order to identify possible improvements in financial management and the internal legal framework for the group's finances.

In the report for the financial year 2016, the Court noted the same irregularities concerning another political group. Parliament has undertaken to develop training courses for political groups on the general principles of budget management and public procurement.

B. Expenditure relating to members and the status of their assistants

Various opinions and reports of the Court concern expenditure on members of Parliament concerning either their own staff arrangements (fees and allowances, supplementary pension funds) or their staff resources (parliamentary assistants). The applicable regulations were adapted in 2008 and 2009.

In 1998, the Court dedicated a special report (No 10/98) on the costs and allowances of members, recommending a radical reform of the regulatory framework. It delivered an opinion in 1999 (No 5/1999) on the members' supplementary pension scheme and supplementary pension fund, at the request of the president of Parliament. In its annual report concerning the financial year 2014, the Court noted some errors in the management of family allowances. The Parliament rectified them and recovered the claims in 2015.

The Statute for parliamentary assistants has been the subject of two opinions, in 1998 (No 6/1998) and 2008 (No 5/2008). In 1998, the Court called for the creation of a specific category of agents in the Union's "other servants" system. In its two annual reports on the financial years 2006 and 2007, it also pointed out shortcomings in the applicable regulatory framework and the need for rules ensuring the effectiveness of the assistants' services. This recommendation was therefore implemented in 2008, with the amendment of the Conditions of Employment of Other Servants of the European Communities, in order to include a new category, that of parliamentary assistants. The single statute for members was set up in 2009.

C. The Parliament's seat in Strasbourg

Parliament has three sites in Brussels, Strasbourg and Luxembourg. The MEPs sit in Strasbourg for the twelve monthly plenary sessions, and in Brussels for committee and exceptional plenary sessions. The General Secretariat of the Parliament and its departments are located in Luxembourg.

In response to a European Parliament Resolution of November 2013, the Court analysed the potential savings for the EU budget of centralising the Parliament's activities in Brussels. Its conclusions were the subject of a letter from the president in July 2014. The Court found that the removal from Strasbourg to Brussels would generate an annual saving of EUR 114 million, including EUR 34 million in mission expenses, which is equivalent to 6.3 % of Parliament's annual budget; this amount must be increased by EUR 616 million if the buildings are sold, and reduced by EUR 40 million in maintenance costs if the buildings remain unsold for two years. The move from Luxembourg to Brussels would represent only a

marginal saving. It should be noted that Parliament's premises in Luxembourg are currently being enlarged and that a removal would involve the purchase or rental of new premises in Brussels, which is not the case in Strasbourg, since all the activities are duplicated between Strasbourg and Brussels. To this end, the Court has analysed previous studies carried out by the Parliament's administration, the estimates of which vary from one to four times more. These variations are due to differences in the purposes, scope and timing of these studies.

In conclusion, the European Court of Auditors' checks on Parliament's expenditure therefore cover all such expenditure, when it is financed from the Union budget. They are carried out as part of its annual verification mission on the implementation of the budget, but also in the scope of specific audits which the Court programs on its own initiative or at the request of a European authority. The Court has thus made a useful contribution to strengthening the control of such expenditure and clarifying the rules governing political parties and the resources available to members. Publicity for the Court's work and the compulsory submission of draft regulations for its opinions thus effectively contribute to the transparency of the financing of the European Parliament's activities.

Critical debate on the public funding of the Parliaments in Belgium

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"The independence of the chambers demands that each of them should have its own budget, prepared by it alone, voted sovereignly and definitively discharged by it alone. Autonomy on this point is complete, absolute, unreserved." [17]. We are familiar with the message of Eugène Pierre. The Parliament cannot fulfil its tasks if it has to rely on the means granted to it by the authorities it controls. However, the debate on the financial autonomy of the Parliament[18] deserves to be reopened. Today's Belgium is no longer that of 1831. Relations between the powers have changed. Structures have become more complex. Management methods have evolved. Today, who loosens or, on the contrary, who tightens the parliamentary purse strings? The question cannot be answered without successively analysing the funding of the Chamber of Representatives, that of the Senate and, as an example for the federated assemblies, that of the Walloon Parliament[19].

I. Funding of the Chamber of representatives

A. The funding rules

"*Each year, the Chamber of Representatives votes (...) the budget*" of the Federal State (Const., Article 174, para. 1). With this proviso:

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[17] E. PIERRE, *Traité de droit politique, électoral et parlementaire*, Paris, Librairies-Imprimeries Réunies, 1902. pp. 1343-1344.

[18] In a State that practises bicameralism and federalism, there is no one public funding of Parliament. There is one per assembly.

[19] The "burden of the parliamentary household", as Pierre Wigny so nicely put it (*Droit constitutionnel. Principes et droit positif*, Brussels, Bruylant, 1952, n° 350), is not just a side issue. It is a political issue in its own right. It reflects society's vision of how Parliament works. It has the advantage of providing a concrete image. One that is even backed up by figures.

"All government revenues and expenditures", without exception, "must be reflected in the budget and in the accounts". The Constitution of 1831 was pioneering. It distanced itself from the Basic Law of the Netherlands and the French Charter of the Restoration. It imposed the principles of annuality, unity and specialty.

"For historical and political reasons, the constitutional text magnifies the role played by the most representative assembly of citizen-taxpayers. However, in this and other fields, the government fulfils an essential function. It establishes the documents that are submitted to the Chamber of Representatives. It prepares the budget. It defends it. It takes upon itself to pursue the policies that the means allocated to it will enable it to achieve."[20].

«However, the Chamber of Representatives ... fixes (...) annually, (...) with respect to (it), (its) operating endowment". The word "dotation" the French word used in Belgium to refer to this endowment is specific to it. Financial resources are entered into the general budget of expenditure. They are intended to cover the needs of particular institutions, such as the Chamber of Representatives. The endowment is listed as a lump sum[21]. It is not the subject of a detailed presentation - item by item - in the budget law[22]. The process preserves the discretion of appreciation and of action of the recipient institution.

Depending on the endowment allocated to it, the Chamber establishes a "chamber budget". The document is public but domestic in nature. The assembly has complete control over it. It is not the subject of consultation with the government. It is not subject to its approval. A fortiori, it is not the subject of a discussion with the Senate.

In terms of revenues, the chamber budget has several sources. Most of it comes from the endowment that the Chamber allocates with the agreement of the government. It is also necessary to have recourse to own revenues (among others, resources placed in reserve), to financial products, to a special endowment for the "Forum" building and to the Senate's reimbursements for the use of the *Maison des parlementaires* and cleaning services. In terms of spending, the chamber budget is distinct from the endowment. It lists the items of expenditure and specifies, for each of them, the means that can be used in the coming year. It serves as a road map for the services of the Chamber.

The chamber budget is used to remunerate the members of the administrative staff that the Chamber has appointed under a statute (40%). A second part is used to pay "*allowances*" (covering salaries and related benefits) to the members of parliament (28%) and to fund political groups (25%). A third part covers the running costs of the institution's services (general services, administrative office, commissary, translation and interpreting teams, etc.), including expenditure related to the maintenance of the Palais de la Nation and of its annexes - Maison des parlementaires and the Forum - (7%). The Chamber's endowment is also used to fund political parties. It still takes into account contributions to international organisations and the grant that is allocated to the parliamentary pension fund.

To accommodate these diverse concerns, Article 174, para. 1, should be rewritten. *"Every year, the Chamber of Representatives passes the Accounts bill and votes on the federal budget. This includes the operating endowment that the Chamber of Representatives and the Senate receive annually. The federal chambers establish, each in their own respect, their budget taking into account these means and their other resources"*.

B. The financial procedure.

A five-step procedure is developing.

– The federal government establishes a working hypothesis. In a *draft general budget of expenditure*, it provides for an endowment to the Chamber. To do this, it takes into account the amounts previously determined. It respects the options taken in a "budgetary conclave" – such as the decision of 2014, intended to be replicated "from 2016 to 2019 inclusive", namely a reduction, after indexation, of endowments of 2%.

– The Chamber checks the relevance of this projection. As early as March of year n, it asks its services to estimate their needs for the year n + 1. The General Affairs, Finance and Commissary Department, together with the Director General of Questure, makes an initial assessment of these requests. It submits them to the Governance Committee It, in turn, adjusts, if necessary, the requests expressed. The document is sent to the government.

– The amount of the endowment is entered in the draft general budget of the State and submitted for approval to the plenary assembly (Article 172.2 of the Rules).

[20] F. DELPEREE and S. DEPRE, *Le système constitutionnel de la Belgique*, Brussels, Larcier, 1988, n° 380. According to the Constitutional Court, the general budget of expenditure is established by a democratically elected legislature, the only competent body for this purpose: it sets the maximum amount that can be spent for each budget item and authorises the executive body to make these expenditures; such a rule may be referred to the Constitutional Court (No. 499).

[21] M. VANDERHULST, *Le Parlement fédéral. Organisation et fonctionnement*, Kortrijk, UGA, 2011, p. 325: the endowment "in principle, has one single budget item that is not broken down into basic allocations".

[22] Art. 51 of the law of 22 May 2003 «Programme appropriations are broken down in the budget tables into basic allocations in accordance with the economic classification, with an indication of the expenditure allocated to the financial service for pre-financed expenditure". With this proviso: "This provision does not apply to appropriations provided for endowments".

– The law passed is the subject of Royal Assent and thus the agreement of the Federal Government.

– On the basis of these figures, the "Governance Committee", set up within the Bureau[23], draws up a *draft chamber budget*. The detailed draft is sent to the Chamber's "Accounting Committee". It is discussed and then voted on[24]. At the end of the year, the chamber budget is voted on in plenary session - which takes place without prior discussion -. It is published. It is registered on the website of the Chamber of Representatives.

The procedure may seem simple. One question remains. What if the amounts proposed by the Chamber exceed the government's projections? Either it ignores the requests made and maintains the amounts envisaged. Or it realises that the requests expressed by the Chamber are justified; it adapts its own forecasts accordingly. In other words, it later finds that the amount envisaged is insufficient and it corrects it; a budgetary adjustment implements the operation.

For the purpose of establishing its own budget and balancing the amount of its income and expenditure, the Chamber of Representatives draws on its other resources to cover the needs of the year n + 1.

II. The funding of the Senate

With regard to the development of the Senate, the Constitution uses the trompe l'oeil technique. It recalls in article 36 that "*the legislative power*" is trinitarian. It "*is exercised collectively by the King, the Chamber of Representatives and the Senate*". It states, close to forty articles apart, that "*by derogation*" from Article 36, "*the federal legislative power is exercised collectively by the King and the Chamber of Representatives*» (Article 74). And this, in all matters other than those listed in Articles 77 and 78. The derogatory regime is the ordinary regime. For this reason, the Senate is described as a "*non-permanent body*" of the legislative assembly (article 44, para. 2, in fine).

The Senate does not vote the budget of the Federal State. It takes cognizance of the one proposed by the Government and voted by the Chamber of Representatives. It finds therein the operating endowment that the Constitution reserves for it[25].

The Senate freely allocates these means to the needs determined by it. The expenditures are of the same order as those of the Chamber. With one difference. Fifty senators are elected by the community and regional parliaments; they are paid by them. The Senate covers the "*allowance*" - half that of a member of Parliament - paid to the ten other senators.

Here again, staffing costs are at the top of the list (50%)[26]. For the rest, the institution's operating, security and maintenance expenses must be taken into consideration.

A. The funding rules.

The Senate does not participate in the preparation of the federal budget.

In application of Article 174, para. 1, second sentence, of the Constitution, it fixes annually, and with respect to itself, its "operating endowment". How to combine this rule and the previous one? One answer can be found in Chapter VII of the Senate Rules - "The endowment" - (Section 88): *"The Senate sets its operating endowment each year on the proposal of the Bureau. The endowment adopted is communicated to the Minister in charge of the federal budget to be included in the draft general budget of expenditures."* The conciseness of the provision cannot hide the interventions of the executive power and, in particular, the directives it is required to give in order to set reasonable amounts.

The Senate establishes the Senate budget taking into account the resources allocated to it and the resources available to it.

B. The funding procedure.

A diagram can be drawn. It is closer to the one prevailing in the Chamber. The fact remains that the different institutional regime that characterises the assemblies is not without impact on the procedures implemented.

– It is up to the federal government to establish a working hypothesis, to consider the means it intends to devote to the various endowments and to determine the endowment to be granted the Senate. This is the purpose of the draft general budget of the State.

– It is up to the Senate to fix, in view of the volume of the envisaged means, those which it could allocate to its needs. The Senate Bureau makes a proposal; it is prepared by the Quaestors (Article 88 of the Rules of the Senate); it is subject to the approval of the plenary assembly.

[23] The Governance Committee is part of the Bureau of the Chamber of Representatives. It is composed of three vice-presidents and two other members of the Bureau. It prepares the Bureau's decisions and monitors the execution of these decisions.

[24] The Accounting Committee is chaired by the President of the Chamber. It consists of eleven members of parliament. On the proposal of the Governance Committee, it determines the budget that will be submitted to the plenary session of the Chamber. Rules. Ch. Rep., art. 172, al. 2, second sentence: *"The Committee, on the proposal of the Governance Committee, determines the budget of the Chamber and submits it for its approval".*

[25] In 2017, the senatorial endowment amounted to 47 million euros. That is 0.05% compared to the federal budget. Or one-third of the amount allocated to the Chamber of Representatives. According to the Senate presidency, the purse strings should be tightened in the future and a more modest «Dutch-style» budget adopted.

[26] The Senate had 308 officials in 2015. There are only 240 today. A figure of 180 is being touted for the near future. It should be achieved through annual departures: the average age is 55 years.

– The Chamber of Representatives should include in the budget documents it adopts, in conjunction with the government, the amount thus negotiated for the senatorial endowment. This regime attests to the dependence of the High Assembly on the Government and the Chamber, including the definition of its means.

– For the establishment of its own budget, the Senate will add, if necessary, its own resources, including resources from its reserves.

– During the financial year, it will request, if required, the intervention of the Chamber of Representatives for the purpose of making the necessary budgetary adjustments.

As can be seen, the practice does not correspond to the regulatory texts. It would be more accurate to write: "The Senate fixes its budget each year. *It establishes it, taking into account, in particular, the operating endowment which has been entered in the general budget of expenditure for its benefit".*

III. The Funding of the Walloon Parliament

A. The Walloon Parliament27

The Constitution (supplemented by laws described as "special", passed in each federal chamber by a two-thirds majority, with a majority in each linguistic group) establishes the principles of organisation and functioning of the federated communities, in this case those concerning the Walloon Region which benefits from a semi-parliamentary regime (Const., art.3).The Walloon Parliament is composed of «*elected representatives*» (Const., Articles 39 and 116, § 1); there are seventy-five of them. They are directly elected. The chosen system is that of a "legislature parliament". The government can resign or be the subject of a motion of constructive no-confidence. On the other hand, parliament cannot be dissolved; it is elected on a fixed date, every five years. The Walloon Parliament exercises, in conjunction with the Walloon Government, the legislative function, in the form of decrees. It ensures the political control of the government and its services. Like the Chamber of Representatives, the Walloon Parliament has extensive powers over the funding of regional public activities.

B. The principles of funding

A special law is responsible for "fixing the system of funding of the regions" (Const., Article 177, para. 1). This is the purpose of the special law of 16 January 1989 on the funding of communities and regions, which was extensively revised in 1993, 2001 and 2014. The special law of 8 August 1980 on institutional reforms stipulates (Article 13) that each community or regional parliament - and therefore the Walloon Parliament - votes the budget annually and draws up the accounts[28]. The budgetary and accounting principles in force at the federal level apply[29], even if the Region is empowered to determine many methods of application.

However, no provision explicitly regulates the question of the funding of the Walloon Parliament, whereas the special law of 8 August 1980 on institutional reforms imposes on the same Parliament several special charges, including compensation for members and the granting of a retirement pension (Article 31ter, § 1), complementary funding of political parties (Article 31 (6)) and remuneration of staff members (Article 45). Since "*all revenues and expenditures are entered in the budget and in the accounts*" (Article 13, §1, para. 2, of the special law of 8 August 1980 on Institutional Reforms), it is necessary to accept the idea that Parliament has the right to be funded in order to fulfil the tasks incumbent on it.

Article 44 of the same special law empowers the Parliament to adopt its rules. Article 169 (3) of the Rules of the Walloon Parliament seeks to fill the void left by the legislator. It states that "*each year, the Parliament adopts, in plenary session, its draft budget for the following year on the proposal of the Bureau"*. In particular, since a budget is composed of revenues, it must be inferred that Parliament has the right to set an amount in the regional budget as an endowment.

The Walloon Parliament votes annually the budget of the Region. It lists the endowment that it receives for its own operation and which, in 2017, amounted to 57,686 million euros, or 0.43% of the regional budget[30].

In 2017, the Parliament's expenditure budget was 58,946 million euros, i.e. almost 1.5 million euros more than the endowment. At 27 per cent, it made it possible to compensate the parliamentarians and grant them various social and material benefits. The funding of parliamentary assistants and political groups mobilised 36% of the budget. The remuneration of parliamentary staff consumes 21% of the budget. The remainder is divided up between service operating expenses (10%) and capital expenditures (6%)[31].

[27] On 16 July 2015, the assembly chose another name, namely "Parliament of Wallonia." It enshrined the name in its rules.

[28] The same provision appears under Article 50, §1, of the special law of 16 January 1989 on the funding of the communities and regions.

[29] See in particular, the law of 16 May 2003 laying down the general provisions applicable to budgets, the control of subsidies and the accounting of the communities and regions, as well as the organisation of control by the Court of Auditors.

[30] To compare the endowments that accrue to the Chamber of Representatives and the Walloon Parliament, it should be noted that the first assembly has twice as many members as the second and obviously to take into account the fixed costs inherent in the functioning of any parliamentary institution.

[31] Historical and material reasons explain an expenditure structure that is different from that of the federal chambers. For example, it is interesting to note that the Walloon Parliament has only one hundred civil servants.

C. The financial procedure

The Bureau of the Parliament, which is empowered to deal with administrative, financial and judicial matters concerning the internal organisation of the Parliament, its administrative office and its organs (Rules, article 24, point 4) decides on the amount of the endowment it deems necessary for its operation for the following year and communicates it to the Minister-President of the Government.

The Parliament's draft operating budget drawn up by the Parliament's services has a greater or lesser importance in this estimate, but there is no doubt that the decision is essentially political in nature. When a multi-year endowment change framework is set, the Bureau's decision is a simple confirmation of the agreement previously reached with the government. At most, a check is made into the macroeconomic assumptions that are imposed on the entire regional budget[32], and the occurrence of exceptional events is taken into account[33]. In the opposite case, the situation of recent years is taken into account.

At the same time, Parliament's services put the final touches to the draft budget. The technique used is that of the "ZBB" or "zero based budget". It imposes the precise annual justification of any cost centre.

In addition to the endowment, the services identify Parliament's own revenue: recovery of awards, pay and allowances from other assemblies[34], recovery of salaries and allowances from third parties, rental of buildings and financial products ... In 2017, the amount mentioned in the budget was 1,260 million euros or 2.14% of total revenue.

The Bureau of the Parliament adopts the balanced draft budget, even at the cost of a compensatory levy in Parliament's reserve fund. Parliament's services simultaneously disseminate the draft budget of the Region and that of the Parliament.

The General Affairs Committee of the Parliament (and not the one which examines the budget of the Region) is responsible for the in-camera examination of Parliament's budget. The Bureau presents the budget and answers questions from Members. A report is prepared and disseminated. The plenary session can formally take up the Parliament's draft budget, which is on its agenda, but traditionally no debate takes place. The draft is subject to the approval of the deputies after the vote on the budget of the Region.

At the beginning of the budget year, the regional administration pays Parliament the full amount of the endowment. Throughout the year, the Parliament's services monitor the implementation of the Parliament's budget.

D. Controls

Controls over the way the means are used are, on the one hand, internal and, on the other hand, from a certain point of view, external.

Internal control is of a three-fold nature.

– The general principles of public accounting are implemented, which ensure the differentiation of stakeholders in the expenditure cycle. In addition, since Parliament's ISO 9001 certification in 2009, control mechanisms are integrated into all service processes.

– The departments analyse the budget execution as of 30 June of the current year and report to the Bureau. If necessary, Parliament's operating budget is adjusted by increasing Parliament's endowment as and when necessary.

– The parliamentary committee that examined the budget is also in charge of the accounting, the accounts and the management of the funds of the Parliament; it appoints an auditor from among each of its recognised political groups[35].

After reviewing the supporting documents, the auditors submit a report on the account for the past financial year that includes the following documents, prepared by the services of Parliament without the intervention of the Bureau: budgetary accounts of the revenues and expenditures, a profit and loss account (based on cost accounting), a balance sheet and a depreciation schedule. The committee checks and clears all accounts; it controls the inventory of the furniture belonging to Parliament. Finally, the committee reports to the Bureau, which decides on the conclusions proposed to it. This report, supplemented by the decisions of the Bureau, is distributed to the assembly.

External control is, for the most part, newer. It is fundamentally based on the concept of publicity. The granting of an endowment to Parliament during the vote of the Region's budget ensures publicity of the overall appropriations made available to it. A debate, held in public session since 1995, on the Parliament's budget and the publication, since 2009, of the accounts of the year n-2 have further boosted the quest for transparency pursued by citizens and the media alike. One radical change is linked to the entry of Belgium into the European Monetary Union and

[32] In particular, the consequences of the automatic indexing of awards, pay, wages and public allowances are considered when they represent more than 80% of the expenditure.

[33] Such as a significant renewal of parliamentarians or the replacement of the Government. à les dfémentir.rence au statut des chambres fédérales,à asseoir une conviction. omique et monétaire (TSCGst avancé pour un pr

[34] Because a Walloon member of parliament belongs to one or more other parliamentary assemblies (Parliament of the French Community or Senate) or due to so-called mixed careers (parliamentarians having sat in assemblies not related to the Walloon Parliament (Chamber of Representatives, Senate).

[35] A political group is recognised if it has at least five members.

its accession to the Stability and Growth Pact[36] : it must now produce statistics and accounts to the European authorities established according to the methodology of the European system of national and regional accounts in the European Union (SEC)[37]. Directive 2011/85/EU of 8 November 2011 on the requirements applicable to the budgetary frameworks of the Member States was transposed into Walloon law in 2015[38] and this transposal was an opportunity to expressly include the Parliament in the scope of consolidation of the Walloon Region[39].

Parliament is thus required:

– since 1 January 2016, to report monthly to the Walloon Government, in accordance with the model adopted by it, the budgetary data relating to expenditure and revenue generated and, more broadly, the data needed to meet the reporting requirements;

– since 1 January 2017, to establish, in accordance with the rules approved by the Parliament in its Rules of Procedure, an annual budget including all revenues and all expenditure, whatever their origin and cause;

– by 1 January 2020 at the latest, to have its public accounting system audited, at its discretion, either by the Court of Auditors or by an independent public or private body, the result of this audit being communicated to the Parliament alone.

On the occasion of the examination of the draft transposal of the directive[40], the Council of State, on the basis of article 60 of the Constitution and its equivalent, article 44 of the special law of 8 August 1980 on institutional reforms, made several observations[41]:

– the inclusion of Parliament in the scope of the decree undeniably has the effect of interfering with the regulatory autonomy of Parliament to draw up the rules governing its working methods;

– the autonomy conferred on the Parliament is only attributed so that the rules relating to its organisation and functioning cannot depend on the approval of the executive power or the decision of any other authority. In the present case, the aim is to subject the internal functioning of Parliament to rules that are binding on it anyway since those rules are applicable to Belgium as a Member State of the European Union. It does not therefore affect Parliament's autonomy, since its regulation would be required to adopt the same rules on its own if the draft did not provide for them;

– a uniform regulation for all the institutions that belong to the Walloon Region and which are part of its consolidation scope is the most efficient way of implementing European obligations in a fully coordinated manner.

Since 1 January 2016 and 2017 respectively, the Parliament has scrupulously fulfilled its obligations in full cooperation with the relevant government department. As for the deadline of 1 January 2020, its respect will not give rise to any difficulty since the Parliament's accounts have been maintained on a very comprehensive basis for several years. The way in which the means of financing the Walloon Parliament are determined indicates that the freedom left to the Parliament has deteriorated from such time as the Government is obliged to respect a budgetary trajectory. External control, «imposed" by the European Union, tends to give credence to the idea that Parliament is an autonomous administration, a kind of public interest body. The texts, if they exist, continue to show some regard for the parliamentary assembly, if only by reference to the status of the federal chambers, but the practices sometimes tend to run counter to them.

* * *

In Belgium, the myth of a Parliament that is sovereign and independent when it comes to defining and using its financial means has had its day. Three phenomena - institutional, material and functional - have contributed to provoke such an evolution.

First, we must consider the phenomenon of multi-parliamentarism. Nine parliamentary assemblies, composed of men and women who, in most cases, will not pursue a homogeneous political career but who will do a lot of toing and froing between several parliaments. Comparisons are being made. Between the Chamber of Representatives and the Senate. Between the various community and regional parliaments. Between the federal chambers and the federated parliaments. The membership of a majority of senators of two or three parliaments encourages the practice of verification.

Consultations can be established to erase too many differences of regime. They are complex in a constitutional system where each of the partners considers, rightly, that it is the equal of the others. They can be tricky as soon as the rhetoric starts advocating solutions that are inspired by the least favourable financial regime. And this,

[36] Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG), entered into force on 1 January 2013.

[37] Regulation (EU) N° 549/2013 of the European Parliament and of the Council of 21 May 2013 (SEC2010).

[38] Decree of the Walloon Region of 17 December 2015 amending the Decree of 15 December 2011 on the organisation of the budget and accounting of the services of the Walloon Government, the decree of 5 March 2008 establishing the Walloon Agency for Air and Climate and the Walloon Code of Housing and Sustainable Housing.

[39] The Walloon Region belongs to the sub-sector of administrations of federated states (S.1312) of the public government sector (S.13).

[40] Draft decree amending the Decree of 15 December 2011 on the organisation of the budget and accounting of the Walloon Government's services, the decree of 5 March 2008 establishing the Walloon Agency for Air and Climate and the Walloon Housing Code and Sustainable Habitat (Doc. *Parl.*, Parl. Wall., n° 343/1 (2015-2016).

[41] See Opinion of the legislation section of the Council of State of 16 November 2015 on a preliminary draft decree "amending the Decree of 15 December 2011 on the organisation of the budget and the accounts of the services of the Walloon Government, the decree of 5 March 2008 establishing the Walloon Agency for Air and Climate and the Walloon Code for Housing and Sustainable Housing «(Parl Parl., Parl. wall., No. 343/1 (2015-2016), pp 38 and following.

regardless of the seniority, the size, the scope of the tasks or the volume of projects and ambitions of the assembly.

We must also take into account the scarcity of public resources. Austerity policies, those that the European Union imposes or those that the federal, community and regional governments advocate, affect the management of all political and administrative institutions. Chambers and parliaments are forced to follow the movement. If they claimed to play a lone hand in the name of the financial autonomy that the Constitution grants them on paper, they would quickly become unpopular. They would be accused of corporatism. The threat is real for institutions that want to be representative of the Nation, the community or the region[42].

We must also be aware of the changes that have occurred in relations between public authorities. The model of a Parliament that legislates and controls a government that executes is outdated. A political majority, even if it is composite, is present in Parliament. It runs a coalition government. No doubt, the latter has taken over control. Even when it comes to defining the scope of the means which are put at the disposal of all the institutions which it controls. Politically, of course. Including, the parliamentary assembly.

The financial autonomy of parliaments is developing today in a narrower context.

– It is doubtful that it will be into any real question any time soon. We can consider that Parliament, in its various configurations, will be prompted, even more than in the past, to come down from its high horse. Like other public authorities, which also have an endowment, it has lost control over the definition of the scope of its means and now only has a say in their use. This in no way undermines the parliamentary institution. It should be seen, rather, as the development of an egalitarian regime for defining means in relation to other public institutions and the preservation of a liberal regime governing of their use. In such a context, parliaments – legitimately concerned with their independence – must be careful that governments do not give in to the temptation to control the efficiency and effectiveness of spending, whose possibility must remain in their hands.

It is down to the parliament(s) to make good use of their status. To constantly adapt the breakdown of expenses: the parliamentary "awards", the financing of the political parties, the salaries of the members of the personnel, the operation, the security and the organisation of the premises ... To use simple forms of collaboration: staff recruitment, group purchasing, joint tenders ... And thus contribute to the advent of a democratic society in which no authority is "sovereign" - neither in its decisions nor in its administration - but draws its legitimacy from the correct performance of its functions.

The end justifies the means... Only work done in the political field can justify the allocation of resources to parliamentary assemblies. Anything else would fail to capture the zeitgeist.

[42] "Both the pressure of the government and that of public opinion compel the Chamber and the Senate to self-censorship" (VAN DER HULST, op cit, at 329).

Reflections on the financing of the German Federal Parliament

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The financing of the German Federal Parliament (*Deutscher Bundestag*) appears, at first glance and in a rather unremarkable way, to fall within the federal budget management system, called the "constitutional finance system." The same can be said of the *Landtage*, the parliaments of the federal states.[43] The objective of budgetary law is to establish a legal framework for the receipt of public funds (from budgetary resources) by public authorities and to achieve the public policy objectives (*öffentliche Zecke*).

[43] In Berlin: *Abgeordnetenhaus*, in Bremen and Hamburg: *Bürgerschaft*.

I. Historic dualism

During the constitutionalism period following the Congress of Vienna (1814-1815), the bourgeois parliaments called for the monarchic executive power to strengthen their participation in budgetary policy. At the time, the French term "*État*" (State) was generally used to designate the national budget. In Germany, the following two systems were distinguished:

on the one hand, the Southern German system in which the budgets were based on negotiations between the monarch and the parliaments for authorisations/periodic tax approvals;

on the other hand, the Prussian system with a budgetary plan proposed by the King. As of 1948, Parliament had the possibility to consent by approving a budget law corresponding to the proposal.[44]

Under the German Empire — or Imperial Germany, from 1871 to 1919 — the Prussian system was imposed following the adoption of the 16 April 1871 Constitution.[45] It remained applicable under the Weimar Constitution of 11 August 1919[46] and still applies under the Basic Law of 23 May 1949 (BL).[47] Its main characteristic is the interaction of powers between the executive and legislative powers, which serves to delineate power according to a horizontal separation of the powers and the reciprocal control of the higher institutions of the State.[48]

II. The Budget cycle

Article 110 (2.1) of the Basic Law generally provides for the existence of a single and complete federal budget for each financial year. The budget is thus defined and established on an annual basis, then implemented, audited and discharged. This procedure is referred to as the budget cycle (*Haushaltskreislauf*).

The draft Budgetary Plan and the Budget Law are established by the executive. The draft process is carried out in an ascending manner: the public authorities forward their forecasts to the superior authorities who check them. The approved forecasts are combined into a single draft budget by the Ministry of Finance, pursuant to paragraphs (§§) 27 and 28 of the Federal Financial Regulation *(Bundeshaushaltsordnung,* BHO) and the Länder financial regulations (*Landeshaushaltsordnungen*, LHO).[49] This draft is debated by the Government which adopts it and submits it to Parliament (§§ 29, 30 of the BHO/LHO). The Parliament enjoys budgetary autonomy and can thus adopt, modify or scuttle the budgetary plan or budget law at its discretion.[50]

In the interest of clarity, my presentation will focus solely on the federal level. Because of structural similarities between the federal and regional levels, the following statements are also largely applicable to the state parliaments and governments.

Systematically, the budget plan adheres to the ministerial principle,[51] reflecting the autonomous powers of each minister in the department assigned to him (Art. 65 (2) of the BL). Thus, the budgetary plan is subdivided into a common plan and specific plans (§ 13 of the BHO). The latter correspond to the different administrative branches, i.e. the ministerial departments (institutional principle), and are subdivided into chapters and titles. The so-called "real" principle (*Realprinzip*) is applied on an exceptional basis. It refers to a specific plan providing for centralised budgetary resources that are commonly managed by several or all the highest federal authorities. At federal level, this is the case for specific plans No 32 (on federal debt) and No 60 (on the general administration of finance).

At the federal level, the budgetary plan established by the Bundestag's budget law is implemented by the federal government (executive branch, §§ 34 et seq. of the BHO). This is done in several stages: the Federal Ministry of Finance (*Bundesministerium der Finanzen*, BMF) forwards the specific plans to the highest federal authorities (federal ministries). The specific plans are then transferred to the higher federal authorities and, where appropriate, to the intermediary federal authorities as well as to the local federal authorities and other services.[52] Within each department, the budget manager (*Beauftragter für den Hautshalt*, BfH) may either manage the funds alone (centrally) or delegate this responsibility to a person responsible for management within the department (*Titelverwalter*).[53] The budgetary titles empower the latter to implement the expenditure authorised by Parliament and earmarked by the budget, to make the corresponding commitments (§ 3.1, § 45.1.1 of the BHO) and to recruit staff (§§ 49 et seq. of the BHO).

Revenue, expenditure and commitment appropriations (§§ 71 et seq. of the BHO) are entered in a register to ensure that accounts are drawn up at the end of the budget year (§ 76, 80.1 of the BHO). During the following budget year, the

[44] C. GRÖPL, in Kahl/Waldhoff/Walter (eds.), Bonner Komm. z. GG (Bonn comment on the Basic Law), Art. 110 (60), first and foremost Art. 98 of the Constitution of Prussia of 31 January 1850. See also § 109 (1) of the Constitution of the Austrian Empire of 4 March 1849, which was repealed by the Sylvester Patent (*Silvesterpatent)* of 31 December 1851.

[45] Constitution of the German Empire (*Verfassung des Deutschen Reiches*) on 16 April 1871 [Official Journal of the Empire = *Reichsgesetzblatt* (*RGBl.*) p.63]: Art.69.

[46] Constitution of the German Empire (*Verfassung des Deutschen Reiches*) of 11 August 1919 (RGBl, p.1383): Art.85. At the time of National Socialism (1933-1945), this constitutional provision was not, like many other provisions of the Weimar Constitution, complied with.

[47] The Basic Law of the Federal Republic of Germany (BL = *Grundgesetz für die Bundesrepublik Deutschland, GG*) of 23 May 1949 [Federal Official Journal = *Bundesgesetzblatt (BGBl.)* p.1]: Art.110.

[48] Decisions of the Federal Constitutional Court [*Entscheidungen des Bundesverfassungsgerichts (BVerfGE)*] 3, 225 (247); 139, 321 (361 et seq., No 125) — settled case law; Sachs, in same, GG, 8th edition 2018, Art. 20 (81, 90).

[49] The Federal Financial Regulation (*Bundeshaushaltsordnung*) of 19 August 1969 (BGBl. I, p.1284) modified. The provisions relating to the budgets of the Länder are consistent with the provisions of this Federal Act (*Landeshaushaltsordnungen — LHO*), see Gröpl, in the same (ed.), Komm. z. BHO/LHO (Comments on the Federal and Land Financial Regulations), 2011, § 27 (14), § 28 (13), § 29 (15), § 30 (11).

[50] *BVerfGE* 45, 1 (32); 129, 124 (177); 131, 152 (202); 132, 195 (238); 135, 317 (399) — settled case law, see also Gröpl, in Kahl/Waldhoff/Walter, op. cit., Art. 110 (79).

[51] Reus/Mühlhausen, *Haushaltsrecht in Bund und Ländern*, 2014, part A, (430, 665).

[52] See in detail: Tappe, in Gröpl, op. cit., introductory remarks on §§ 34 (4).

[53] See in detail: Gröpl, in Gröpl, op. cit., § 9 (15).

Federal Ministry of Finance establishes a management account for the past budget year based on the closed accounts (§§ 80.3, §§ 81 et seq. of the BHO). In this way, it fulfils its constitutional obligation, pursuant to Article 114 (1) of the LF, to present an account to the Bundestag and Bundesrat in order to receive the final discharge from the federal government (*Bundesegierung*).

III. Specific parliamentary requirements

When it comes to the parliamentary assemblies, and the Bundestag in particular, the main question is to determine whether these legislative bodies are integrated into the budgetary cycle (and if so, how) or whether they are subject to a specific regime. It is evident that the Parliament also generates expenditure. These funds must be managed somehow. However, budget implementation and management are institutionally attached to the executive. The question then is whether parliamentary assemblies can belong to the executive – and, if so, to what extent –, and whether they can therefore participate in the budget implementation procedure and the implementation of the budget plan.

A. The "Parliamentary Offices"

At the functional, institutional and organisational level, parliamentary assemblies do not belong to the executive power — they form the core of the legislative power. However, the development of modern parliaments after 1815[54] has shown the need for some administration in support of members, ensuring that they carry out their legislative function effectively.[55] It was therefore (and is still) necessary to prepare and follow up on the debates in plenary and in the parliamentary committees, in addition to providing the necessary financial resources for members' missions. Similarly, members needed access to parliamentary property, such as buildings equipped with conference rooms and a plenary room. It was in this context that the "parliamentary offices" were established in the German states.[56] The staff of these offices has long been provided by the executive, traditionally by the Ministry of the Interior. In this way, the (monarchic) executive has retained considerable influence on parliamentary affairs.[57] This form of influence is difficult to reconcile with the concept of parliamentary autonomy, as established by the modern constitutions and enshrined in Article 40 of the BL for the Bundestag.[58]

The Parliament of the North German Confederation (*Reichstag des Norddeutschen Bundes*), and later the German Empire Parliament (*Reichstag des Deutschen Reiches*), paved the way for parliamentary autonomy[59] by including the following passage in their rules of procedure (*Geschäftsordnungen*): "The president [of Parliament] shall take decisions on the recruitment and dismissal of service and parliamentary administrative staff and on the expenditure necessary to meet Parliament's needs, in compliance with the forecasts determined by law."[60] However, the Chancellery of the Empire *(Reichskanzleramt)* remained responsible for the administration of the Parliament, through its successive forms of the Imperial Administration of the Interior (*Reichsamt des Inneren*, beginning in 1879) and the Imperial Ministry of the Interior (*Reichsministerium des Inneren*, after the First World War).

B. Full parliamentary autonomy since 1949

It was not until after the Second World War that the conviction that Parliament's autonomy and the horizontal separation of powers (laid down in Article 1 (3) and Article 20 (2) (2) and 20 (3) of the BL) could not be assured solely through the self-management of parliamentary assemblies began to prevail.[61] Although the concept of parliamentary self-management is not found in the text of the Basic Law, the concept forms part of the constitutional principles both at the federal and regional level.[62] Since its first inaugural session on 7 September 1949, the Bundestag has therefore enjoyed full parliamentary autonomy in the modern sense, i.e. staff, material, organisational (logistical) and functional independence.[63] In this context, it has its own administration (*Bundestagsverwaltung*), which it forms at its discretion. The Bundestag's administration currently employs some 3,000 members.[64] It is headed by the president of the Bundestag,[65] who is thus not only a member[66] and the president of the legislative body, but also the head of the parliamentary administration and its superior administrative authority. It is clear from the interpretation of Article 40 of the Basic Law that all the competencies of management, organisation and direction fall under the exclusive and absolute responsibility of the president of the Bundestag;[67] the other members of the presidency, the vice-presidents, have only limited powers.[68] These very extensive powers of the president are stipulated in §7 of the Bundestag's Rules of Procedure (*Geschäftsord-*

[54] See Schönberger, in Morlok/Schliesky/Wiefelspütz (eds.), *Parlamentsrecht*, 2016, § 1 (24).

[55] See Jekewitz, *Deutsches Verwaltungsblatt (DVBl* = German administrative review) 1969, 513 (513); Brocker, in Morlok et al, op. cit., § 34 (1).

[56] Herz, *Zeitschrift für Parlamentsfragen (ZParl* = journal on parliamentary questions) 41 (2010), 551 (557); Brocker, in Morlok et al, op. cit., § 34 (16).

[57] Brocker, in Morlok et al, op. cit., § 3 (15).

[58] Schliesky, in Morlok et al, op. cit., § 5 (59).

[59] On development, see also Klein, in Mahnz/Dürig, *Kommentar zum Grundgesetz* (Comment on the Federal Law), Art. 40 (10), with additional bibliographical references.

[60] § 12 of the Rules of Procedure of the Reichstag of the Federal Confederation of Northern Germany *(Geschäftsordnung für den Reichstag des Norddeutschen Bundes)* of 8 June 1868, http://www.reichstagsprotokolle.de/en_Blatt3_nb_bsb00018289_00415.html (accessed on 16 February 2018); § 14 of the Rules of Procedure of the Reichstag of the German Empire *(Geschäftsordnung des Reichstages des Deutschen Kaiserreichs)* of 10 February 1876, cited by Ernst Rudolf Huber, *Dokumente zur deutschen Verfassungsgeschichte*, vol. 2: *Deutsche Verfassungsdokumente 1851-1918*, 1964, p.61; See also Herz, *ZParl*, op. cit., 41 (2010), 551 (555) and Brocker, in Morlok et al., op. cit., § 34 (17) — the constitutional basis of organisational autonomy was Article 27 (2) of the Constitution of the Empire of 16 April 1871 (RGBl. p.63).

[61] See Article 50 (3) of the constitutional draft of Herrenchiemsee: *"Dem Präsidenten untersteht die Verwaltung des Bundestages. Er verfügt über die Einnahmen und Ausgaben des Hauses und vertritt den Bund für den Geschäftskreis des Bundestages"* (Management of the Bundestag lies with the president. He has the revenues and expenditure of the institution and represents the Federation within the Bundestag administration.

[62] Brocker, in Morlok et al, op. cit., § 34 (15).

[63] Brocker, in Morlok et al, op. cit., § 34 (8).

[64] Https://www.bundestag.de/parlament/verwaltung, accessed on 12 February 2018.

[65] See § 7 GOBT.

[66] Klein, in Maunz/Dürig, op. cit., Art. 40 (88); Brocker, in Kahl/Waldhoff/Walter, op. cit., Art. 40 (106); Blum, in Morlok et al, op. cit., § 21 (1).

[67] In this sense: Brocker, in Morlok et al, op. cit., § 34 (12); See also Magiera, in Sachs, Komm. z. GG, 8th edition, 2018, Art. 40 (6).

[68] See § 7 (4) (4) of the GOBT (Bundestag Rules of Procedure, op. cit.).

nung des Deutschen Bundestages, GOBT)[69] and grant him a strong and even monopolistic position, both legally and politically.[70]

The director of the Bundestag is placed under the direct authority of the president. As the highest official, he/she is the hierarchical superior of all the agents and supports, advises and represents the president in administrative matters.[71]

C. The Bundestag's budget: structure

1) A Dual Role

It follows from parliamentary autonomy that the Bundestag, through its administration, must be able to request and manage budgetary resources autonomously and draw up accounts. In organisational terms, the administration of the Bundestag, like the federal administration, is part of the federal executive. The budget unit of the "Law" subsection (ZR), which forms part of the central section of parliamentary administration, is competent in this matter.[72] For each calendar year (budget year[73]), for example, a specific budgetary plan dedicated to the Bundestag is defined, adopted, implemented and monitored (specific plan No 2). At the same time, as the central body of the legislature, the Bundestag is responsible for establishing and implementing the federal budget — which includes "its" specific plan. In this context — concerning only the Bundestag's specific plan — the interaction[74] between the legislature and the executive ensuring the separation of powers is affected. I will come back to this dual role of the Bundestag concerning its own budget later.[75]

2) The Structure of the Budget (Key Figures)

The Bundestag's specific plan for the 2017 budget year contained general budgetary allocations and amounted to a total of around EUR 870 million, broken down as follows:

– EUR 70 million for the "compensation" of members,[76] i.e. the "salary" for their parliamentary activities, which was not introduced in Germany until 1906;

– EUR 245 million for the tax-exempt, flat-rate allowances granted to members[77] and employment expenditure for members' office staff;[78]

– a last important item, more than EUR 46 million, for the pension of former members and the survivors' pension.

The amount spent in 2017 for members and their employees therefore amounted to approximately EUR 361 million, which corresponds to 40 % of the total expenditure in Specific Plan 2. For the 2018 budget year, this expenditure is likely to grow significantly as a result of the increase in the number of members from 630 to 709 for Parliament's 19th term.

That leaves more than EUR 500 million, or approximately 60% of the total expenditure of EUR 870 million of the Budestag's specific plan. Approximately EUR 155 million was spent on the parliamentary administration's staff, which comprises about 3,000 agents.[79] Administrative expenditure accounted for another EUR 134 million. In this context, particular attention can be given to an item of around EUR 0.5 million (520,000): an amount at the disposal of the Bundestag's leading officials[80] for "food and refreshment expenditure at meetings on specific occasions." For the French, EUR 500,000 for occasional restaurant and incidental expenditure out of a budget of EUR 800 million probably seems extremely low. To a German, it seems to be quite a lot. This marks a fundamental difference between the financial "cultures" on either side of the Rhine.

However, some EUR 110 million was spent on "non-investment appropriations and allocations," a rather cumbersome notion. These are mainly cash benefits paid to Bundestag parliamentary groups[81] amounting to EUR 88 million.[82] The remaining approximately EUR 20 million was used for financial assistance to the German Institute for Human Rights and other national and international organisations presenting parliamentary reports. Only EUR 24 million, not even 3 %, was spent on investments.

D. Defining the Bundestag's parliamentary budget

1) The Decision of the Council of Elders on the Budget Forecasts

The forecasts of the Bundestag's specific budget plan are drawn up according to the "law" subsection of the parliamentary administration.[83] In view of the Bundestag president's strong position as director of the administration, developed above,[84] it could be assumed that he is solely responsible for definitively determining the nature and amount of the forecast. Curiously, this is not the case. According to §6 (3) (3) of the Bundestag's Rules of Procedure, the Council of Elders establishes the budget estimates for the Bundestag's specific budget plan. Subparagraph 1 (1) of the same provision states that the Council

[69] In the version published on 2 July 1980 (BGBl. I, p.1237). At the start of each new legislature, the GOBT is adopted by the Bundestag in accordance with Article 40 (1) (2) BL, the most recent date of 24 October 2017, see *Bundestags-Drucksache* (*BT-Drucks.*= material printed by the Bundestag) 19/1 and *Plenarprotokoll* (plenary protocol) 19/1 of 24 October 2017, p.12.

[70] On these points, in detail: Blum, in Morlok et al, op. cit., § 21 (8), (40).

[71] Https://www.bundestag.de/parlament/verwaltung, accessed on 12 February 2018; Brocker, in Morlok et al, op. cit., § 34 (25).

[72] Https://www.bundestag.de/parlament/verwaltung, accessed on 12 February 2018.

[73] § 4 (1) of the BHO, op. cit..

[74] See *supra* I.

[75] See *infra* III. 5 a.

[76] Mission allowances are included. Legal basis: Art. 48 (3) (1) BL combined with §§ 11 s. of the law on deputies (*Abgeordnetengesetz*, AbgG).

[77] All lump-sum expenditure: EUR 33 million.

[78] Expenditure for staff recruitment: EUR 212 million.

[79] Planned posts and posts, in chapter 2 of the budget, existed for around 1,500 officials and 1,150 employees.

[80] The chair, the vice-chair, the director and others.

[81] Like MPs, parliamentary fractions in the Bundestag are also financed by taxes. According to § 50 AbgG, for the discharge of their duties (§ 47 AbgG), the fractions have the right to financing and material benefits from the Federation's budget. The financial services consist of a basic contribution for each fraction, a contribution for each member and a supplement for each fraction that is not part of the government majority (supplement for the opposition). The amount of such contributions is decided annually by the Bundestag. The financing of the fractions through State aid is authorised, according to the case law of the Federal Constitutional Court, because fractions, as autonomous parts of the Bundestag, are integrated into the State organisation (BVerfGE 29, 56 [104]; 80, 188 [231]). There is controversy as to what extent the president of the Bundestag must check the financial resources granted to the fractions of the Bundestag. The dominant view takes a position against such a check: see Blum, in Morlok et al.

[82] These means are granted to fractions for their self-management, see § 15 (2) BHO.

[83] See in detail, *supra* III 3 a and footnote 30.

[84] See III 2.

of Elders is composed of the president of the Bundestag, the vice-presidents[85] and 23 other members appointed by the parliamentary groups. The first sentence of paragraph 2 states that the Council shall assist the president in the conduct of his affairs. The Council of Elders' competence in the drafting of the budget[86] indicates a welcome separation of the powers in the Parliament which counterbalances the president's strong position in financial matters.

2) Submission of Budget Proposals and Budget Negotiations

As with all draft specific budget plans, the budget proposals for the Bundestag's specific plan are sent annually to the Federal Ministry of Finance (§27 (1) (1) of the BHO). The Federal Ministry of Finance's annual letter on the establishment of the budget, which contains the Ministry's directives, forms the basis.

The forecasts for the specific budget plans are then negotiated by a representative of the Bundestag and the Federal Ministry of Finance. The director of the Bundestag and the director of the section, subsection or unit responsible generally conduct these negotiations on behalf of the Bundestag. Within the Federal Budget Section of the Federal Ministry of Finance, there is one unit for each specific budget plan.[87] In this context, the procedure is the same as for the budgets (specific budget plans) of other areas. The Federal Ministry of Finance examines the forecasts and then drafts the common federal budgetary plan (common plan and specific plans,[88] §28 (1) of the BHO). The draft plans and budget law are submitted to the federal government for debate and approval.[89]

3) Procedural privileges: The expression of differences in budgetary matters

As the "budget ministry," the Federal Ministry of Finance is in a position of strength when it comes to preparing the draft budget: it can delay the budget forecasts of the various sectors, including the Bundestag's. However, the federal budget law provides in §28 (2) (BHO) a privilege over the Bundestag's specific plan:[90] if the German Ministry of Finance differs from the Bundestag's forecasts in its draft budget, it is obliged to inform the Federal Government *(Bundesregierung)*. This privilege is not granted to the other branches, namely the federal ministers. During the federal government's debate and approval of the draft budget law (§29 (1) of the BHO), its attention is thus directed to the differences between the Bundestag's administration and the Federal Government.

In the event that the Federal Finance Minister succeeds in imposing his or her views on the Bundestag's forecasts, §29 (3) of the BHO grants the Bundestag another privilege:[91] the parts of the specific plan on which there remains a disagreement will be attached to the draft budgetary plan without modification. This ensures that the Bundestag's budget committee, which is competent in this area,[92] will be aware of the sources of discord between the Bundestag's authorities and the federal government during the budget debates.

E. The debate and establishment of the Bundestag's budget

The budgetary legislative procedure within the Bundestag is the central element of the parliamentary provisions on the expenditure of the administration and its financial management. The Basic Law guarantees the budgetary procedure in that it requires the budgetary plan to be adopted by a law (Art. 110 (2) (1) of the BL). On the one hand, the Bundestag is thus a key player due to its role as the federal parliament. On the other hand, subject to specific provisions, the general rules of the legislative procedure are applicable. According to §30 of the BHO, the federal government *(Bundesregierung)* must submit the draft laws and budgetary plans to the Bundestag (Art. 110 (3) of the BL) before the beginning of the budget year, usually no later than early September. The deliberations within the Bundestag's Budget Committee, which can amend draft laws and budgetary plans (estimated budget[93]) and draw up draft resolutions for the Bundestag's plenary session, are an essential component.

1) The intervention of the Bundestag on its own account: an infringement of the separation of powers

On the one hand, the fact that the Bundestag both debates and adopts the plan containing its own specific budget plan reflects normal democratic and parliamentary policy, especially as it debates and approves all the other specific plans of the federal budget in the same way. On the other hand, this dual role is an anomaly, since the Bundestag can grant itself its budgetary resources. It thus intervenes in its own (financial) affairs, which generally requires particular precautionary measures to be taken, even outside

[85] Under § 2 (1) (2) GOBT, each fraction of the Bundestag (currently there are six) is represented by a vice-president in the presidium.

[86] The Council of Elders *(Ältestenrat)* decides on budgetary matters, such as questions within the meaning of § 6 (8) of the GOBT — in different ways than in the case of questions within the meaning of § 6 (2.3) of the GOBT — with a majority of the votes, see Roll, Komm. z. GOBT, 2001, § 7 (6); Klein, in Maunz/Dürig, op. cit., Art. 40 (122).

[87] http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentlicate_Finanzen/Bundeshautshalt/Bundeshaushalt_auf_einen_Blick/2011-08-15-die-haushaltsabteilung.html, accessed on 1 February 2018.

[88] § 13 (1) BHO.

[89] On this point: Art. 65 (4) BL combined with §§ 15 s. of the *Geschäftsordnung der Bundesregierung* (GOBReg = Federal Government Rules of Procedure). On the Federal Minister for Finance's right of opposition, see § 29 (2) (3-4), § 28 (2) (2) BHW in conjunction with § 26 (1) GOBReg.

[90] Under the terms of § 28 (3) BHO, the parts concerning the Federal president, the Federal Council *(Bundesrat)*, the Federal Constitutional Court and the Federal Court of Auditors are also advantaged.

[91] Also (footnote 48) with regard to the Federal president, the *Bundesrat*, the Federal Constitutional Court and the Federal Court of Auditors.

[92] See § 95 (1) (2) GOBT.

[93] See § 95 GOBT.

parliament and the public sector.[94] In the public sector, this "intervention on its own account" undermines the separation of the legislative and executive powers in budgetary matters. In concrete terms, the fear is that the Bundestag might be tempted to allocate resources to itself more easily or in greater amounts than to other parts of the budget, or to show more leniency in the control of its own budget (Art. 114 (1) of the BL).

2) No other solution: transfers of powers

Concern about the Bundestag's dual role in the budgetary legislative procedure — it both requests and grants the budget — could be reduced by making exceptions to its powers. Either the Bundestag administration's power to draft budget forecasts and conduct budget negotiations with the Federal Ministry of Finance would have to be revoked, or the Bundestag would have to be prohibited from approving its own special plan, along with the common plan and the other specific plans.

Transferring the preparation of the budget estimates and their representation in the budget negotiations to another authority than the administration concerned would be a novelty in German budgetary law and would result in a dysfunctional representation by a third party (*Fremdorganschaft*). When it comes to defining the budget, the administration concerned, in this case the Bundestag administration, must retain a right of proposal and co-decision-making which cannot be exercised by third parties. Article 28 (1) (2) of the BHO stipulates that the Federal Ministry of Finance has the final decision on the budget forecasts. In this context, the Bundestag administration's powers with regard to these forecasts and negotiations is without risk in that it is not the one who takes the final decision. At this stage of the budget cycle, the Federal Ministry of £Finance's major role in defining the draft budget elicits the introduction of external expertise, which may impose its views.

With regard to the establishment of the budget, the question arises as to which public authority, which body of the democratic and representative State (*repräsentativ-demokratischer Rechtsstaat*), other than the Bundestag, should approve the budgetary plan. A transfer of partial powers to another constitutional body would not only contradict the horizontal separation of powers but also the democratic principle (*Demokratieprinzip*, Art. 20 (1-2) of the BL), according to which the legislative function, and thus also the budgetary legislation, must come from Parliament (Art. 77 (1) (1), Art. 110 (2) (1) of the BL).

In particular, the Bundesrat (Federal Council) cannot assist the Bundestag in this context. Its role in the establishment of the federal budget plan is modest. Although it participates in the legislative procedure in accordance with the Basic Law, the budgetary law is only a law of opposition; the Bundesrat cannot obstruct its entry into force, only slow it down (Art. 77 (2-4), Art. 78 of the BL). Moreover, and this is the main argument, the federal laws, which include the budget law, are all, without exception, adopted by the Bundestag in accordance with Article 77 (1) (1) of the Basic Law. The Bundesrat cannot take on this function, even in regards to the Bundestag's specific plan. This is also the case for reasons of federal organisation. According to Article 50 of the Basic Law, the Federal States' representatives meet in the Bundesrat.[95] Not only are the federal states not concerned by the Bundestag's specific budget plan, they do not have any responsibility regarding the federal budget.

3) Compensatory mechanisms, particularly antagonism between the Budget committee and the administration

If transferring the power to establish the Bundestag's specific plan to another body is excluded, other considerations must be examined to offset the Bundestag's dual role regarding its own budget. The truly differentiated structure of this large, modern "Parliament of committees" (*Arbeitsparlament*) can be mentioned here.

Through its structure, the Bundestag is able to mitigate any suspicion of preferential treatment as a result of its intervention on its own account. Indeed, the Bundestag is not a single body, nor is it a body which forms its opinion only in plenary. Rather, it is divided into committees, which are the actual working units of the parliament.[96] Discussions on the common and specific budget plans, as well as the details of the related draft budget, form the central mission of the Budget Committee. This committee is attentive to the sustainable functioning of the State, which can only succeed if a balanced budget is ensured[97] and expenditure disciplined, thus protecting the interest of the "taxpayer" community. In other words, it would be the first to criticise the commitment of any additional expenditure or acceptance of such expenditure, even for the administration of the Bundestag. The Budget Committee is thus

[94] This phenomenon is also found in regards to members' allowances, the legal basis for which is set out in the Federal Law on Members of Parliament (*Abgeordnetengesetz*), but which must, however, be decided by the Bundestag.

[95] Members of the governments of the Länder (Art. 51 (1) BL).

[96] Kersten, in Maunz/Dürig, op. cit., Art. 7 (13); Winkelmann, in Morlok et al, op. cit., § 23 (1).

[97] This does not mean a balanced budget in the formal sense of Article 110 (1) (2) BL, but in the material conception of Art. 109 (3) (1) and Art. 115 (2) (1) BL.

the "antagonist," within the Bundestag itself, of the Council of Elders *(Ältesrat)*, the president and the Bundestag administration, which in turn must represent the financial interests of the Bundestag and the administration when setting up the budget forecast and budgetary negotiations. This institutional dichotomy between the Budget Committee, on the one hand, and the Council of Elders and the president of the Bundestag, on the other, is well suited to control the danger of estimates and expenditure in contradiction to sound financial management as concerns the Bundestag's specific plan.

Apart from this institutional dichotomy in the budgetary procedure, it must be borne in mind that the Bundestag administration is not an administration in the traditional sense. From an "organisation of the State" perspective, it belongs to the Bundestag, which, due to the direct and democratic legitimacy of its members (Art. 38 (1) of the BL), represents the diversity of the people's political movements. This gives rise to another dualism, commonly referred to as the "new" or "internal parliamentary" dualism between the majority groups and the minority groups of the opposition.[98] Through its role as a parliamentary minority, the opposition has some control over the State's management, which, in the parliamentary system of the Basic Law, is established of the parliamentary majority and the government.[99]

It may be argued that the opposition also acts as a control for the specific budget plan of its "own" (i.e. the Bundestag's) administration. As for any debate, the opposition benefits from the constitutional guarantee of public debate for the budget discussions, in the plenary sessions at least (Art. 42 (1) of the BL). This is the ideal moment for the opposition to raise any objections to the Bundestag's specific plan and thus make a good impression; the media would certainly publicise elements of the debate, which would heighten public awareness. The democratic constitutional State may, and must in this context, trust that the Bundestag does not give itself preferential treatment in regards to its own financial issues.[100]

4) Privilege within the budgetary procedure: "Consultation" of the Council of Elders

The optimism shown here must be put into perspective, however, given the following provision in the Bundestag's Rules of Procedure: according to Article 6 (3) (3) (2), the Budget Committee cannot deviate from the budget forecasts for the Council of Elders' specific parliamentary plan after the latter have given their opinion. The right provided by this regulation thus puts in place a means of protecting the Bundestag and its administration from any budget cuts initiated by the Federal Ministry of Finance or the Budget Committee itself.[101] Neither the competent ministers nor the other departments managing the plan benefit from such a "feedback" privilege, which does not seem to follow any rationale. Is this meant to preserve harmony in the Bundestag between the Council of Elders and the Budget Committee? This duty to consult seems virtually incompatible with the previously-mentioned role of the antagonists; this confrontation between the Budget Committee and the Council of Elders[102] is institutionally desirable to compensate for the absence of a separation of powers. In order to remedy the fear of "self-conferred" (*Selbstbevorzugung*) preferential treatment, the Bundestag should remove this provision from its own regulation.

Fortunately, in an administrative sense, "consultation" simply means that the Budget Committee must inform the Council of Elders if it intends to modify the Bundestag's budget forecast and that the Council of Elders has the right to take a stand vis-à-vis the Committee.[103] Unlike an "agreement," this simple "consultation" does not give the Council of Elders a right of veto allowing it to impose its ideas on budgetary policy on the Budget Committee. Any other rationale would be questionable from a constitutional point of view. An equally important aspect is inherent to the uniformity of the budget plan (Art. 110 (1) (1) of the BL)[104] and the uniform budgetary procedure: all public revenue and expenditure must be transparent to Parliament and therefore to all citizens; all public institutions must be treated in the same way in the budgetary assessment. A Council of Elders or Bundestag president who, as representatives of the financial interests of the Bundestag and its administration, could interfere significantly in the Budget Committee's debates, which has to keep the common plan in mind, would hardly be compatible with this concept.

F. Implementation of the Bundestag's budget

The budget plan is implemented by the administration. As regards the Bundestag, the president of the Bundestag orders the expenditure as part of the budget plan (Art. 7 (3) (2) of the

[98] Conversely, the "historic" dualism of the constitutionalism between the Parliament and the monarchic executive is overcome. See in this respect *supra* I.

[99] See BVerfGE 142, 25 (56.87).

[100] Similarly to the Bundestag's scientific jobs, the specific questions on the procedure for the preparation, implementation and control of the Bundestag's budget, WD 4-3000-113/16, autumn 2016, p.5.

[101] After the practical experience, there must be very few significant changes, in particular as regards the increase in expenditure, as indicated by the position paper of the Bundestag scientists, the specific questions on the procedure for the preparation, implementation and control of the Bundestag's budget, WD 4-3000-113/16, autumn 2016, p.5.

[102] See above III. 5 (c).

[103] See generally Gröpl, in Maunz/Dürig, op. cit., Art. 89 (141).

[104] On this point see Gröpl, in Kahl/Waldhoff/Walter, op. cit., Art. 110 (172); Tappe, in Gröpl, op. cit., § 11 (16).

Bundestag's Rules of Procedure). A literal interpretation of this would mean that the president of the Bundestag has the right to issue payment orders in accordance with Article 70 (2) of the BHO.[105] But the provision must be understood in a broader sense: the power to have the final say in the implementation of the Bundestag's specific budget plan must, within the framework of his broad management powers,[106] also belong to the president of the *Bundestag*.[107] In other words, the president is responsible for managing the implementation, which he may, however, delegate to the head of budgetary affairs[108] (*Beauftragter für den Hautshalt*) and other staff (*Titelverwalter*).[109] On this point, the Bundestag's administration does not differ from that of other administrative units.

G. Implementation and auditing: financial control by the Federal Court of Auditors (Bundesrechnungshof)

Under Article 114 (1) of the Basic Law, the Federal Finance Minister must, in the year following a budget year, present to the Bundestag and the Bundesrat an account showing all revenue and expenditure, as well as a statement of assets and liabilities, in order to obtain the federal government's final discharge (Art. 80 (3), Art. 81 et seq. of the BHO).[110] To this end, the Bundestag administration is obligated to keep accounts in its area on the basis of closed accounts (Art. 80 (1) and Art. 76 of the BHO). On this basis, the Federal Court of Auditors (*Bundesrechnungshof*, BRH) verifies these accounts and ensures that the budget and financial management of the Federation are balanced from an economic viewpoint and in line with the budgetary rules; it thus monitors the Bundestag's specific plan and administration. It must report annually to the federal government, as well as the Bundestag and the Bundesrat (Art. 114 (2) (1) and 114 (2) (3) of the BL). The Federal Court of Auditors thus plays a significant role in financial control, especially since the members of the Court, one of the highest federal bodies, enjoy the same recognised independence awarded to judges, which is constitutionally protected by Article 114 (2) (1).

Given the insufficient application of the separation of powers as regards the specific budgetary plan of the Bundestag and its administration, the Federal Court of Auditors' responsibility for this exercise is all the greater.[111] In the budget preparation procedure, the Federal Court of Auditors, along with the Federal Ministry of Finance, is the only institution that cannot be influenced by the Bundestag, yet occupies a sufficiently decisive role in the horizontal separation of powers,[112] and which can control the Bundestag's specific plan "from the outside." According to Article 90 (3-4) of the BHO, the Federal Court of Auditors' examination also involves determining whether the Bundestag administration complies with the requirements of sound financial management and whether the administration could perform its duties more efficiently while reducing its staff and equipment costs. It can therefore be deduced that this grants the Federal Court of Auditors the right to exercise a broad financial control.[113] In this context, it must take a critical look at the development of the Bundestag's specific plan at all stages of the budget cycle and draw attention to any financial management problems. The Federal Court of Auditors pays particular attention to the fact that the Bundestag itself — despite differences in powers within Parliament[114] — also adopts its own specific plan via the budget law. In a certain way, it can thus address the possibility that the Bundestag may be too generous to its administration during the budget authorisation procedure (*Haushaltsbewilligung*). Every year, the Federal Court of Auditors must summarise the results of its audits in its "observations" (Art. 97 of the BHO), which are published by the Bundestag as the "Bundestag document" (*Bundestags-Drucksache*) and directly online[115] by the Federal Court of Auditors. Moreover, pursuant to Article 96 of the BHO, these results must be discussed with the entity subject to the examination, in this case the Bundestag administration. Those within the Bundestag who are responsible for communicating with the Federal Court of Auditors are the head of budgetary affairs (*Beauftrager für den Haushalt*),[116] the director of the competent section or subsection, the head of the Bundestag,[117] and, if necessary, the president of the Bundestag.

* * *

In conclusion, the fact that it is Parliament, not the government, which decides on all State expenditure is a democratic achievement of historical importance. Article 101 (2) (1) of the Basic Law provides that this decision is taken, at federal level, by the establishment of the budget plan and the Bundestag's adoption of the budget law. As regards the establishment of its own specific

[105] On this question, Kußmaul/Meyering, in Gröpl, op. cit., § 70 (6).
[106] See above III. 2.
[107] In this sense: Brocker, in Morlok et al, op. cit., § 34 (12). No position is taken on this point in Roll, Komm. z. GOBT, 2001, § 7.
[108] On the position of the head of budgetary affairs (*Beauftragter für den Hautshalt, BfH*), see § 9 BHO.
[109] See generally Gröpl, in Gröpl, op. cit., § 9 (15).
[110] Criticism of accounting practices: Gröpl, *Haushaltsrecht und Reform*, 2001, p.568 s, with additional references.
[111] See above III 3a.
[112] On the constitutional position of the Federal Court of Auditors, see Schwarz, in Gröpl, op. cit., introductory remarks on §§ 88 (15), with additional references.
[113] Schwarz, in Gröpl, op. cit., introductory remarks on §§ 88 (5) ff.; § 88 (5), § 90 (7), with additional references.
[114] On this point III 5 c.
[115] Https://www.bundesrechnungshof.de/de/veroeffentlichungen/bemerkungen-jahresberichte/jahresberichte/... See, for example, the chapters relating to this, 2016 vol. I No 5, p.24.
[116] See footnote 67.
[117] See footnote 29.

budget plan, the Bundestag plays a problematic dual role: on the one hand, through its administration, it requests budget on its own behalf and, on the other hand, it is in a position to award this budget within the framework of the common federal budget. The fear of preferential treatment raised by this intervention on its own account is all the greater since the Bundestag holds three privileges in terms of budgetary procedure (Art. 28 (3) and 29 (3) of the BHO and Art. 6 (3) (3) of the Bundestag's Rules of Procedure). Constitutionally, this problem can be mitigated through certain structures and mechanisms:

– The Bundestag is not a single body; it comprises a functional and organisational differentiation that also applies to budgetary matters. The Bundestag administration, the Council of Elders, the Budget Committee and the plenary assembly should be distinguished. Within the administration, the president of the Bundestag is also distinguished from the section and subsection responsible for budget matters, the budget unit and the other sections. To a certain degree, this serves as an institutionalised balance of interests.

– In addition, the Bundestag is composed of members of Parliament of differing origins and political convictions. As a parliament, it is the subject of media attention and is thus placed under the public eye.

– When, in the case of the federal budget, the differences between the members are attenuated by the common desire to be allocated sufficient resources, the Federal Court of Auditors plays an important role. In view of the aspects of the budgetary procedure which reduce the separation of powers, the Federal Court of Auditors is called upon to exercise its supervision in a particularly intensive manner.

– In addition to the Federal Court of Auditors, the Federal Ministry of Finance represents a compensatory element. During the budgetary procedure in particular, it is called upon to critically review the Bundestag's specific budget plan.

▶ Third round table

Under the chairmanship of Prof. Etienne DOUAT,

Professor at the University of Montpellier

Financial autonomy of parliamentary assemblies in *sui generis* countries in Europe

Reflections on the public financing of the UK bicameral system

Mr Ramu DE BELLESCIZE, *Senior Lecturer at the University of Rouen*

On 12 June 1215, King John of England was grudgingly compelled to sign a Great Charter, the *Magna Carta*. The English barons took advantage of several defeats, including those at Bouvines and La-Roche-aux-Moines, to force King John to recognise the freedom of the clergy, respect specific rules for the nobility, and agree to a Great Council tax. Over the centuries, the Great Council would become the British Parliament, at least that is what legend says. This would make the British Parliament one of the oldest in the world. The parliamentary model began to spread, urged on by the expansion of the British Empire.

One of the original features of the UK's constitutional system, the parliament comprises the Queen, the House of Lords and the House of Commons. Its seat is at the Palace of Westminster in London. By convention, the prime minister of the United Kingdom and the members of the government are all Members of Parliament, generally the House of Commons, but not necessarily. In this presentation, we shall focus on the funding of Parliament in the strictest sense, or how it is understood in France, meaning the House of Commons and the House of Lords.

The question of the financing of the British Parliament ultimately boils down to the question of the separation of powers. A parliament that operates exclusively with its own revenues seems hardly conceivable. At the same time, a parliament that is too dependent on the executive ceases to be a genuine counter-power. Hence the importance of this issue in relation to the financing of the UK Parliament. This financial autonomy of the UK parliament is in place. It is not compre-

hensive, as the Parliament's budget is adopted in the appropriation acts passed by Parliament. These are prepared by the government and cannot be changed during parliamentary debate, except with the government's consent. It is a constitutional convention.

The symbolism of independence. Parliament's independence in adopting appropriation acts is, in principle, greater than for other laws. A highly symbolic element reflects this increased independence. No sitting of Parliament can begin until the mace is carried in by the Serjeant at Arms and placed on the central table that separates the majority from the opposition. When Parliament is in session, the mace is carried in every day. The mace serves as a symbol of authority, originally that of military commanders and now, in the House of Commons, the Queen. In fact, it is decorated with symbols representing the Queen's authority, notably a cross. The Queen is the head of the Church of England. There is one instance when the mace is not placed on the table: when the Commons debate the finance laws the mace rests beneath the table. The purpose is to show that, during these debates, the House is independent from the Queen. Parliament has the exclusive right to vote on taxes, which thus lessens the Queen's authority.

The mace is carried in by the Serjeant of Arms at the beginning of each sitting.
Behind him is the Speaker of the House of Commons.

The mace is on the table.

Financial laws: the mace is underneath the table.

I. Preparation of the budget by both Chambers

A. Preparation of the budget of the House of Commons

The leading role of the House of Commons Commission. Founded by the House of Commons Administration Act of 1978, the House of Commons Commission is the governing body of the House's Administration. Unlike most other commissions, it is permanent, meaning that it works outside the sessions and even during periods of dissolution. The Commission is composed of the Speaker, who chairs the commission, and five other members: the Leader of the House of Commons; one member nominated by the opposition leader; and three Members who are not ministers.

The Speaker remains a member, even during the dissolution of Parliament, until a new Speaker is elected. Apart from the Leader of the House (who remains a member until a new Leader is appointed), the others also remain members during a dissolution, unless they do not seek to be appointed as Members or are not re-elected in the general elections.

The Commission is responsible for the administration and services of the House of Commons, the Clerk of the House of Commons, the Serjeant of Arms, the library and the House of Commons Official Report.

In budgetary matters, the Commission draws up two different budgets using two different procedures:

– *The Administration Estimate.* The administration estimate is intended to determine the appropriations required for the maintenance and acquisition of Parliament's real and personal

property, the functioning of the House and the administrative staff expenditure. The Commission prepares the draft budget. It is assisted in its task by the Estimate Audit Committee (composed of three Members and three external members), which checks the forecasts.

– *The Members Estimate.* This appropriations request includes all the funds needed to pay the salaries of MPs and their assistants, as well as funds for the opposition parties.

House of Commons Members Estimate Committee (MEC). To draw up the provisional Members budget, the House created the Members Estimate Committee (MEC), whose role is to oversee the preparation of the budget. The MEC has the same composition as the House of Commons Commission. It is assisted by the Members Estimate Audit Committee. The House also created the Members Allowances Committee to advise the Speaker and the Leader of the House on other budgetary matters, such as requests for allowances from MPs or, more generally, the rules and drafting of rules on the reimbursement of these funds.

The MEC consists of the same members as the House of Commons Commission. Its role is to supervise and monitor the appropriations requests of Members of the House of Commons. The committee's scope was significantly reduced following the 2010 parliamentary elections. A large part of its responsibilities was transferred to the Independent Parliamentary Standards Authority (IPSA). However, the MEC retains the following competencies: the contribution towards the cost of pensions for members; the provision of ICT equipment to members; funds for the opposition; training for MPs and the administration; and stationery costs. The MEC provides a final agreement on the House of Commons budget request before its transmission to the Treasury.

B. Preparation of the budget of the House of Lords

The leading role of the House of Lords Commission. The House of Lords Commission supervises the House's Administration. In carrying out its duties, the Commission approves the House's provisional budget; oversees the subsidies distributed to the Lords and members of the Administration; and approves the various plans that enable the House to operate (strategic affairs, financial, performance and objectives, etc.).

In this work, the Commission cooperates with the Management Board to develop, define and approve the strategic plan, the annual budgetary plan and to monitor whether the administration's performance meets the objectives. The Management Board takes decisions concerning the management and provision of services to the House of Lords as part of the strategy agreed by the House of Lords Commission. Chaired by the Clerk of the House of Lords, the House's highest official, the Management Board supports and advises the House of Lords Commission. Together they lead the House of Lords. The Management Board prepares the strategic plan, business plans, financial plans, annual estimates and annual reports for approval by the House of Lords Commission; manages the resources agreed by the House of Lords Commission; supports the Clerk of the Parliaments in the exercise of his duties as accounting officer and employer of the House of Lords staff; assesses and manages risks — board members have responsibility for managing and responding to each corporate risk — maintaining an effective control system; and monitors and evaluates performance.

C. Parliament's adoption of the budget of the Houses

The Treasury forwards its budget request to Parliament, which then adopts it. At this stage, the adoption of the budget of the House of Commons and that of the House of Lords is the same as for any other budget. A single general comment on this adoption: the British Parliament, as contradictory as it might seem for the land of the *Magna Carta*, has very little budgetary power.

In France, the adoption of the Finance Law gives rise to well-regulated confrontations. At the end of the debates, the Finance Act is ultimately adopted with very few amendments. This is even more true in the United Kingdom where, according to a famous saying that reflects reality, "parliamentary control of public expenditure is a myth of constitutional law" (C.-K. Allen, *Law and Orders — An Inquiry into the Nature and Scope of Delegated Legislation and Executive Powers in English Law*, 3rd edition, London, Stevens and Sons, 1965, p.160).

II. The Questioning of budgetary independence

A. The factors behind the questioning: the expenses scandal

In January 2005, the Freedom of Information Act of 2000[1] entered into force. The Labour Party had made this law one of its campaign promises during the 1997 legislative campaign. The law applies to any public body or state undertaking, and thus to more than 100,000 bodies, including schools and municipalities, and, of course, the Parliament. In the name of transparency, the law allows for the disclosure of information that was not previously made public.

An amendment was adopted in 2007 by the House of Commons to exclude Parliament from the scope of this law. Two reasons were given: the law constitutes an invasion of privacy of the members of Parliament; the House of Commons Commission, which is responsible for issuing expenditure information for members, is not a public authority within the meaning of the 2000 Freedom of Information Act. This amendment was declared illegal by the High Court, however.

Once the law entered into force, journalists jumped to use this new right to request information about MP expenditure. The press began publishing this information in May 2009. The scandal involved MPs of both the majority and the opposition and very few members of the House of Lords. *The Times* spoke of "the darkest day in the history of Parliament."[2] The scandal was amplified by the UK economic recession, the financial crisis and the unpopularity of the government.

The revelations concerned a wide variety of subjects: more or less fictitious parliamentary assistants, family "employees" paid for doing nothing, a parliamentary assistant who took care of children full-time ("nanny gate"), purchase of real estate with parliamentary money, false declaration of legal address, reimbursement requests for loans already reimbursed, work expenditure for personal property, maintenance costs for gardens, and restaurant expenditure. Several MPs resigned, including the Speaker (and thus chairman) of the House of Commons, Michael Martin. He was the first Speaker to be forced to resign since John Trevor in 1695. Five ministers and state secretaries. Members of Parliament were even sentenced to prison terms. The speaker even allowed the police to enter the House. A member of the Labour Party, Kate Hoey, criticised this, calling it an illegal decision. The seriousness of the scandal did not, in her opinion, justify such an invasion of the House's independence and distracting the police from their regular work.[3] A member of the Right, Douglas Carswell, proposed a no-confidence vote be held against the Speaker, but this motion was not adopted.

The shock was so great and the disgrace cast on Parliament so profound that the parliamentary physician drew attention to the risk of suicide among MPs. On 23 May 2009, the Archbishop of Canterbury Rowan Williams, the highest leader of the Church of England after the Queen, warned that "the continuing systematic humiliation of politicians itself threatens to carry a heavy price in terms of our ability to salvage some confidence in our democracy."[4]

In late May 2009, the first proposals for reform of the political system were introduced. One of the most noteworthy was that of David Cameron, who was the leader of the conservative opposition party at the time. David Cameron proposed a redistribution of power within the House of Commons by strengthening the authority of "backbenchers." This would enable them to control the party leaders, who are usually called upon to become ministers. Hence a stronger control over the government. Given the modus operandi of the Conservative and Labour Parties, which is very hierarchical, this constituted a genuine revolution, but one that would never come to fruition. On the other hand, however, an independent body responsible for managing MP expenditure[5] was established. This thus put an end to the autonomy and historic "self-regulation" of parliamentarians with regard to their expenditure.

B. The embodiment of this questioning: the creation of the Independent Parliamentary Standards Authority (IPSA)

The IPSA was created at one arm's length from Parliament. Just far enough away to remain quite close. This is reflected in its composition. The IPSA is made up of around 70 people. At its head is a five-member executive board, led by a chairman appointed by the Queen on the recommendation of the House of Commons. The executive board must comprise at least: one member who has held high judicial office; one member who is

[1] *Freedom of Information Act*, November 30, 2000.
[2] "Parliament's darkest day: MPs suspended and Michael Martin at Risk," *The Times*, 15 May 2009, p.1.
[3] Hansard, House of Commons, Westminster, 11 May 2009.
[4] Rowan Williams, "Stop MP humiliation," BBC News, 23 May 2009.
[5] The decision was announced on 20 May 2009 by Harriet Harman, the leader of the House of Commons. The leader must be distinguished from the speaker. The role of the leader is to organise the work of the government within Parliament.

a qualified auditor;[6] and one member who is a former MP. The other staff cannot have belonged to the House of Commons within the past five years. The IPSA is an independent body created by law in 2009. Its creation was largely a response to the expense scandal that shook Parliament in early 2009.

The IPSA's mission. The House of Commons Fees Office lost control of 80% of the funds it previously managed. Responsibility for these funds was transferred to the IPSA. This was notably the case with regard to determining MP salaries. As part of the 2010 constitutional reform,[7] which primarily focused on the statute of civil servants, the IPSA's powers were increased again. The IPSA's role is manifold: monitoring MP expenditure; determining MP salaries; paying MP salaries and various expenses; paying the wages of their assistants; advising MPs on fiscal matters; and determining the procedure to follow for investigations and complaints about MPs.

The IPSA publishes an annual report that primarily focuses on MP expenditure. In July 2015, the IPSA announced an increase in MP salaries from £67,000 to £74,000. This increase was necessary due to the widening gap between MPs and the rest of the public sector. The then Prime Minister David Cameron opposed this increase, on the grounds that the average increase for public employees was 1.3 %, while MP salaries were increased by 10 %. The increase finally became effective some time later. One must give honour where honour is due. The IPSA, which was founded to improve the House of Commons' "efficiency" (to use the current buzzword) in terms of expenditure management, got tangled up in its own net. Indeed, many MPs consider that its operating method is unsatisfactory: too costly and ultimately provides relatively modest services. The time it takes to reimburse member expenses is deemed too long.

The agency produces a guide entitled *The scheme of MPs' business costs and expenses*,[8] which informs MPs about their rights and obligations concerning secretarial expenditure.[9] Members receive an allocation budget to help them exercise their parliamentary functions. For 2017-18, the annual allocation budget is £161,550 for MPs living in the London metropolitan area and £150,900 for those living elsewhere. Assistants must not perform any political tasks during office hours, provided they are paid with public funds. The budget for the London area is higher as it takes account of the fact that all staff employed by London Area MP are based in London, where personnel costs are higher than for the rest of the United Kingdom. The allocation covers the salaries of four full-time members of staff.

The IPSA provides payroll services for MPs and their assistants. It provides model contracts and job descriptions on its website. These must be used for all new assistants to ensure that all staff have an adequate contract and a definition of their function corresponding to their actual activity. Members can hire volunteers who can claim meals and travel if they have signed the volunteer agreement. This agreement does not impose any contractual obligations on the part of the MP or the volunteer.

The excesses of the IPSA. There have been excesses in the publication and reimbursement of parliamentary expenditure. For example, some of the information found on the IPSA website for 2018 appears to go beyond the limits of the right to information to reflect a veritable policing of MPs. One finds, for instance, a parliamentary assistant's attendance sheet, an MP's request for the reimbursement of a £12 newspaper, etc. This information could be interpreted as an excess of transparency.

III. The content of the budget of both Houses

A. Comprehensive overview of expenditure

Transparency of expenditure. Parliament's expenditure is presented in the Central Government Supply Estimates. In the States using the Westminster system, the Estimates are a series of legislative proposals retracing the ministries' requests for appropriations. These requests are drawn up by the Treasury in cooperation with the Cabinet and, of course, the ministries and departments. The ministries and departments submit their estimates to the Treasury, which then compiles them into a single document, the Central Government Supply Estimates. Once adopted by Parliament, it becomes the Main Supply Estimates. The particularity of the Main Supply Estimates is that they do not contain any information on long-term income or expenditure.

A total of 52 central government budgets were presented for 2017-2018. There is a single estimate for each department. Separate estimates

[6] Qualified under Schedule 3 to the National Audit Act 1983.
[7] The Constitutional Reform and Governance Act 2010.
[8] The scheme of MP's business costs and expenses, IPSA, 2017-2018.
[9] The scheme of MP's business costs and expenses, IPSA, 2017-2018, p.2.

are produced for civil service pension schemes with their own resource accounts. In addition, five independent budgets are presented separately by the following bodies: the Administration of the House of Commons, the National Audit Office, the Electoral Commission, the Independent Parliamentary Standards Authority and the Local Government Boundary Commission for England.

The volume of expenditure. The following data can be found in the 2018-19 Central Government Supply Estimates:

House of Commons

House of Commons Members: £16,738,000 *Net cash requirement*

House of Commons Administration: £352,781,000 *Net cash requirement* (subject to constant increase due to the restoration of the Palace of Westminster).

Amounting to a total of £369,519,000. To put this into perspective, the justice budget is £7,349,458,000, or 20 times more than the budget of the House of Commons. Similarly, the defense budget is £37,113,920,000, or 105.5 times more than the budget of the House of Commons.

House of Lords

House of Lords: £166,327,000 *Net cash requirement*

The budget estimate covers allowances and expenses paid to members of the House of Lords in the exercise of their duties as members of Parliament, as well as the administration and accommodation costs for the House of Lords. It includes the payment of salaries and pensions, supplies, catering and retail services, the House of Lords' share of the housing and security costs of Parliament, which it shares with the House of Commons, other shared services, financial support for opposition parties, and subsidies to parliamentary bodies and organisations that promote the House of Lords' objectives. Their inspection is entrusted to the House of Lords Commission, which is appointed at each session. The expenditure plans provide for a uniform level of service for the House and its committees.

B. Breakdown of expenditure

Controversy on the cost of a member of Parliament. In 2013, several British newspapers revealed the cost of MPs, which was deemed much too high. *The cost of members.* MPs received a salary for the first time in 1911. It was £400 per year. In 1996, the average monthly salary was £34,085. In 2018, the average monthly salary is £77,379. *The cost of Lords.* Most of the Lords do not receive a salary for their parliamentary duties, but they are entitled to allowances and, within certain limits, to travel expenses they incur in the performance of their parliamentary duties. Those who do not receive a salary may be entitled to a flat-rate allowance of £150-£300 for each day of attendance in the House. This daily allowance replaces the separate overnight subsistence, day subsistence and office costs in the previous system. Entitlement to benefits is determined by attendance, not residence criteria. Some Lords receive a salary because of their duties. The Leader of the House of Lords, the Lord Speaker and the Senior Deputy Speaker are paid by the budget of the House of Lords. Government ministers are paid by the relevant ministries. Members receiving a salary as a Minister or bureau are not entitled to claim benefits on the basis of their attendance.

Controversy on certain items of expenditure. In 2014, £65,000 for sparkling wine: the press latched on to this figure. They did the same in reaction to the fire safety expenditure. It all began with the trauma of the Great Fire of 16 October 1834. The Chancellor of the Exchequer had asked workers to burn the contents of two carts filled with small wooden counting sticks which had been used to draft the budget. The sticks were burned in ovens located under the House of Lords. This sparked a fire in the Palace of Westminster. It was the largest fire after the 1666 Great Fire of London and before the German bombings of the Second World War. Hence the tradition of higher fire safety expenditure compared to other parliaments.

Reflections on the nature of the financial autonomy of the Spanish parliament

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The financial autonomy of the *Cortes Generales* stems from the separation of powers, being its goal to guarantee such separation. In Spain, this autonomy is quite limited in quantitative terms, bearing in mind the relevance of Section 02, namely *Cortes Generales*, budget, which scarcely amounts to 0,08% of the total of the State General Budget. However, it is a very important principle from a qualitative perspective. Thus, it is necessary to ensure its protection in parliamentary systems. It is indeed for this reason that those who drafted the Constitution considered it necessary to specify in article 66.3 of the Spanish Constitution (hereinafter CE) that the *Cortes Generales* are inviolable, but likewise in an explicit and direct manner in article 72.1 CE, that the Chambers adopt their budgets autonomously. This constitutional recognition is important. Indeed, it is not frequent in compared European constitutional law to find such a statement. Usually, financial independence is to be found solely in the Chambers' Standing Orders, and not in supreme texts. Moreover, this recognition only exists for the *Cortes* and does not benefit the autonomy of other Spanish constitutional institutions. Financial independence is an element of parliamentary autonomy which could be defined as "the powers possessed (by the Chambers) to regulate and manage themselves with a view to performing their functions"[12] benefitting from a "sphere of self-decision"[13]. This autonomy allows them to operate free from any pressure, and it is not "and end in itself [but] guarantees an instrumental function"[14]. Financial autonomy, as pillar of parliamentary independence, attains a remarkable level in Spain and the examination of its multiple aspects will clearly show this. The Chambers not only have remarkable budgetary privileges, but also enjoy exclusivity as regards guaranteeing the financial control of their own activities (II).

I. Important budgetary privileges

As rules which must be adopted by absolute majority of the members of the Chamber[15], the parliamentary Standing Orders are at the core of their internal organization. They enshrine mainly their financial autonomy and grant them prerogatives which cover "all stages of the budgetary cycle"[16]. Thus, article 31 of amended Standing Order of February 10, 1982, concerning the Congress of Deputies, regarding the organization of the Chamber, grants the Bureau full competence to "prepare a draft budget […], supervise and oversee its implementation and submit to the full House at the end of each year a report as to its fulfilment". Article 36.1 of amended Standing Orders of May 3, 1994 concerning the Senate, goes in the same line establishing the possibility that the Bureau resorts to a regulatory power to lay down budgetary, accounting and monitoring rules. However, it is to be noted that, as compared to the Senate, where the procedure to draft the budget is detailed in a written provision, namely provision of December 9, 2014[17] -, the procedure is much less formal in the Congress of Deputies, more used to functioning on the basis of customary rules.

To start with, the Chambers' budgetary power is materialized in the fact that they are free to prepare their budgets. This preparation is the result of the cooperation between the Bureau and the technical directorates. Indeed, the Bureau (*la Mesa*) elected independently by each Chamber[18], is a key body of parliamentary institutions. Its membership, limited in order to ensure its efficiency, is quite simple: at the Congress, the Speaker of the Chamber, four Deputy Speakers and four Secretaries, and in the Senate, two Deputy Speakers and two Secretaries. Moreover, the procedures to appoint their

[10] The first part of the article was written by Mr BARQUE. The introduction was prepared by both authors.
[11] Ms REVUELTA DE ROJAS, *Letrada des Cortes generales, Interventora* to the Congress of Deputies, wrote the second part of the article.
[12] F. BALAGUER CALLEJÓN and *alii*, *Manual de derecho constitucional*, Madrid, Tecnos, volume II, 2016, 11th edition, p.516 ; M.A. MARTÍNEZ LAGO, « La autonomía presupuestaria de los órganos constitucionales y el presupuesto parlamentario », *Revista de las Cortes generales*, N° 82, 2011, p.370.
[13] ATC 52/1994 of February 16, 1994, FJ 2.
[14] M.A. MARTÍNEZ LAGO, « La autonomía presupuestaria de los órganos constitucionales… », *op. cit.*, p.370.
[15] Article 72.1 CE.
[16] M.A. MARTÍNEZ LAGO, « La autonomía presupuestaria de los órganos constitucionales… », *op. cit.*, p.372.
[17] Rule No 899/000010, *Cortes Generales Official Gazette*, December 9, 2014, p.357.
[18] Article 72.2 CE.

members allow for parliamentary minorities to be represented. Although in theory the Bureau is entrusted with drafting the Budget, in practice it only adopts it, due to its mainly political membership. At most, the Bureau may introduce some amendments to the provisions directly affecting parliamentarians (particularly as regards appropriations for hiring assistants). In fact, the directorates responsible for budgets and contracts guarantee the technical preparation of budgetary documents on the basis of data conveyed by the general secretariats, and of the main guidelines given by the Speaker of the Chamber. These Directorates shall subsequently convey this "draft budget" [19] to the Bureau together with an explanatory report to the Chief Clerk *(Letrado mayor)*[20].

This autonomy is even more remarkable bearing in mind that the Chambers depend almost totally on the State to finance their expenses. In fact, they can only count on some own resources resulting from financial interests[21], rentals or even from selling goods. Thus, the risk would be that the State may indicate the Chambers which expenses can be made. In practice, that is not the case; indeed, the Chambers fully decide the global amount of demanded appropriations and their allocation. The Minister of Finance, who receives their appropriations requirements, cannot amend them and merely includes them in the finance draft bill. The Chambers' right to amend the budget is likewise limited in order to guarantee their independence. If parliamentarians may introduce amendments to modify the budget of their Chamber, they cannot do so as regards the other Chamber's budget; likewise, no government amendment is envisaged.

Moreover, when they are integrated in the draft finance bill for their consideration, the Chambers' draft budgets are submitted by chapters and detailed to the level of articles. Therefore, items (*concepto*) and sub items (*subconcepto*) are not detailed. Only when their draft budget is finally adopted, shall the Bureaus detail the distribution and specialize their appropriations with a view to implementing them all throughout the year. Thus, the Bureaus enjoy a great freedom since the distribution of appropriations among articles, such as it is the case when voting the finance act, does not pose them any limit, given that they can submit the appropriations differently after the vote.

As regards the implementation of the budget, once again there is a great level of autonomy. We find again, *mutatis mutandis*, the principle of separation of payment mandate issuers and accountants. Based on the competences of a French auditor, we might say that such competences are distributed between the Speakers of the Chambers and their respective Bureaus[22], although there is the possibility to delegate these prerogatives in other individuals. In principle, and as regards the Congress of Deputies, it is incumbent upon the Bureau to take a decision on the proposed expenses submitted to it and which have been put together stemming from the different administrative services of the relevant Chamber[23]; if approved, the Speaker of the Congress shall proceed to issue the payment mandate for the expense[24].

On the contrary, the payment of expenses and the collection of own revenues is guaranteed by the Treasury department of each chamber and not by an agent independent from the Chamber in organic terms. Moreover, the payment shall only be made from treasury funds available for the Chambers. However, it may seem that such funds depend on the public Treasury, which provides these treasury resources every three months[25]. In practice, the Chambers have never had the slightest difficulty in this regard and have always benefitted from granted payments; acting as an automaton, the public Treasury must make the payments on a final basis, not judging the advisability or even the legality of the operation.

Finally, the Chambers benefit from an unexpended balances fund (*fondo de remanentes*). Supplied by credits which have not been used in the course of the year and which shall not be cancelled, such fund is autonomously managed by each Chamber which may, at any moment, draw from it the necessary resources to make an expenditure. This mechanism grants flexibility to a system which compels the Chambers to integrate their budgetary estimations in the finance bill and thus depend on a government initiative to be able to amend such act. Resorting to the *fondo de remanentes* in the course of the year allows to face unexpected expenses with greater calm without having to wait for the executive to table an amended finance bill. The amounts in question are quite remarkable, which to a great extent is due to the fact that budgetary appropriations included in the finance bill are not fully used up. In average, in both Chambers, approximately between 80% and 85% of appropriations are used up[26], which leaves room for integrating the unexpended in the fund. For ex-

[19] According to the terms of budgetary rule adopted on December 9, 2014.

[20] In the Senate, this procedure is clearly detailed in article 2.3 of the budgetary rule adopted on December 9, 2014.

[21] For example, the Congress of Deputies has benefitted from approximately 81,000€ in financial interests in 2015.

[22] Articles 31.1 and 32.1 of the Standing Orders of the Congress of Deputies; budgetary rule of December 9, 2014, for the Senate.

[23] It is possible to delegate this competence. See, particularly for the Congress, article 3 of the provision on the Bureau of November 17, 2008, No 291/000002.

[24] Again, it is possible to delegate this competence.

[25] Concerning the Senate, the principle is detailed in article 23 of the budgetary provision of December 9, 2014.

[26] Thus, in 2016, 83,15% of appropriations allotted to the financing of the Congress of Deputies were actually used up.

ample, in 2018, the Congress of Deputies can count on a fund amounting to some 92 million euros.

However, this freedom has its nuances. In practice, to start with, the Chambers resort to this mechanism with great caution. Next, the use of these funds is supervised by the Chambers themselves. First, the General Secretariat must issue a demand to the Bureau which, in turn, shall decide if it is justified to resort to the fund to finance the relevant expense. Secondly, regardless of the Chamber concerned, the fund can only finance certain expenses. On the occasion of a meeting held on April 29, 2003, the Bureau of the Congress of Deputies[27] decided to limit, in principle, the use of this fund solely to investment expenses; the expenses should have to be related to the goods, movable and immovable, considered as part of the assets and whose lifetime goes beyond a financial year[28]. However, and on an exceptional basis, the fund may be used to finance extraordinary expenses not envisaged during the adoption of the Chamber's budget, or those expenses that cannot be possibly carried forward to the following financial year even if there were appropriations envisaged to this end but which proved to be insufficient. To these budgetary powers we must add the full competence of the Chambers to monitor budgetary activity.

II. Exclusive internal control

The Spanish model of parliamentary autonomy entails a high level of financial independence.

However, this does not mean a lack of control, since in Spain the Chambers, as well as all public powers, are subject to the Constitution and the legal framework, as enshrined in article 9.1 of the Spanish fundamental charter, and in any case are likewise subject to the courts. According to the Standing Orders of the Congress of Deputies and of the Senate, the Bureaus are entrusted with supervising the implementation of their budgets[29]. To perform this duty, they can rely on the internal technical support of the "*Interventores*", auditors, of each Chamber. As it is the case with the auditing of the State General Administration, the internal auditing of the economic and financial management is conducted in conformity with the principle of full autonomy with regards to the authorities or institutions subject to such control.

This is the framework of the auditing task, as internal control of the *Cortes Generales* and of each Chamber. The work is performed by the legal advisors of the *Cortes Generales* appointed Directors by the Bureau or Bureaus, as it is the case when it comes to the auditing of the *Cortes Generales*. Each Auditor is directly in charge of an Accounting Department.

Three audits can be performed, independent from one another.

– Auditing of the *Cortes Generales*: performed within the framework of the budget of the *Cortes Generales*, of the Ombudsperson and of the Central Electoral Board.

– Auditing of the Senate: performed within the framework of the Budget of the Upper Chamber.

– Auditing of the Congress: internal control of the Budget of the Lower Chamber.

The internal auditing work of the parliament is governed in Spain by internal rules, given that the Act on the State General Budget and its internal control excludes from its scope the *Cortes Generales*, in accordance with the principle of budgetary autonomy enshrined in article 72 of the Spanish Constitution[30]. As regards the Congress, there are the Rules on Incurrence of Liabilities, Management and Expenditure Authorization, Auditing and Supervision of Payments of November 17, 2008 and the Directive on the Procedure for Incurrence of Liabilities, Expenses Auditing and Management. In the Senate, there are the Rules on Budgetary Procedure, Supervision, Accounting and Contractual Activity of December 2, 2014. The goal of the auditing of the Chambers is to:

– Guarantee the compliance with the legislation in force.

– Verify the adequate registry and accounting of conducted operations, as well as their correct registry in the accounts and financial statements of the Chambers.

– Assess the conformity of procedures subject to supervision to the principles of good financial governance and budgetary stability.

Internal auditing comprises:

– Carrying out a critical audit or a preliminary supervision as regards formal and material modes.

– Financial control, on a standing basis.

All acts, documents or reports of the Chambers giving rise to economic rights and obligations, as well as relevant payments and investments or the general implementation of public funds are

[27] The Senate has exactly the same limits: *cf* article 21 of the budgetary rule of December 9, 2014.

[28] For example, the underground parking of the Congress of Deputies was built thanks to the *fondo de remanentes*.

[29] Article 31.1.2° of the Standing Orders of the Congress of Deputies, and article 36.1.e of the Standing Orders of the Senate.

[30] Article 2.3 of the General Budgetary Act of November 26, 2003.

subject to supervision on a prior basis to their approval. Thus, the goal of the auditing of the Congress of Deputies is to ensure compliance with the legislation in force or with the applicable provisions in each case, by means primarily of a formal examination of all documents that must be compulsorily attached to the file. This procedure may be followed by a material verification of the effective and actual implementation of public funds. Therefore, all expenditure proposals of the Congress of Deputies are subject to a preliminary auditing with a view to verifying the existence of the relevant budgetary appropriation, as well as ensuring the compliance with the legislation in force and with the rules and agreements of the Bureau.

The payment formal auditing takes place during the payment stage in order to guarantee the correct issuance of payment orders, as well as the subsequent payment in favour of the recipient according to the previously fixed amount. To this end, the payment proposal must be submitted to the Auditor, as well as the accreditation of its compliance with the contract requirements, so that the obligation can be duly recognized. Should the auditing consider that the examined act, file or document complies with the law, this is to be confirmed by a signed document. Should the auditing detect irregularities in the file resulting from the non-observance of requirements or unnecessary procedures, a favourable opinion shall be issued although it shall be subject to the resolution of the problem before the final adoption of the file. A reasoned opinion shall be issued only if the auditing expresses its disagreement, both with the substance and with the form of examined files or documents. In such case, the consideration of the file shall be suspended and it shall be returned to the origin service in order to correct detected mistakes. The auditing may spot: lack of funds, serious irregularities as regards justifying documentation or omission of formal requirements or of fundamental procedures, including lack of preliminary auditing, which may entail the invalidity of the act. The auditing may also consider that continuing with the file may lead to economic damage for the Chamber. If the objections underlined by the auditing are not accepted and the opinion is rejected, the file shall be returned to the Bureau for it to rule on the matter.

Ultimately, it is incumbent upon the Bureau of the Chamber, under the direction and coordination of the Speaker (by analogy with the Council of Ministers) to settle the conflicts concerning reasoned opinions in the field of parliamentary auditing, having the Bureau the ultimate responsibility for budgetary control. Thus, the competence for auditing the Chambers remains a key aspect which allows to conduct a reasonable preliminary report on the authorizations for budgetary amendments and the use of the accumulated balance of the remainders of appropriations at the end of the year during following years. The supervision of the implementation of the Chambers' budget shall be completed once the Bureaus approve the accounts at the end of each financial year. Once adopted, the Bureau submits the budgetary liquidation for its debate in the plenary, the same body which considers and adopts the State General Account.

Finally, the accounts are published in the website of the Congress and of the Senate. The Transparency Portals of each Chamber also publish, every three months, the information on the implementation of their budgets. Likewise, the Congress and the Senate publish in the Portal of Transparency all economic data as well as those regarding its contractual activity, in conformity with the Transparency Rules adopted by their Bureaus[31]. Lately, the demand for greater transparency of public powers has given rise to a debate on the advisability to add, or not, an external control by the Court of Auditors (*Tribunal de cuentas*) to the internal control of parliamentary accounts. This issue requires an in-depth reflection which goes beyond the limits of financial law, since it falls mainly within the realm of constitutional law. From a financial law perspective, the principles which should govern the control of public funds, which envisage internal and external supervision, are clear. Throughout the history of European parliamentary Constitutional Law the sufficiency of internal financial control of parliaments has prevailed, so this fact is due to the adoption of a larger approach.

The historical roots of the Chamber's budgetary autonomy are deep and indeed they date to the historical struggle of parliaments against the power of the Crown which in Spain goes back to the *Cortes de León* of 1188[32]. As regards parliaments' financial autonomy, there is the principle of separation of powers which, together with the guarantee of a set of fundamental rights, represent the two major principles of the Rule of Law[33]. The parliament's budgetary independence is but an aspect of a much greater autonomy, namely, that of the legislative power. Its *raison d'être* is

[31] Rules of the Bureaus of the Congress of Deputies and the Senate on transparency and access to the information on the activities of parliament (*Norma de la Mesa del Congreso de los Diputados, de 20 de enero de 2015, para la aplicación de lo dispuesto en la Ley 19/2013 de 9 de diciembre sobre la transparencia, el acceso a la información pública y el buen gobierno de la Cámara, en relación con toda actividad sujeta al derecho administrativo. Normas del derecho al acceso a la información pública del Senado, aprobadas por la Mesa del Senado en su sesión del 2 de diciembre de 2014*).

[32] *Mémoire du Monde*, UNESCO 2013: "The Decrees of León of 1188 are a set of documents containing the oldest details on the European parliamentary system. These documents, originating from Spain, are based on the celebration of a *Curia Regia* (Royal Council) during the reign of Alfonso IX de León (1188-1230)".

[33] Article 16 of the Declaration of Human and Citizens' of 1789.

the need for the legislator not to be limited in any way by an external power, since the balance of powers ensures that there will be no abuses.

In parliamentary systems similar to the Spanish one, there is a close link between parliamentary majority and the government elected by it. Therefore, the separation of powers becomes essential as a guarantee for minorities. It is not only about avoiding external interferences in the legislative power, but also protecting the rights of minorities in the Chambers. Budgetary autonomy guarantees that representatives of national sovereignty shall have the necessary material means to legislate and control the executive power. Any proclamation of the independence of the legislative power would be deprived of sense if the Chambers could not freely resort to the necessary material means for their independent organization and functioning. For this reason, any consideration on an external control of the parliament, be it in the organization, Standing Orders or budgetary sphere, must be framed in this context of Constitutional Law.

In this sense, article 136 of the Spanish Constitution states that: "the Court of Auditors is the supreme body charged with auditing the State's accounts and financial management, as well as those of the public sector. It shall be directly accountable to the *Cortes Generales* and shall discharge its duties by delegation when examining and verifying the General State Accounts". The members of the Court of Auditors, who are elected by the plenaries of each Chamber, shall conduct their supervision with absolute functional independence. Therefore, in Spain the Court of Auditors is not a body external to the *Cortes Generales*. Thus, the Organic Act on the Spanish Court of Auditors does not include the Parliament in its scope. The legislative considered that the parliament is not part of the public sector, since the *Cortes* are not a geographical administration and do not implement a public policy[34]. To conclude with, accountability is a principle inherent to all public authorities. The question is to whom the parliament is accountable. The Spanish Parliament has decided that the accounts of the Congress of Deputies be exclusively controlled by its Bureau and submitted to the representatives of national sovereignty in the plenary, the same parliamentary body that supervises the State General Accounts, and to citizens by means of its publication in the Chamber's Transparency Portal.

[34] Article 4 of Organic Act 2/1982, of May 12.

From defining financial autonomy to its implementation : the budgetary and accounting autonomy of the italian parliament

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Introduction

Financial autonomy is defined in relation to the institution receiving it. It is the result of a status. The Italian Parliament derives its financial independence from its status as a constitutional body, which confers it constitutional independence from the other constitutional powers. That is why it would be difficult, from a theoretical point of view, to generalise a single definition to all public entities,[37] including regional and local authorities, for instance. On this point, the situation in Italy differs from that of France because its Parliament's financial autonomy was defined in contrast to that of the regional councils. In fact, it was through its differences and similarities with the financial autonomy of other Italian institutions that the financial autonomy of the Italian Parliament was defined. A number of factors must therefore be considered: Parliament's constitutional position in comparison to other public authorities; equal bicameralism; the recognition under Italian law of specific parliamentary rights (such as *autodichia*, or self-judging); regionalism; and, finally, the system of sources governing Parliament's financial autonomy.

As a constitutional institution whose political independence is guaranteed, Parliament's financial autonomy can only be understood and defined[38] in reference to its relations with the other constitutional institutions. In fact, Parliament's financial autonomy is first of all a history of budgetary emancipation[39] from the executive, which implicitly controlled its budget. The Chamber of Deputies demonstrated its desire to take over the preparation of its budget through the progressive introduction of an internal adoption procedure. The main challenge for the Chamber was to establish its own administration since all parliament officials were attached to the ministries.[40]

The definition of Parliament's budgetary autonomy therefore depends on the historical, political, institutional and financial context. It has been progressively clarified by the Italian Constitutional Court (I), and its features help to highlight the Italian specificities of Parliament's budgetary and accounting autonomy (II).

I. Definition and constitutional protection of the Italian parliament's budgetary autonomy

Parliament's budgetary autonomy has been enshrined as a constitutional principle, but was debated and clarified by affairs which directly or indirectly affected Parliament: directly, through the Government's desire to reduce its budget and the Court of Auditors' desire to supervise it; and, indirectly, through litigation concerning the financial autonomy of the regional councils. In this context, Parliament's budgetary autonomy was first guaranteed through the sovereign nature of the body (A) and thanks to the constitutional nature of its (legislative) functions (B). It has thus come to protect all acts of Parliament, including those which are not legislative in nature, such as management procedures (C).

A. Parliament's budgetary autonomy and sovereignty

Parliament's budgetary autonomy was first defined according to the statue of Parliament itself. As a sovereign institution, it benefits from the principle of immunity. Its sovereignty (it holds the highest position in the Italian legal order) was defined in contrast to the regional assemblies.[41] Its financial autonomy is much better protected compared to the latter, a fact recognised by the Constitutional Court in a dispute on the financial and accounting autonomy of regional councils.[42] The Constitutional Court permitted the Court of Auditors to review the acts of the regional

[35] Ms BLAIRON wrote the first part of the article and its introduction. We would like to point out that she also provided the full French translation of Prof. MICCÙ's written and oral statements. She is very warmly thanked.

[36] Prof. MICCÙ prepared the second part of the article and its conclusion.

[37] Cf. J.C. MAITROT, *Recherches sur la notion d'autonomie financière en droit public*, doctoral thesis in law, University of Paris I Panthéon-Sorbonne, 1972, 311 pp.; V. DUSSART, "Autonomie financière et budget autonome," *in* G. ORSONI, *Dictionnaire encyclopédique Finances publiques*, 2nd edition, Economica, PUAM, p.68.

[38] However, "financial autonomy can be measured more than it can be defined" (V. DUSSART, *op. cit.*, p.67).

[39] A. CARMINATI, *Forme dell'autonomia organizzativa delle camere: La gestione del bilancio interno*, Promodis Italia Editrice, Brescia, 2004, p.7.

[40] A. CARMINATI, *op. cit.*, p.8.

[41] Cf. Constitutional Court Decision N°110 of 26 June 1970.

[42] Cf. Constitutional Court Decision N°143 of 30 December 1968.

councils on the grounds that the latter are only granted autonomy, not the right to benefit from the same derogations to the Court of Auditors' scrutiny as Parliament, which is sovereign.

Given Parliament's absolute independence vis-à-vis the other constitutional bodies, the Constitutional Court has inferred that the Court of Auditors supervisory power cannot be applied to Parliament's activities (or the activity of the president of the Republic and the Court itself).[43]

B. Financial independence and constitutional function

Subsequently, the Constitutional Court no longer founded Parliament's budgetary autonomy on its sovereignty but on the constitutional protection of its specific functions. The Constitutional Court adhered to this functional model in 1985,[44] in regards to a regional issue concerning the immunity of regional advisers. Once again, the Court made a comparison with the members of Parliament who, under the Constitution, benefit from immunity, which therefore implies the absence of any judicial review. This immunity is granted as part of "the protection of the highest functions of political representation,"[45] i.e. the legislative function. Since this function is guaranteed by the Constitution, legislative action must also be preserved. However, as acknowledged by the Court itself, Parliament's functions are not limited to the legislative function.[46] The question then is whether the constitutional protection also extends to other acts of Parliament which are not legislative in nature, such as management acts and regulations, which are the main source of budgetary autonomy. The constitutional coverage of parliamentary political functions was ultimately extended to acts adopted within the context of the Assembly's self-government (regulations).[47] This is not the case for regional councils.

The functional criterion was also used against the Court of Auditors. Its constitutional function consists of "ex ante control of the legality [*legittimità*] of the acts of the Government as well as the ex post control of the management of the State budget."[48] As this figures in a title of the Constitution dedicated to the government, the Constitutional Court deduced that the Court of Auditors' control relates exclusively to the administration and not to the other constitutional bodies, including Parliament.[49] Such monitoring must be limited and is restricted by the other constitutional standards and principles.[50]

C. Financial independence and the protection of normative power

The issue of financial independence and the protection of Parliament's normative power was first raised in 1981[51] in a case concerning Parliament's budgetary autonomy. The case brought before the Constitutional Court raised the question of a conflict of jurisdiction in regards to the Court of Auditors' decisions on the accounts kept by the accountants of constitutional bodies, namely the two chambers of Parliament and the Constitutional Court. The Senate held that the inviolability of Parliament could give rise to an immunity from audits as it could prevent the Court of Auditors from having access to the documents needed to carry out its checks. Although the Court rejected this line of thinking in this case,[52] this principle served as the basis for a broad exemption benefiting the Italian Parliament, namely the principle of *autodichia*, or self-judging. It establishes an internal "absolute" jurisdiction within Parliament for disputes involving the Parliament and its officials or contract staff, public procurement contracts or the award of grants. In sum, this principle excludes any external jurisdiction in the Parliament, including that of the Court of Auditors. Turning back to the 1981 case, the president of the Chamber of Deputies had remarked that an "audit by the Court of Auditors could potentially involve decisions which the Chambers consider secret." Making parliamentary acts public, in the course of an audit by the Court of Auditors, would have been a violation of Article 64 (2) of the Constitution, an argument the Court also rejected.

Most importantly, the Constitutional Court referred to "a constitutional custom"[53] recognised by the institutions, which over time delineated the practical aspects of their functional autonomy by means of their normative power. The focus is therefore transferred to the sources, the types of acts adopted by the institutions. As regards Parliament, the Court thus noted a wide range of acts, including the Rules of Procedure "which has a reserved domain" protected by the Constitution,[54] which is the main source of its budgetary autonomy. Consequently, a review by the Court of Auditors of the decisions adopted by Parliament by means of its Rules of Procedure would constitute a violation of the Constitution.[55] The true constitutional source of financial autonomy is thus Article 64 (1) of the Constitution governing the regulatory power of the Chambers.[56]

[43] *Ibid.*, recital 2.
[44] Constitutional Court Decision N°69 of 20 March 1985.
[45] *Ibid.*, recital 4.
[46] Cf. *ibid.*, recital 5.
[47] Cf. Decision 69/1985, op. cit. On the "primary" nature of the legislative functions of the regions, but on the issue of the patronage management of certain regions and the need for a management check: Constitutional Court Decision No 209 of 2 June 1994.
[48] Article 100 (2) of the Constitution.
[49] And the Constitutional Court itself: Constitutional Court Decision No 143/1968, op. cit., recital 2; cf. Decision N°110/1970, op. cit..
[50] Cf. Constitutional Court Decision N°129 of 10 July 1981, recital 3.
[51] *Ibid.*
[52] However, the Court had acknowledged the immunity of Parliament's seat in Decision N°14 of 4 March 1965.
[53] Cf. Constitutional Court Decision N°154 of 23 May 1985.
[54] Cf. Articles 64 and 72 of the Constitution.
[55] Cf. Constitutional Court Decision N°154/1985, op. cit.
[56] "Each Chamber shall adopt its rules of procedure by an absolute majority of its members."

While the principle of Parliament's financial autonomy has thus been resolved, some of its aspects could be called into question. This is the case, for instance, of the definition of the amount of the allowance for members of Parliament. According to Article 69 of the Constitution, "Members of Parliament shall receive an allowance determined by law." The law, which was adopted in 1965,[57] does not set a precise amount. It leaves this up to the regulatory power of each Chamber, thus giving the president's office a broad margin of discretion. The Italian doctrine has not failed to criticise the constitutionality of this law, the strength of which has proven to be very relative. An essential component of parliamentary autonomy, the allowance is not guaranteed and, like any law, can be called into question by a referendum, as was envisaged in 1994.[58] Last but not least, the law does not expressly provide for a minimum amount. Therefore, the parliamentary compensation is not considered as a way to ensure Parliament's political and financial autonomy (contrary to what is provided for Constitutional Court judges). Its regulation reflects more "a willingness to contain the spending capacity," but its "parameter thus works *against* the financial autonomy" of the Parliament,[59] which practice has contradicted several times, however. Indeed, the constitutional custom recognises Parliament's full autonomy, making it the supervisor of its budget.

II. The budgetary decision-making autonomy of a bicameral parliament

Parliament's budgetary autonomy is ensured by a special procedure of common law (A), which takes the specific characteristics of Italy's bicameral legislature into consideration. While its autonomy may be called into question by institutional practice (B), constitutional custom and principles guarantee it genuine financial autonomy (C).

A. Absence of an ad hoc budget law: the inconsistent protection of parliamentary financial autonomy

Parliament's budgetary autonomy is not formally reflected in an autonomous budget document. More specifically, Parliament's budget is not included in a special budgetary law, separate from the general budget law, contrary to the president of the Republic[60] and the Constitutional Court, which benefit from a "guarantee [of] autonomy vis-à-vis the government and the Parliament."[61] Although Parliament determines the amount of its own allocation independently of the government (see 2.2.), the latter, the sole holder of the budget initiative, could thus act on the general budget, which contains the budget of the Chambers, as it intended to do in 1993. On its own initiative,[62] it sought to reduce the Chambers' expenditure by 3 % in a move to consolidate public finances. The Chambers reacted strongly. The Assembly opposed the conversion of decree-laws providing for this reduction in expenditure and adopted, with the Government's consent, two agendas: one on the desirability and objective of reducing the overall expenditure of the constitutional bodies; the other inviting the executive to consult with the representatives of the institutions to achieve this objective. Although the result is the same, the initiative comes from Parliament. History repeated itself shortly after in 1995 when the government further decreased the expenditure of the Chambers by decree-law. Faced yet again with strong reactions from the Parliament, the government indicated that it had "not intended to undercut the constitutional principle of the financial and functional autonomy of the legislative assemblies"[63] and removed the contested provision by means of an amendment.

This debate illustrates that the budgetary requirements laid down in Article 81 of the Constitution are not binding on the Chambers. Indeed, practice has shown that the government cannot impose the balanced budget it aspires to achieve for all public budgets, and that any budgetary decision concerning Parliament may only come from the Parliament. The power of the Chambers to determine the amount of their allocation therefore derives more from custom than political expediency.[64]

Although Parliament's budget is contained in the general budget, its adoption procedure is different, as these are "distinct and separate acts."[65]

B. Autonomy guaranteed by an exceptional budgetary procedure

The financial autonomy of the Chambers is based on Article 64 of the Constitution[66] and, consequently, in the rules of each Chamber. Custom and practice is also of particular importance in this area.

The main source of the normative framework for the Chamber of Deputies is found in Articles 10 (2), 12 (2) and 66 of the Rules of Procedure for

[57] Law N°1261 of 31 October 1965, *GURI* of 20 November 1965, No 290.
[58] *GURI* N°4 of 7 January 1994.
[59] A. CARMINATI, *op. cit.*, p.23.
[60] Article 84 (3) of the Constitution provides for an allocation established by law (cf. Law N°1077 of 9 August 1948).
[61] A. CARMINATI, *op. cit.*, p.16
[62] By means of a decree-law.
[63] Quoted by A. CARMINATI, *op. cit.*, p.13 et seq.
[64] Cf. A. CARMINATI, *op. cit.*, p.8.
[65] V. DI CIOLO, L. CIAURRO, *Il diritto parlamentare nella teoria e nella pratica*, Giuffrè, 15th edition, 2013, p.437.
[66] Cf. supra 1.3. On Article 64 cf. A. MANZELLA, "Le Camere, Art. 64, II" in G. BRANCA (ed.), *Commentario della Costituzione*, Bologna, 1986.

Administration and Accounting[67] (RAC). In particular, the adoption procedure is broken down into three phases: a) preparation of the draft budget and management record by the quaestors; (b) adoption of the draft by the president's office; (c) debate and vote of the draft and management record by the Assembly. A seat of political power par excellence, the Assembly is the competent body to take the final decision about the Chamber's budget. During the debate and approval of the agenda (or other parliamentary management actions), members of Parliament may act on expenditure decisions or on their criteria of use.

From a substantive point of view, the criteria for drafting the Chamber's budget — all of which are provided for by the RAC — are the same as those for the public accounts of the State. Once the Chamber's budget has been adopted, its president sends requests for allocations or additional funds to the government throughout the year.[68] It should be noted that both parts of the Parliament's budget follow specific rules.

As regards appropriations, the Chambers do not have their own resources. Their resources depend directly on the State; the Government grants an allocation, the amount of which is voted by each Assembly in its budget. Parliamentary resources are therefore primarily made up of resources transferred by the State, and sometimes from the proceeds of an alienation of property. The Chambers do not hold any property that is not State property. The question raised was whether the Chambers are holders of a property title,[69] which Italian doctrine refused to recognise at first, considering that the Chambers have the mere access to State property (which are also included in the general accounts of the State). Recently, the doctrine has shown less interest in defining the legal nature of patrimonial assets, focusing instead on the purpose and use of the property, and thus the ultimate purpose of the allocation: public interest.

With regard to expenditure, the RAC applies the principle whereby the higher the amount, the higher the hierarchical status of the competent entity. In general, subject to exceptions, the College of the Quaestors has a general or "residual" competence in expenditure decisions. The most important expenditure, however, is decided by the highest collegiate body of the Chamber, the president's office. A political body is always at the centre of the expenditure procedure, which means that each expenditure decision is inevitably political in nature.

Part of the doctrine[70] believes the two-chamber principle, by law, should require each Chamber to approve the presentation of the accounts. However, this solution would require both Chambers to adopt the law, which means that each Chamber would intervene in the control of the other's budget. This goes against the requirements of the Chambers' budget autonomy. The alternative solution would consist of presenting the accounts of the management bodies to their own Chamber only, outside of any legislative framework.[71]

C. Broad accounting autonomy and its financial and political implications

Once the allocation has been transferred, the State does not assess the amount nor the destination. Control by the Court of Auditors concerns only the regularity of the transfer[72] and has been strictly limited to this stage. The lack of control over the management of Parliament's expenditure has thus been acknowledged and accepted.[73] In practice, the Minister of Treasury releases the necessary funds by a single act (direct mandate). The single and immediate withdrawal of the allocation from the country's budget has the disadvantage of creating a burden on the Treasury, especially as the Chambers may not use it. On the one hand, this accounting procedure was regarded as an unnecessary expense, representing an economic burden on the State coffers which could use a part to purchase Treasury bonds.[74] On the other hand, the Chambers recover full autonomy of their expenditure and do not need to request a mandate from the minister for its implementation, as they have their own accountant for this purpose.

Despite their rather broad autonomy, contemporary parliaments are readily considered to be modern and transparent institutions subject to scrutiny as part of the separation of constitutional powers. However, this does not correspond to the rules applicable to the management of the Italian Chambers. These rules exempt them from the principle of legality, the ordinary jurisdiction and the ordinary forms of auditing, to which all the administrations and, in general, all bodies of public law are subject.[75] The audit system represents one of the most problematic corollaries of the Chambers' financial autonomy. As concerns the Chamber of Deputies in particular, the RAC

[67] *Regolamento interno di Amministrazione e contabilità.*
[68] Article 10 (1) RAC.
[69] A. CARMINATI, *op. cit.*
[70] Cf. A. CARMINATI, *op. cit.*, p.38.
[71] Ibid.
[72] Cf. Constitutional Court Decision N°143/1968.
[73] Cf. Constitutional Court Decision N°129/1981 op. cit. and *supra* part 1.
[74] A. CARMINATI, *op. cit.*, p.23 et seq.
[75] The economic independence of the legislative assemblies, through the creation of internal administrative and accounting bodies, follows the UK model that spread to the other parliamentary systems of the continent. The post-revolutionary experience in France made a decisive contribution to redefining the legal foundations of the administrative independence of political assemblies. On this trend, see the historical reconstruction of C. SPECCHIA, "L'autonomia contabile e finanziaria delle Camere del Parlamento," in *Camera dei deputati, Boll. cost. e parl.*, No 1, 1983; P. ZICCHITTU, *Le "zone franche" del potere legislativo*, Torino, 2017, p.286 et seq.

establishes strict forms of auditing[76] in which the College of Quaestors — also responsible for adopting decisions on expenditure — plays a central role. There is a final particularity of the autonomy of the Chambers compared to that of the other constitutional bodies. Indeed, as for the Parliament, the management of the accounts of the president of the Republic and the Constitutional Court is not subject to any scrutiny by the Court of Auditors.[77] However, it is subject to scrutiny by the Parliament. Should the controller be controlled? But does Parliament's budgetary autonomy as defined above allow it?

Conclusion

An internal control system, like that of the current Parliament,[78] clearly does not provide sufficient guarantees, but at this stage seems to be the only possible option.

The practice, in Italy's constitutional system, of excluding any judicial review of Parliament's internal decisions (*interna corporis*) ,[79] illustrated by the notable constitutional case law on the subject, has always prohibited any external control of the agents who manage the public funds of parliamentary assemblies.

Prohibiting the audit of Parliament's financial management activities, motivated by the need to preserve the independence of the legislature, has obvious limitations. First, it must be recognised that the money spent on the functioning of the elected assemblies is, in any event, public and that its management is not among the primary functions of Parliament. Secondly, the historical and political reasons which had originally established a perfect separation of the accounting management of the Chambers from that of other public bodies and administrations have become much less important in the contemporary constitutional state. Indeed, in such states, constitutional bodies are all subject to constitutional supremacy, including the Parliament, which is no longer required to fight to assert its own constitutional role — for example, in relation to the Crown, as was the case in the first parliamentary systems of the liberal era. In this constitutional context, any special or derogation measure in favour of one constitutional body over the others must not only be formulated in the Constitution, but also contribute to the separation of powers "in the strict sense", meaning as a guarantee against the oppression of one power over another, or the control of one on another. For these reasons, given the Italian Constitution's silence on possible exceptions to the combined provisions of Article 100 (2) (on the forms of administrative checks by the Court of Auditors) and Article 103 (2) (on the Court's jurisdiction), it seems difficult today to continue to support the Chambers' absolute immunity from any control system — and the principles — applicable to all other administrations and bodies of the State.

[76] Cf. Title VI, Articles 68-75 of the Constitution.

[77] With the exception of the presidency of the Council, which is subject to review by the Court of Auditors: cf. Constitutional Court Decision No 221 of 29 May 2002.

[78] For a full study of the Court's case law on the *interna corporis*, cf. G.G. FLORIDIA, "L' 'ordinamento parlamentare,' Ipotesi di lettura della giurisprudenza costituzionale," in AA. VV., *Principio di eguaglianza e principio di legalità nella pluralità degli ordinamenti*, Annuario 1998 de l'Associazione dei costituzionalisti italiani, Padova, 1999; C. EPOSITO, "La Corte Costituzionale in Parlamento," *Giur. Cost.*, 1959; P. BARILE, "Il crollo di un antico feticcio (gli interna corporis) in una storica (ma insoddisfacente) sentenza," *Giur. Cost.*, 1959. On the Court's more recent case law developments, and in particular Decisions No 120/2014 and 262/2017, see G. BUONOMO, "Il diritto pretorio sull'autodichia, tra resistenze e desistenze," *Forum di Quaderni costituzionali*, 13 May 2014; N. LUPO, "Sull'autodichia la Corte Costituzionale, dopo lunga attesa, opta per la continuità (nota a Corte Cost. N. 262 del 2017)," *Forum di Quaderni costituzionali*, 21 December 2017; R. DICKMANN, "La Corte costituzionale consolida l'autodichia degli organi costituzionali," *Federalismi.it*, 20 December 2017.

[79] For a full study of the Court's case law on the *interna corporis*, cf. G.G. FLORIDIA, "L' 'ordinamento parlamentare,' Ipotesi di lettura della giurisprudenza costituzionale," in AA. VV., *Principio di eguaglianza e principio di legalità nella pluralità degli ordinamenti*, Annuario 1998 de l'Associazione dei costituzionalisti italiani, Padova, 1999; C. EPOSITO, "La Corte Costituzionale in Parlamento," *Giur. Cost.*, 1959; P. BARILE, "Il crollo di un antico feticcio (gli interna corporis) in una storica (ma insoddisfacente) sentenza," *Giur. Cost.*, 1959. On the Court's more recent case law developments, and in particular decisions No 120/2014 and 262/2017, see G. BUONOMO, "Il diritto pretorio sull'autodichia, tra resistenze e desistenze," *Forum di Quaderni costituzionali*, 13 May 2014; N. LUPO, "Sull'autodichia la Corte Costituzionale, dopo lunga attesa, opta per la continuità (nota a Corte Cost. N. 262 del 2017)," *Forum di Quaderni costituzionali*, 21 December 2017; R. DICKMANN, "La Corte costituzionale consolida l'autodichia degli organi costituzionali," *Federalismi.it*, 20 December 2017.

Fourth round table

Under the chairmanship of Prof. Stéphanie DAMAREY,

Professor at the University of Lille

Financial autonomy of parliamentary assemblies in unitary countries in Europe

A critical debate on the public financing of France's bicameral legislature

Mr Harold DESCLODURES[1], *Senior Lecturer at the University of Côte d'Opale*
Prof. Vincent DUSSART[2], *Professor at the University of Toulouse*
and Mr Laurent DOMINGO[3], *Master of Requests for the Council of State*

I. The administrative autonomy of France's parliamentary assemblies

A guarantee of the effective separation of powers, the independence of parliamentary assemblies implies their functional independence from the executive branch. To freely exercise the powers conferred on them by the Constitution, they have the necessary legislative and material means to exercise these powers on their own, i.e. they enjoy both financial and administrative autonomy. As Eugène Pierre summarised it, "if assemblies are to be independent, they must be the masters of their own home."[4]

Administrative autonomy can be assessed according to five main criteria:[5] the normative capacity of the assemblies in administrative matters; the legal capacity of the assemblies; the internal organisation of parliamentary administrations and the situation of staff; and the management and protection of premises. These elements constitute a lens by which to analyse the administrative autonomy of France's parliamentary assemblies. However, even if common features and rules exist, within a bicameral legislature administrative autonomy must also be considered as specific to each parliamentary assembly. At the outset, one should note that, contrary to financial autonomy,[6] there is no textual basis for such administrative autonomy.

Recognising the benefits of an organisation providing the material support for the Parliament's constitutional missions as a body of the State implies instilling this organisation with some form of

[1] Mr Harold DESCLODURES wrote the first part of this contribution.
[2] Prof. Vincent DUSSART wrote the second part of this contribution.
[3] Mr Laurent DOMINGO wrote the third part of this contribution.
[4] E. PIERRE, *Traité de droit politique, électoral et parlementaire*, N°1181, p.1348.
[5] Commonly used criteria for comparison.
[6] Enshrined in Article 7 of Ordinance 58-1100 of 17 November 1958 and the case law of the Constitutional Council 2001-448 DC of 25 July 2001 and 2001-456 DC of 27 December 2001.

normative autonomy. This right to "self-organisation" of parliamentary bodies thus characterises their autonomy. However, the Ordinance of 17 November 1958, on the functioning of parliamentary assemblies, provided a framework for this normative autonomy (in particular by expressly providing that the administrative judge is competent with regard to the administrative activity of the parliamentary assemblies.)

These provisions are supplemented by rules of procedure[7] freely adopted by the Bureau of each assembly in accordance with a "Permanent Delegation of the Chambers" provided for in the Rules of Procedure: services and staff regulations, accounting regulations, rules of procedure for public procurement, pension and social security regulations, and, of course, the Bureau's general instructions (BGI).[8]

Although much progress has been made in the disclosure of these standards, the full set of acts is not accessible, including the regulations on parliamentary staff. However, Article 32 of the National Assembly's BGI provides that "the regulatory acts of the National Assembly, **the publication of which is determined by the Bureau**, shall be the subject of an insertion in the Official Journal." Even if such a provision is not included in the Senate's BGI, sometimes acts are published in the OJ.[9]

Although they have no legal personality and because they have to act freely, the assemblies have wide room to manoeuvre, in the name of autonomy. Although they act on behalf of the State, as a component of the State, giving the assemblies a broad legal capacity strengthens their autonomy.

Parliament's procurement contracts are subject to rules determined freely by the Bureau and must be published in the *Official Journal*. It may therefore be assumed that Parliament carries out public procurement, which signifies that Parliament is a separate legal personality from the State. Article 74 of the National Assembly's budgetary, accounting and financial rules stipulates that "the award and performance of **contracts awarded by the National Assembly** shall be subject to the same rules as those applicable to State public procurement, subject to specific conditions laid down by Order of the Bureau."[10]

Other elements also point to the existence of a legal personality. The Chambers have bank accounts, financial investments and own resources,[11] such as the concessions obtained in the Luxembourg Gardens which provide royalties and consequently augment the Senate's allocations.[12]

Finally, Article 3 of the Ordinance of 1958 lays down that "these provisions shall apply to buildings assigned to the assemblies **as well as the properties they are entitled to use in any capacity whatsoever**." Similarly, Article 2 refers to **"buildings acquired or built by the National Assembly or the Senate."**

Thus, elements pointing to a legal personality do indeed exist, despite the 1958 text. However, it is more a de facto personality than a legal one. It stems from the advanced level of financial and administrative autonomy enjoyed by the assemblies, which sometimes makes a subtle distinction between the State and the parliamentary assemblies.

Given its administrative autonomy, it follows that Parliament's administrative functions, and management functions in particular, must be entrusted to "parliamentary authorities" or authorities chosen by them. However, the connection between the various players is complex due to the multiplication of authorities.

The parliamentary Bureaus lead the administration of each Chamber. However, due to the complexity and multiplication of Parliament's duties, this body does not directly act on the management of services. Indeed, some competencies are explicitly reserved to another authority by law, others are delegated to one of the Bureau members. The Bureau of the National Assembly is still competent to hear, subject to appeal and as a last resort, any disputes between civil servants and their assembly, as well as disputes "between the administration of the Assembly and persons or groups who are foreign to that administration."[13]

The presidents of Chambers and the quaestors exercise most of the administrative powers either directly or by delegation of the Bureau. The presidents of the assemblies play a particular role in the management of the parliamentary administration due to their own administrative powers which are recognised by the 1958 Ordinance. Representing their assembly and leading the debates remain their main functions, however. This is why the quaestors are the true "administrators" of the "parliamentary machine." They have traditionally carried out, by delegation of the Bureau, the administrative and financial tasks and are responsible for security by delegation of the president.

[7] Which, since 1848, have comprised most provisions of an administrative and financial nature.

[8] Since 1946.

[9] E.g. Decree of Quaestors of 3 July 2003, OJ 8/07/03, p.11580.

[10] Bureau Decree No 152-XIII of 6/04/11 (published in the OJ). Also Article 39 of the Senate's accounting rules.

[11] For all of these problems, see the acts of the Lille colloquium, *The Financing of Parliaments*.

[12] Around EUR 200,000 of provisional revenue each year since the 2011 revaluation of the fees levied on the 17 concession operators in the Gardens. Often over EUR 300,000 in implementation.

[13] Preamble of the Rules of Procedure on the organisation of services bearing on the status of the staff of the National Assembly

The specific features of the statutes of parliamentary officials also reflect parliament's administrative autonomy. However, the 1958 Ordinance helped redefine these statutes. Article 8 provides that the statute and pension scheme are drafted by the Bureau after consulting with the trade unions and professional associations, which represent the staff; it also stipulates that, in the event of an individual dispute, the court or tribunal shall decide in the light of the general principles of law and the fundamental guarantees granted to all State civil servants and members of the military referred to in Article 34 of the Constitution. Furthermore, the Constitutional Council, on the occasion of a PPRC (Priority Preliminary Rulings on the issue of Constitutionality),[14] stated that "on this occasion, the staff member concerned may, by way of exception, challenge the legality of the statutory acts on the basis of which the decision adversely affecting the member of staff concerned was taken and institute proceedings against the State." This possibility had previously been established by the Council of State.[15] In 2011, it stated that this principle thus satisfied the provisions of the ECHR "guaranteeing the right to a fair hearing and the right to bring an action before the Court."[16]

However, the complexity of the system, set up even though the law already regulates these matters, can be questioned. It is for this reason that we believe that the principle of the independence of the Chambers must be relaxed in order to allow the statute of the parliamentary officials, who are civil servants of the State, to be removed from the responsibility of the governing bodies of the assemblies, and restore it to Parliament's by bringing it into line with the law. The only "political" requirement for such a scheme would be an "abstention" from the Government. Finally, it should be noted that such a measure would also mean that the statute of parliamentary staff would be published in the OJ, and thus become public knowledge.

Since the French Revolution and the Estates General, the assemblies' free disposal of their premises is a central component of their independence. Today, this goes beyond the confines of the Chamber itself to encompass the idea of a parliamentary precinct, the management and security of which are also necessarily the responsibility of the parliamentary authorities. In France, the parliamentary precincts are laid down in Article 2 of the 1958 Ordinance, which provides for a list of the premises and buildings allocated to the two assemblies. The same article also states that "**buildings acquired or built by the National Assembly or the Senate shall be assigned to the assembly concerned by decision of its Bureau.**"

Therefore, the parliamentary precincts are much larger than the historic buildings assigned to the assemblies by law. Article 1 of the National Assembly's BGI lists all the buildings that form the assembly's precinct. For instance, the National Assembly recently acquired the Hôtel de Broglie from the State[17] for the sum of EUR 63 million.[18] The furniture and housing maintenance, which falls under the responsibility of the building maintenance service, is carried out by civil servants specialised in various trades. In the event of repairs or construction that exceed the skills of their civil servants and technical means, Parliament's services make use of works contracts. This control of the parliamentary space, both in terms of determining the premises and the means to maintain them, is even more apparent when it comes to protecting the parliamentary precincts. The Precinct Police belong to the Assemblies themselves, with the exception of the Sûreté (Security) Police, which belong to the presidents on the basis of the direct empowerment granted by the 1958 Ordinance. However, the Assembly Rules of Procedure provide that competency of the police shall also be handed over to the presidents who exercise it on their behalf.[19] The presidents are authorised to delegate this exercise to the quaestors. However, they retain the right to determine the importance of the military forces. Thus, the security is ultimately determined conjointly by the president and the quaestors. Practical tasks are the responsibility of specialised services and agents.

However, due to the separation of powers, neither the assemblies nor their components can take the place of the judicial authorities. In the event of an offence, two situations must be distinguished: one in which the criminal act is committed by a member of Parliament and another in which the offence is committed by another person. In the first case, the Rules of Procedure provide for a preliminary procedure adapted to the status of the individual concerned. The Bureau immediately reports to the Prosecutor General that a crime has just been committed in the parliamentary precinct.[20] If the matter concerns a non-parliamentary individual, the Bureau directly informs the competent

[14] Conclusion 2011-129 QPC, *Trade Union for Senate Staff*, 13 May 2011.
[15] CS 19 January 1996, Ress. No 148631, *Escriva*; CS 16 April 2010, Ress. No 326534, *National Assembly*.
[16] CS 28 January 2011, Ress. No 335708.
[17] On this point: Regulation on the budget and approval of the accounts for 2016 and the special allocation for the management of the State's real estate assets.
[18] The Bureau of the National Assembly confirmed the operation at a meeting on 20/12/17 to initiate EUR 20 million of development work projects with the goal to return a rental property and save EUR 2.5 million/year.
[19] Art. 90 of the SR and Art. 52-2° RAN
[20] Art. 98 SR and Article 78 RAN

authority. In the Senate, the Rules of Procedure[21] provide that, where appropriate, the offender is referred to the competent authority. Since the judicial police forces may only intervene in the parliamentary precinct at the request of the competent parliamentary authorities, the security guards and military members of the Republican Guard have the power to restrain the offender if he/she resists or until the judicial authorities arrive. This concept of the specific nature of judicial police operations within the parliamentary precinct is particularly evident in the case of the Luxembourg Gardens, which are open to the public. Since 2002,[22] Senate staff accredited by the Public Prosecutor[23] have been responsible for the park's surveillance. Therefore, they write reports on offences, which are punishable by the fine for first class offences. The complex nature of the relationship between the various police powers remains one of the perennial symbols of the separation of powers, in particular as the policing of surrounding areas is ensured by members of the national police force who, as we know, can, depending on the situation, represent both the administrative police, which is answerable to the executive power, and the judicial police, which is answerable to the judicial authority, even though security, which is incumbent on the parliamentary presidents, is entrusted to a military commander who has an important contingent of men at his disposal, allowing him/her to resort to the use of firearms when necessary.

II. The Financial Autonomy of French Parliamentary Assemblies

Ulpian's adage "*Princeps legibus solutus est*" aptly seems to fit the financial regime of France's parliamentary assemblies. Since 1789,[24] the parliamentary assemblies have benefited from a specific financial status theoretically justified by the separation of powers. The appropriations in question are not necessarily very significant given the size of the state budget but they do present a particular problem. History shows that this principle was applied more or less broadly depending on how parliamentary the regime was. The principle of self-organisation was recognized very early on, as of 1789, even though financial issues were not addressed immediately. Autonomy was limited under the authoritarian regimes, and the Empires in particular, even though, paradoxically, the quaestors were established by the senatus consultum of 28 Frimaire Year XII (20 December 1803). Parliament's autonomy became full and unconditional during the Third and Fourth Republics. The Fifth Republic has seemingly limited its autonomy. The first paragraph of Article 7 of Ordinance No 58-1100 of 17 November 1958 on the functioning of the parliamentary assemblies provides that "every parliamentary assembly has financial autonomy." The autonomy of this constitutional institution is thus defined by its greater or lesser degree of control over three fundamental financial elements: the free fixing of their appropriations; the free management of the latter; and the "adapted" monitoring of their implementation.

In fact, the financial autonomy of parliamentary assemblies falls under the broader framework of functional autonomy, which is broken down into regulatory, administrative and financial autonomy. In fact, the financial autonomy of the assemblies is two-fold: autonomy from the Government justified by the separation of powers, and autonomy from one another in compliance with the bicameral system. We shall first examine the budget preparation and adoption procedures before moving on to budget implementation and control procedures.

A. Preparation and Adoption of the Parliamentary Budgets

In turn, we will examine the preparation and adoption of budget allocations. These factors make it possible to measure the very broad autonomy of parliamentary assemblies in such matters.

The preparation of the allocations is the first indicator of the degree of financial independence of the constitutional public authorities. The executive power is usually responsible for preparing the budget. It is important to analyse the relationship between Parliament and the ministry responsible for the budget. In fact, the nature and intensity of this relationship determines the amount of parliament's freedom in fixing its appropriations, which can be considered an essential element of Parliament's financial autonomy. Constitutional public authorities cannot dispose of own resources as decentralised authorities or public institutions can. The degree of freedom cannot be measured by the amount of own resources but rather on the basis of the relationship between the Ministry of the Budget and the various constitutional powers.

[21] Art. 91 SR
[22] Now Art. 2 of the new Gardens regulation of 2016
[23] Modelled on Article L511-2 of the Internal Security Code
[24] See V. DUSSART, *L'autonomie financière des pouvoirs publics constitutionnels*, CNRS, 2000, p.23 et seq.

Pursuant to Article 38 of the Organic Law of 1 August 2001 on the Finance Act (LOLF), the budget preparation is entrusted to the minister of finance under the authority of the prime minister. However, this traditional pattern is modified for the parliamentary assemblies. The competent departments must send their appropriations request within the time limit laid down in Article 39 (1) of the LOLF. Therefore, the National Assembly and the Senate prepare their annual budget plans through the Secretary General of the Questure, which is under the authority of the quaestors.[25] At the National Assembly, the draft budget thus drawn up, comprising an expenditure and miscellaneous revenue forecast analysis, the amount of the allocation requested in the draft budget law and, where appropriate, a levy on the funds available to the Assembly, is then adopted by the College of Quaestors and presented to the Bureau of the Assembly, composed of the president, six vice-chairmen, three quaestors and 12 secretaries of the National Assembly. A relatively similar procedure is carried out in the Senate.

A major original feature of the procedure can be found in Article 7 of Ordinance No 58-1100 of 17 November 1958, which provides that "the appropriations necessary for the operation of the parliamentary assemblies shall be the subject of proposals prepared by the quaestors of each assembly and adopted by a joint commission composed of the quaestors of both assemblies. The committee shall be chaired by a chamber president from the Court of Auditors appointed by the president of the latter. It shall also include two magistrates from the same Court who serve in an advisory capacity. This committee shall adopt the proposals which are entered into the draft budget, to which is annexed an explanatory report drawn up by the committee referred to in the preceding subparagraph."

The assemblies do not debate their own allocations in public sessions. At no time do members of Parliament engage in any real debate, despite the efforts of some members. This is due in part to the general characteristics of the budget debate, but also, it seems, to a deliberate desire on the part of the parliamentarians, who do not actually vote on each allocation and who, correspondingly, voluntarily abstain from discussing certain allocations. There are a number of reasons for this. Prior to 1956, votes were held chapter by chapter. This obliged members of Parliament to make a genuine vote on the appropriations of the various constitutional institutions. Under the Fifth Republic, the disappearance of the chapter-by-chapter vote purely and simply abolished votes on the various appropriations entered into the draft budget. The LOLF introduced a mission-by-mission vote of the general budget. The assemblies therefore vote on each mission, which is divided into programmes. As far as the allocations of the assemblies are concerned, they are not approved allocation by allocation. The budget of the assemblies is set out in detail in the Government's annual performance project.

B. Implementation of the Parliament's budgets

The finances of the assemblies are incorporated into those of the State. Strictly speaking, the implementation of appropriations is the field in which Parliament's financial autonomy is the most advanced. Public sector accounting rules are usually highly prescriptive with regard to the procedures to be followed. These rules have been adapted to facilitate the specific procedures for the scrutiny of parliamentary budgets. Indeed, each House has its own accounting rules, which are essentially based on internal practices. In the case of the assemblies, it is rare to see the principles of public sector accounting applied purely and simply, which reflects the specific form of autonomy granted to them. These rules are now accessible. The accounting rules have finally been published.[26]

There is one fundamental element which should not be underestimated when it comes to political institutions: they are all chaired by non-permanent political leaders who are subject to election. In the case of the parliamentary assemblies, their presidents are the authorising officers for the expenditure of their respective assemblies. The commitment of expenditure results from the creation or recognition of an obligation on the part of the Assembly, for which the latter is accountable. It is prepared by the directors of the various departments responsible for managing appropriations under the authority of the Secretary General of the Questure. This falls within the functions of the quaestors. Liquidation occurs only after the managing departments have established a payment mandate on behalf of one or more creditors. It is legally carried out by the Secretary General of the Questure. Authorisations are the responsibility of the delegated quaestor. The payment of expenses is carried out

[25] Art. 3 National Assembly Budgetary and Accounting Rules and Article 3 of the Senate's Budgetary and Accounting Rules.

[26] Thus, the National Assembly's budgetary, accounting and financial rules take the form of a decree of the Assembly's Bureau. It lays down the internal financial rules of the National Assembly. This document was posted on the National Assembly website in November 2017. The Senate has done the same.

by the treasurer, who is an official of the Assembly. He/she is held responsible to the quaestors for the funds entrusted to him/her.

The treasurer is also responsible for revenue collection. He/she must be authorised by the delegated quaestor and authorises the managing departments to issue a revenue order to recognise this revenue and allow for its liquidation. This is done by the Secretary General of the Questure.

The assemblies must hold accounting records, such as an aggregated balance sheet and income statement. These include the accounts of: the National Assembly itself, the pension and retirement funds, and the two social security funds for members and staff. The balance sheet, the income statement and the notes on the accounts are drawn up according to the principles of the general accounting plan, subject to adjustments made necessary by the specific features of the National Assembly or the Senate and decided upon by order of the quaestors.[27] After the end of the financial year, the quaestors, in liaison with the Secretary General of the Questure and the Department of Financial Affairs, draw up an administrative account setting out the expenditure of the financial year. The purpose of these documents is to enable the various inspections to be carried out.

C. Endo-control of the management of the Parliamentary assemblies

The procedures for monitoring the implementation of parliament's appropriations are among the factors by which the specific financial autonomy that characterises them can be measured. This monitoring can be categorised as administrative, judicial or parliamentary according to the type of authority carrying out the inspection. Other scholars have classified these control operations chronologically. These classifications, as correct as they may be, cannot truly be applied to the control of parliament's finances. Internal controls within the parliamentary institutions do exist, but these checks vary and take on particular forms. The assemblies are virtually immune from checks by the Court of Auditors. This lack of external control of the assemblies is one of the fundamental characteristics of their financial autonomy.

The verification and clearance of accounts is the sole political responsibility of the National Assembly and the Senate. Thus, Article 16 of the National Assembly's Rules of Procedure provides for the appointment of a special committee to check and clear the accounts. This committee is made up of 15 members in a proportional representation of the parliamentary groups; it is renewed each year at the start of the ordinary session (members of the Bureau may not serve on the committee). There is a similar committee in the Senate.

The special committee responsible for verifying and clearing the accounts is the post-clearance audit body for the quaestors' accounting management. It has exclusive competence to authorise the quaestors to finalise the accounts of a financial year and leave their management to the Assembly's officials. This committee has a great deal of power: it can verify all the payment mandates issued in a given fiscal year on the spot. In addition, for a number of years it has published an annual report containing its analyses and comments on the accounts for the past financial year. The conclusions of the special committee responsible for verifying and discharging the Senate's accounts include the accounts of the *Public Sénat* news channel and the Luxembourg Gardens. In the event of accounting irregularities, the committees report to the president of the Assembly.

In Article 58 (5), the LOLF provides for the certification of the regularity, accuracy, sincerity and precision of the State's accounts by the Court of Auditors. It follows from the practice that, if there is no need for proper certification of the accounts of the assemblies, the Court must, in order to certify the accounts of the State as a whole, obtain a reasonable assurance of the quality of the accounts as a whole, and in particular attest to their exhaustiveness. The assemblies fall within this framework. The assemblies have decided to entrust a third-party entity with the mission to audit their own accounts with a view to their certification. After first having been entrusted to France's National Council of Public Accountants (CSOEC), this task has been assigned to the Court of Auditors since 2013. The president of the Court of Auditors addresses a certification report to the president of the concerned assembly for delivery to the president of the special committee.[28]

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Parliament's financial autonomy is a long-standing principle but it continues to be a part of its operation. It has been called into question, however, due to

[27] See e.g. Senate BAR p.27 et seq.

[28] See, for example, the National Assembly 2017 account certification report. https://www.ccomptes.fr/fr/publications/certification-des-comptes-2017-de-lassemblee-nationale

questions of transparency, which have become central to public debates. It seems that the counterweight of public opinion, alerted by the media, is alone capable of putting an end to practices which remain unclear[29] despite significant efforts of transparency. The principle of financial autonomy was born at a time when Parliament's power over the budget was not guaranteed. It thus became a guarantee for Parliament. Now, one can legitimately wonder whether these justifications for autonomy still exist and whether a new approach is not needed.

III. The administrative and financial autonomy of parliamentary assemblies in a comparative law approach (France, Spain, Italy)

As regards the administrative and financial autonomy of parliamentary assemblies, which involves issues relating to the organisation and functioning of the departments and the budget of the Houses,[30] it can be seen that, in a comparative approach to French, Spanish and Italian law, this autonomy is the most obvious in regards to financial matters (budget and accounting). It has been shown (see the previous contributions) that the rules on the preparation, approval, implementation and control of parliamentary budgets are quite specific and largely derogate from those of ordinary law. This is less true for the law applicable to parliamentary staff and property, as well as the administrative litigation of these assemblies, even if certain features can be identified and improvements envisaged.

A. Parliamentary staff

To ensure parliamentary autonomy, the staff of the assemblies are subject to a specific status and the hierarchical authority of the bodies governing the Houses. This status is adopted by the assemblies themselves. In France, the parliamentary staff are not covered by the general statute of the Law of 13 July 1983, but are governed by regulations adopted by the Bureaus.[31] In Spain, the parliamentary staff are subject to the joint staff regulations of the *Cortes Generales* (EPCG) under Article 72 of the Constitution. In Italy, the staff is subject to the Rules of Procedure adopted by the office of the president of the Chamber of Deputies and the council of the president in the Senate.

It should be noted, however, that the provisions applicable to parliamentary staff are mostly based on the essential rules of public service law, either by the obligation to comply with constitutional or legislative principles, or even with general principles of law or, perhaps also, in simple imitation of common law in instances where there was no need for parliamentary law to do otherwise. For instance, under French law, Article 8 of the Ordinance of 17 November 1958 provides that staff members "shall be civil servants of the State," that they are "recruited by competition," that their statute is established after the opinion of trade union organisations representing staff, and that this statute is subject to "the general principles of law" and the "fundamental guarantees recognised for all civil and military servants of the State referred to in Article 34 of the Constitution." Thus, parliamentary civil service is subject to the main principles of civil service law. In Spain, the EPCG includes references to the general legislation applicable to the state administration. For example, Article 39 (4) of the EPCG provides that the *Cortes Generales* civil servants' exercise of trade union, representation, participation, collective bargaining and strike rights is based on the conditions laid down in the Law on Civil Servants. Similarly, in Italy, the Rules of Procedure for the Chamber of Deputies' departments and staff refer to legislation applicable to civil servants so they are subject to the same scheme (e.g. Article 67 of the Rules of Procedure on salaries and allowances notably specifies that Chamber civil servants receive the same allowances as those laid down by the law, in addition to the special allowances provided for by the Rules of Procedure).

B. Parliamentary property

As regards goods and contracts, the overall picture is similar. The parliamentary assemblies also have specific rules (especially in regards to competence) which are generally justified by the Houses' need to act autonomously.[32]

However, in substance, the gap with general government law is relative, as most often the majority of this common law applies. Under Spanish law, for instance, the first additional provision of the Law on the Assets of Public Administrations provides that "the allocation of the property and rights of State assets to State constitutional bodies, as well as their decommissioning, administration and use, shall be governed by the standards laid down in these laws for the ministerial departments."[33] The differences between general law and parliamentary law are thus limited to jurisdic-

[29] This is reflected by recent articles on the Staff Regulations of the National Assembly. See, e.g., J. NOUAILHAC, "Les nababs de l'Assemblée nationale," *Le Point*, 5 June 2018.

[30] On parliamentary autonomy in general, see our thesis, *Les actes internes du Parlement. Etude sur l'autonomie parlementaire (France, Espagne et Italie)*, LGBJ, 2008.

[31] Article 2 of Law No 83-634 of 13 July 1983 on the rights and obligations of civil servants states that "This Act shall apply to civil servants of government administrations (...) excluding officials from parliamentary assemblies (...)," while Article 8 of the Ordinance of 17 November 1958 stipulates that "Agents serving in parliamentary assemblies shall be officials of the State whose status and retirement scheme are determined by the Bureau of the assembly concerned...."

[32] The case of the Luxembourg Gardens, which are assigned to the Senate, is the most surprising: Article 14 of the Law of 15 November 2001 on daily security has laid down that the Luxembourg Gardens rules are established by the Senate president and quaestors and that it has "the force of a police order," whereas Article 76 of the Law of 2 July 2003 on urban development and housing conferred "on the competent authorities of the Senate" the power to lay down "the rules applicable to the management of assets accumulated by the Luxembourg Gardens [...] as well as the rules relating to buildings, demolition, works, developments and installations in the perimeter and on the fences surrounding the Gardens," which allows the Senate to exercise full control over these gardens.

[33] Law No 33/2003 of 3 November 2003 on the heritage of public administrations.

tional issues.[34] In terms of contracts, it is also the national law which applies directly. The law on public sector contracts provides that the competent bodies of the Chamber of Deputies and the Senate shall conclude their contracts in accordance with the rules laid down for public administrations.[35] The Spanish parliamentary bodies are subject to general law, although the rules on jurisdiction may be adapted.[36]

As regards contracts in French parliamentary law, after the Council of State Administrative Claims Division's decision of 5 March 1999, *president of the National Assembly*, in which it ruled that "in the absence of special rules laid down by the competent authorities of the National Assembly, the contracts in question are governed by the rules of the Public Procurement Code,"[37] the National Assembly and the Senate established special internal regulations on the award of public contracts.[38] These regulations lay down the principle that the contracts "shall be governed by the provisions applicable to state contracts, subject to the provisions of this Decree, supplemented by orders issued by the quaestors." In sum, it is the ordinary law that applies, in particular the general principles of public procurement,[39] subject to some specific features.[40]

In Italian parliamentary law, the regulations of the Chamber of Deputies and the Senate also govern the contracts awarded by each of the Houses. These parliamentary rules reflect the general rules of common public procurement law, subject to minor adaptations. For example, Article 39 of the administrative and accounting rules of the Chamber of Deputies (as Articles 38 and 39 of the same regulation in the Senate) states that "All the Chamber's contracting party selection procedures and all of the Chamber's other administrative activities concerning works, services and supplies contracts shall be subject to the directly applicable European Union standards and, when not provided for otherwise in this Regulation, to the provisions of the current laws for State contracts." Thus, "it can be argued that the implementation of the contractual procedures does not, in its main lines, differ from those applicable for public administrations in general."[41]

C. The issue of controls

In France and Spain, Parliament's administrative activities are subject to judicial review. In France, pursuant to Article 8 of Ordinance No 58-1100 of 17 November 1958, the administrative judge (or, in certain cases, the judicial judge) has jurisdiction over a number of disputes: liability actions for damage of any kind caused by the departments of parliamentary assemblies; individual disputes concerning parliamentary staff (the regulatory acts are checked by the plea of illegality);[42] and individual disputes concerning public contracts. Article 60 of Law 2003-710 of 1 August 2003 on urban planning and renewal made it clear that these disputes (liability, staff liability and contracts) constitute the only litigation that can be taken against the parliamentary assemblies.[43]

In Spain, the statute of the *Cortes* staff (Article 35 (3)), Organic Law No 6/1985 of 1 July 1985 on the judicial branch (Article 58), and finally Law 29/98 of 13 July 1998 on administrative disputes have established the judicial review of Parliament's administrative activities. It allows the administrative court judge to exercise broad scrutiny in the area of parliamentary administration. Under Article 1 (3) of the Act, the administrative court has jurisdiction in disputes relating to "acts and provisions relating to staff, administration and asset management which are subject to public law adopted by the competent bodies of the Congress of Deputies [and] the Senate." Appeals are brought directly before the Supreme Court's Chamber of Administrative Proceedings (Article 12 (1) (c) of the Act).

The situation is different in Italy. Judicial immunity for Parliament's administrative activities is the principle. The Constitutional Court has validated the *autodichia* (or self-justice) system, which prohibits courts from knowing about the internal acts of the Chambers.[44] In return for this judicial immunity, the Italian parliamentary bodies have put in place, both in terms of staff and other administrative matters, relatively developed internal control mechanisms.[45] This system has not been called into question by the European Court of Human Rights. It considers that the provisions of Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms apply, but it states that "the power of the Italian Chamber of Deputies and other constitutional bodies to have an internal judicial system and to regulate independently the judicial protection of their employees and the legal relationships with third parties is not at stake," since "neither Article 6 (1) nor any other provision of the Convention oblige the States and their institutions to comply with a given judicial order." For the Court, "it is not a question of imposing on the Member States a given constitutional model set-

[34] Cf. P. DE PABLO CONTRERAS, "La actividad de las Asambleas legislativas en el tráfico jurídico inmobilario," *Revista Crítica de Derecho Inmobiliario*, 1989, No 573, p.285.

[35] Additional provision 1a of the Law on public sector contracts (revised by Legislative Decree 3/2011 of 14 November 2011 and Law 25/2013 of 27 December 2013).

[36] On this subject, see J. J. LAVILLA RUBIRA, "La contratación de los órganos constitucionales," *in* B. PENDAS (ed.), *Derecho de los contratos públicos*, Praxis, Barcelona, 1995, p.159.

[37] CS, Ass., 5 March 1999, *Président de l'Assemblée Nationale*, RDCE, p.42 concl. C. BERGEAL, *Les Grands arrêts de la jurisprudence administrative* (with references).

[38] In the National Assembly, see the Rules of Procedure on public procurement (Order of the Bureau of 6 April 2011 and Orders issued by the Quaestors on 13 April 2011 and 31 July 2012).

[39] In any event, the public procurement law of the parliamentary assemblies is subject to the general principles of public order and to the requirements imposed by European Union law (the Court of Justice of the European Communities has held that the legislative bodies fall within the scope of "the concept of state within the meaning of the Community directives on public works contracts," cf. CJEU, 17 September 1998, *Commission v. Belgium*, Rec. 1998-I, p.5063).

[40] On this subject, see notably J. BONNET, "Le contrôle des marches passes par les Assemblées parlementaires. Les repercussions de la jurisprudence 'Président de l'Assemblée Nationale' (CE, Ass., 5 mars 1999)," in *Contrats publics. Mélanges en l'honneur du Professeur Michel GUIBAL*, University of Montpellier I, 2006, Vol. II, p.317.

[41] L. FIORENTINO, "L'autonomia contabile e finanziaria degli organi costituzionali," in C. D'ORTA, F. GARELLA (eds.), *Le amministratzioni degli organi costituzionali. Ordinamen-to italiano e profili comparati*, Editori Laterza, Rome-Bari, 1997, p.357.

[42] On this subject, see our comments on "QPC et contentieux administrative des assemblées parlementaires," note under CS, 24 September 2010, Decurey, No 341685, JCP A, 2010, No 42, 2303 and "QPC et contentieux administrative des assemblées parlementaires," note under CS, 21 March 2011, Association of Senate Officials, No 345216 and CC, 2011-129 QPC of 13 May 2011, Association of Senate Officials, JCP A, 2011, No 24, 2212.

[43] Such a provision is surprising. It did not prevent the Paris Administrative Court and the Paris Administrative Court of Appeals from considering cases concerning urban planning decisions at the Luxembourg Gardens (e.g. CAA Paris, 10 March 2008, No 05PA04644).

[44] CCI, Decision N°154, 6 May 1985, *Giur. cost.*, 1985, p.1078.

[45] Cf. our thesis op. cit., *Les actes internes du Parlement. Etude sur l'autonomie parlementaire (France, Espagne et Italie)*, p.411 et seq.

tling in some way the relations and interaction between the various State authorities. The Italian legislature's decision to preserve the autonomy and independence of the Parliament by acknowledging its immunity from ordinary courts cannot in itself be an object of challenge before the Court."[46]

Nevertheless, strong arguments, based on respect for the general rules of the State to which the Assemblies are subject, call for a greater degree of judicial control, both in administrative and financial matters, of the activity of parliamentary assemblies and thus for the end of "the anachronistic doctrine of the incontestability of the *interna corporis*."[47] Judicial review does not imply a limitation of parliamentary autonomy. The mission of the judge is not to negate Parliament's autonomy, but to ensure it is respected, within the limits of the overriding principles of the legal system. Indeed, it can be seen that parliamentary autonomy has not been diminished in countries where its administrative activities are subject to judicial control. In fact, the judge can thus guarantee the protection of parliamentary autonomy. At the same time, in the case of assemblies, this is also a matter of political importance affecting Parliament's legitimacy and the demands of "controlled transparency" (D. Lamarque).

[46] Cf. ECHR, 28 April 2009, Savino et al. v. Italy (Nos 42113/04, 17214/05, 20329/05).

[47] J.C. DA SILVA OCHOA, "El derecho del Parlamento," in J.C. DA SILVA OCHOA (coord.), *Instituciones de derecho parlamentario. I. Las fuentes del derecho parlamentario*, Parlamento Vasco, Vitoria-Gasteiz, 1996, p.18.

A critical debate on the financial autonomy of the Romanian parliament

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Romania[50] is a unitary state and constitutional democracy[51] organised under the principle of the separation of powers between the three branches of government – legislative, executive, and judicial – and the checks and balances between them. Since its creation in 1862, the Romanian Parliament has traditionally been a bicameral legislature, except during the communist era, a period during which it only had a single house. The desire to put an end to the top-down policies that characterised the communist era was an impetus for Romanian voters to return the legislature to its former bicameralism by recasting the Romanian Parliament as a legislature composed of two houses, the House of Representatives and the Senate[52]. Senators and representatives are elected to four-year terms by universal suffrage in free, secret, and equal popular elections. Both representatives and senators are elected via the same voting mechanism, that is, by party-list proportional representation[53]. The manner in which the two houses are organised and function, as well as their funding, is set out in the Constitution and in a number of legislative and regulatory texts. In a first part (I), this article will analyse the rules for creating, implementing, and auditing the budgets of the two houses – which are the result of a patchwork of laws and regulations governing the Romanian Parliament – setting the stage, in a second part (II) for the evaluation of the quantitative change in the two houses' budgets, as well as the different ways of overseeing their spending.

I. The multifarious framework of budgetary rules governing the Romanian parliament

A first section (A) will show that the constitutional and statutory enshrinement of the Parliament's organisational, administrative, and financial independence has not prevented Romanian lawmakers from subjecting the budget implementation of the two houses to a dual oversight mechanism, which will be discussed in a second section (B).

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[49] The second part was written by Ms Verginia VEDINAS.

[50] Romania neighbours Bulgaria to the south, the Republic of Moldova to the east, Ukraine to the northeast, Hungary to the northwest, Serbia to the southwest, and the Black Sea to the southeast. Its territorial area measures 238,391 km^2 (92,043 sq. mi.), and it is home, according to the latest census data from 2011, to a population of 20,121,641 inhabitants. The country's official language is Romanian (a Romance language). Its currency is the "*leu*" (plural: *lei*): 1 euro = 4.5 lei [G. CONDURACHE, *Le pouvoir local roumain*, 2013, 92 pp., ISSN 2112-5953, online at www.ola-europe.com.

[51] Article 1 of the Romanian Constitution of 8 December 1991 as amended by Law 429 of 23 October 2003 (amendment approved by a national referendum held on 18-19 October 2003).

[52] After bitter debate as to whether Romania's Parliament should be unicameral or bicameral among members of the Constitutional Assembly tasked with drafting Romania's first post-communist constitution, champions of a bicameral parliament were successful in pleading their cause. Article 58, Paragraph 2 of the Constitution of 8 December 1991 provides that "the Parliament is composed of the House of Representatives and the Senate".

[53] After the December 2016 elections, Parliament numbered 465 members (329 representatives and 136 senators), down 123 from December 2012 (588 members of Parliament – 394 representatives and 176 senators).

A. The constitutional and legal scope of threefold independence

The organisational and administrative independence of the two houses – reflected, among other things, by their constitutionally recognised right to establish their own rules governing their organisational structure and manner of operation, provides a guarantee of financial independence (1) and of independence in drawing up and implementing the two houses' budgets (2).

1) Organisational and administrative independence: A bedrock for financial independence

Article 64 of the Romanian Constitution sets out the general framework both for the organisational and administrative independence ("each house may freely determine the rules governing own its organisation and operation") and for the financial independence ("financial resources are specified in the budgets approved individually by each house") of Parliament. Consequently, the rules governing the implementation and boundaries of this independence can be found, among other places, in the provisions of the Romanian House and Senate Rules.

The general framework establishing the organisational independence of the houses is found in Article 64, Paragraph 2 of the Constitution. It provides that once elections for representatives and senators have been authenticated, each house must appoint a president[54] and a Permanent Bureau. Each Permanent Bureau is composed of 13 members, including the president of the house, four vice-presidents, four secretaries, and four quaestors. Under Article 21 of the Senate Rules and Article 16 of the House Rules, parliamentary groups are entitled to the financial resources needed for the secretarial and personnel costs required for their activities to take place under proper conditions, in addition to resources for transport and logistics.

In addition, the Institute of the Romanian Revolution of December 1989 (IRRD) was created and operates under the authority of the Senate, whereas the Romanian Institute for Human Rights (RIHR) operates under the authority of the House of Representatives[55]. The Senate receives most of its funding from the national government, along with some funding from its own resources, such as revenues earned through its "Center for Organizing and Promoting Events"[56] ; the House of Representatives, on the other hand, is entirely funded by the national government.

2) Independence in procedures for setting and implementing budgets

Romania's budget policy complies with EU requirements for budgetary oversight and avoiding excessive public deficits.[57] With regard to the House of Representatives and Senate budgets, the provisions of Article 34, Paragraph 2 of Law 500 of 11 July 2002, along with the provisions of the Romanian House and Senate Rules, provide that each house, after consulting with the Government, independently determines and approves its own budget. In this regard, the Senate draft budget is prepared by four quaestors, who then, under the terms of Article 40 of the Senate Rules, must send it to the Permanent Bureau for its opinion. The Permanent Bureau then sends the draft budget to the Senate floor for a vote by the senators in full session. In contrast, the House of Representatives draft budget is prepared by its Permanent Bureau, which, before sending it to the House floor for a vote by the House of Representatives in full session, must seek the endorsement of the House Budget, Finance, and Banking Committee[58].

Once they have approved and passed their budgets, the houses send them to the Government for inclusion in the overall national-government budget. The budget of each house is therefore part of the national government's overall budget, which is approved in a joint session of the Parliament. Even if the Government theoretically lacks the authority to alter the budgets proposed by the two houses, in practice, the Government's real influence – one might even say control – is far from insignificant[59].

The reality is that the legal and constitutional enshrinement of the Romanian Parliament's financial independence in creating, approving, and implementing its budget is not a synonym of independence free from any form of oversight of its spending.

B. The framework for dual oversight of spending

Considering that personnel costs represent a full? of a given house's budget expenditures,[60] an overview of the rather strict framework governing expenditures related to compensation for senators' and representatives' constituency-related and legislative duties (1), will make it possible to better understand the rules governing the oversight of – among other things – the budget implementation of the two houses (2).

[54] The presidents of the House of Representatives and Senate serve for the full term of office of both houses.

[55] The amount of the House of Representatives' 2018 budget earmarked for the RIHR is 1,449,000 lei (€322,000).

[56] Expenditures for the 2018 financial year financed by own-source revenues amount to a mere 642,000 lei (€142,666).

[57] J.-F. BOUDET and G. CONDURACHE, *A critical debate on the budgetary framework of Bulgaria and Romania*, in a special issue of the journal *Gestion et Finances Publiques* dedicated to the publication of the proceedings of the International Symposium on the Golden Rule in Public Finance in Europe and its Impact on National Budget Systems, organised by the University of Lille and the Lille Regional Institute of Administration, October 2014, pp. 21-27.

[58] The Budget, Finance, and Banking Committee is one of the 21 permanent committees of the House of Representatives under Article 60 of the House Rules.

[59] On this topic, see the remarks of Verginia Vedinas in Part II of this article.

[60] Of the total 195,336,000 lei (approximately €43,408,000) Senate budget approved for 2018, 144,967,000 lei (€32,214,888) represents personal expenditures related to the exercise of their representational and legislative duties. Similarly, in the House of Representatives, 392,800,000 lei (approximately €93,622,222) of the total 2018 budget of 421,300,000 lei (approximately €87,288,888) was earmarked for expenditures related to the exercise of their representational and legislative duties.

[61] For example, the gross monthly compensation for each senator was about 7,700 lei (approximately 1,700 euros) in 2017. It is scheduled to increase (to about 13,050 lei, or €2,900, per month) when the new Public Sector Remuneration Act (Law 153 of 28 June 2017) enters into force. The full array of its provisions will only take effect at the close of 2018.

[62] The same possibility exists for members of the lower house of Parliament who represent national minority organisations.

[63] When local governments are unable to make such spaces available for senators and representatives, they can be rented from other private individuals or companies, provided that they are not owned by the representatives and senators themselves or by their families, up until the 3rd degree of kinship; or, if they are companies, provided that the representatives and senators own no shares in the company.

[64] The budget allocated to organising and operating a given electoral district considerably varies from one district to the next, often due to the size of the county, its population, and, consequently, the number of representatives. According to the information available on the Senate's website, the highest-spending senate districts in November 2017 included: Bucharest (Romania's capital), with a monthly total of 157,053 lei (€34,900), composed of 88,420 lei (€19,648) in personnel costs and 156,965 lei (€34,881) in goods and services, or Jassy, with a total of 122,192 lei (€27,153), composed of 33,031 lei (€7,340) in personnel costs and 89,161 lei (€19,813) in goods and services. On the opposite end of the spectrum, the lowest-spending district is Ilfov, with a monthly total of 41,528 lei (€9,228), which includes 26,841 lei (€5,964) in personnel costs and 14,687 lei (€3,263) in goods and services.

[65] The net compensation for a senator in November 2017 was between 9,153 lei (€2,034) and 12,106 lei (€2,690), https://www.senat.ro/Financiar.aspx, consulted 28 February 2018.

[66] In November 2017, senators' travel costs to Bucharest for legislative activities totalled 389,412 lei (€86,536), while travel costs to electoral districts totalled 8,091 lei (€1,798). Representatives' transport costs in December 2016 reached a total of around 406,784 lei (€90,396).

[67] The total amount of which, for November 2017, reached 491,685 lei (€109,257) for senators, compared to 772,923 lei (€171,760) in lodging costs for representatives in December 2016.

[68] Each year, the president informs the Permanent Bureau of the House in question of the amounts actually spent during the course of the prior year.

[69] Article 45, Paragraph 1 of the Status of Representatives and Senators Act 2006.

[70] Article 45, Paragraph 2 of the Status of Representatives and Senators Act 2006.

[71] Article 37 of the House Rules.

1) The framework governing constituency-related expenditures and compensation for legislative duties

Personnel-related expenditures for the two houses fall into two main categories. The first (a) encompasses expenses related to MPs' representational duties in their constituencies, and the second (b) encompasses the compensation paid to those holding the office of senator or representative.

a) Constituency-related expenditures and their justification

For the purposes of carrying out their representational duties in the electoral districts they represent, senators and representatives receive a fixed allowance from the budget of the house to which they belong. The total amount of this allowance is determined by a decision at a joint meeting of the two houses' bureaus, in accordance with available budgetary resources. In this regard, although Article 38 of the Status of Representatives and Senators Act 2006 (Law 96/2006) does not place a maximum limit on the amount of this allowance, it does establish a minimum amount, providing that the "amount of the fixed allowance may not be less than the 1.5 times the gross amount of compensation paid to the representative or senator".[61] In light of this, within the limits of this allowance, Paragraph 2 of the same article entitles senators and representatives to jointly or separately create parliamentary offices in their constituencies.[62] The fixed allowance allocated to the senator or representative covers rent for the facilities used for constituency offices,[63] maintenance costs, the salary paid to the employees working there, and other expenditures for the organisation and operation of these offices.[64] Furthermore, senators and representatives performing parliamentary work who do not reside in Bucharest or in the county of Ilfov are entitled, under the terms of Article 41, Paragraph 1, to a daily travel allowance equal to 2% of the gross monthly compensation set for each representative or senator. In addition to the daily travel allowance, Paragraph 2 of the same article entitles members to a daily housing allowance out of the House of Representatives and Senate budget, proof of which can be furnished via a signed affidavit. In addition to expenses for senators' and representatives' representational duties in their constituencies, expenses for legislative duties must also be taken into account.

b)Compensation and expenditures for legislative duties and their justification

Under the terms of Article 42 of Status of Representatives and Senators Act 2006 (Law 96/2006), representatives and senators receive monthly compensation for the entire duration of their term of office, the amount of which is determined by law[65]. In addition to their monthly salaries, which are augmented by travel[66] and housing[67] allowances, Article 44 also entitles senators and representatives to so-called "protocol expenses" (gifts, business lunches/dinners, etc.). To this end, the House of Representatives Presidential Fund and the Senate Presidential Fund are annually approved in the budget of each house.[68] In addition, for their entire term of office, senators and representatives benefit from free rail transport,[69] and can also receive an official vehicle or, in lieu of an official vehicle, an allowance whose amount is set by the Permanent Bureaus in accordance with, among other factors, the available budgetary resources of each house.[70] Transport costs are covered by the budget of the house in question, with a signed affidavit from the representative or senator serving as probative evidence of the expenditure incurred. However, the budget implementation of both houses of the Romanian Parliament remains subject to two forms of oversight – internal and external.

2)Internal and external oversight of budget implementation

Under the legal and constitutional framework in place in Romania, the budgets of both houses are subject to two forms of oversight: internal and external. Internal oversight for the House of Representatives is carried out by the quaestors of the Permanent Bureau, who are responsible at the same time for overseeing asset management and the efficacy and performance of the different offices of the House of Representatives, as well as for carrying out financial auditing of the House's expenditures.[71] For the Senate, the provisions of Article 41 of the Senate Rules entrust the quaestors with proposing the draft budget and the balance sheet for the prior financial year, as well as with asset management and internal financial auditing of the Senate's expenditures. In addition to internal oversight, Romanian law also provides for external auditing by the Court of Audit, under the terms of Article 140 of the Constitution and the Court of Audit Act 1992 (Law 94 of 8 September 1992). As such, the Court of Audit oversees the drafting of each house's budget and

the use of national and public-sector funding. Consequently, pursuant to Article 25 of the Court of Audit Act 1992, the Court of Audit has exclusive jurisdiction to oversee, among other things, the House of Representatives' and Senate's budget implementation. An analysis of the quantitative data regarding changes in spending by the two houses of Parliament will render it possible to better grasp the reality of the Romanian Parliament's financial independence and its limitations.

II.The financial independence of the Romanian Parliament in practice (2016-2018)

A first part (A) will examine the limitations of the financial independence resulting from the implementation of the rules governing the procedures for adopting the budgets of the Romanian Parliament's two houses, followed by a second part (B) on the specificities of Court of Audit's oversight of Parliament's budget implementation.

A. Procedures for budget adoption and limitations to the principle of financial independence

In line with the principle of financial independence, the Senate and House of Representatives each adopt their own budget in accordance with their rules.[72] After adopting their budgets, they are required to send them to the Government for inclusion in the national government's budget, which is in turn sent to Parliament for approval in a joint session. The result of the foregoing is thus: both Houses of Parliament have full independence in determining their own budget ; this budget is then sent to the Government, though this is only done to allow it to be integrated into the national government's budget.

This means, were one to subscribe to a literal, logical-mathematical interpretation, that the role of the Government is confined to taking note of the budget determined by each house and simply integrating it into the national government's overall budget. Nowhere is it stated that the Government has any say in the content of either house of Parliament's budget – which more often than not amounts to budget reductions, rather than budget increases. Yet in reality, the Government, in its exclusive, all-powerful decision-making role, sometimes does exercise discretionary authority in its budgetary actions – such as, for example, when it attempts to adjust the amount of different budgets, such as those of the two houses of Parliament.

This article's quantitative analysis takes into account the period from 2016 to 2018, considering that each house of Parliament approves its own budget annually by a majority vote of its members[73]. For the Senate, the situation is as follows:

– Resolution no. 76 of 23 November 2015 on the 2016 budget;[74]

– Resolution no. 122 of 27 January 2017[75] on the approval of the 2017 Senate budget;[76]

– Resolution no. 122 of 27 November 2017 on the approval of the 2018 Senate budget.[77]

A comparative analysis of the budget over the three-year period shows that the 2017 budget was 45,000 lei (€10,000) lower, probably because it was passed during an election year. It can likely be surmised that Members of Parliament showed a certain degree of prudence and responsibility in drawing up the budgets sent to the Government formed in the wake of the elections. However, this attitude seems to have been abandoned in the 2018 budget, which calls for 75,000 lei in additional spending compared to 2017. For the House of Representatives budget, the situation is as follows:

– the 2016 House of Representatives budget was approved by Resolution no. 118 of 14 December 2015;[78]

– the 2017 House of Representatives budget[79] was approved by Resolution no. 6 of 16 January 2017;

– the 2018 House of Representatives budget[80] was approved by Resolution no. 89 of 29 November 2017.

The analysis of the House of Representatives' budgets for the last three years is similar to the one for the Senate, in that while in 2017, the total budget fell by nearly 105,000 lei, in 2018 it rose again by 174,000 lei. The House of Representatives budget is also nearly twice that of the Senate budget. This difference can be explained by the number of representatives in the lower house, which has more than twice as many members as the Senate.[81]

As it has already been noted, the Government does not merely "content itself" with integrating the two budgets into the national government's overall budget bill before sending it to Parliament for approval. Ordinarily, the government adjusts

[72] Article 21 of the Senate Rules and Article 25 of the House Rules.

[73] Article 76, Paragraph 2 of the Constitution provides that ordinary laws and parliamentary resolutions, aside from those concerning the House and Senate Rules or the rules governing joint sessions of the two houses of Parliament, must be adopted by a majority in both houses.

[74] The 2016 Senate budget, drawn from the overall national budget, amounted to 165,919,000 lei (€36,870,888), broken down into 159,119,000 lei (€35,359,777) in primary expenditures and 6,800,000 lei (€1,511,111) in capital expenditures.

[75] 2017 was an election year in Romania, and as such the budget was not adopted until 2017 (after authentication of December's parliamentary elections and the formation of a new Government in January 2017).

[76] The 2017 Senate budget, drawn from the overall national budget, was 121,576,000 lei (€27,016,888), broken down into 115,829,000 lei (€25,739,777) in primary expenditures and 5,747,000 lei (€1,277,111) in capital expenditures.

[77] The 2018 Senate budget, drawn from the overall national budget, amounts to 195,336,000 lei (€43,408,000), broken down into 188,681,000 lei (€41,929,111) in primary expenditures and 6,655,000 lei (€1,478,888) in capital expenditures.

[78] The 2016 budget for the House of Representatives, drawn from the overall national budget, was 340,772,000 lei (€75,727,111), broken down into 300,717,000 lei (€66,826,000) in primary expenditures and 38,046,000 lei (€8,454,666) in capital expenditures.

[79] The 2017 budget for the House of Representatives, drawn from the overall national budget, was 340,109,000 lei (€75,579,777), broken down into 322,615,000 lei (€71,692,222) in primary expenditures and 11,494,000 lei (€2,554,222) in capital expenditures.

[80] The 2018 budget for the House of Representatives, drawn from the overall national budget, amounts to 421,300,000 lei (€93,622,222), broken down into 392,800,000 lei (€87,288,888) in primary expenditures and 28,500,000 lei (€6,333,333) in capital expenditures.

[81] The Romanian Parliament currently numbers 329 representatives and 136 senators.

the proposed amounts, more often than not cutting them – even if, during its various modifications to the budget over the course of the year, the Government often reverses its course on reducing Parliament's funding. These circumstances are, at a minimum, worthy of criticism, because in order to properly plan and organise its activities for a given year, any public or private legal entity must have an idea of the amount of funding at its disposal from the very start of the year. This is why it is preferable for budget adjustments to be exclusively used to cover unforeseen expenses, rather than to cover expenses that were foreseen in initial budgets but deliberately struck from them for reasons that it is difficult to grasp and/or accept.

As for the public perception of expenditures used to cover the day-to-day operation of Parliament, as well as the expenditures of each of its members, it is obviously negative, owing, among other reasons, to citizens' negative perception of the status of members of Parliament.

B. Oversight of the creation and implementation of parliament's budget

Article 61 of the Constitution's classification of Parliament as the supreme representative body of the Romanian people does not imply, ipso facto, that its activities are free of all forms of oversight. The actual conditions for the yearly implementation of the budget – and, in the end, for public spending – are subject to the oversight of the Court of Audit.

Under Article 140, Paragraph 1 of the Constitution, the constitutional remit of the Court of Audit is to "exercise control over the formation, administration, and use of the financial resources of the State and public sector". Article 25, Paragraph 1 of the Court of Audit Act 1992 therefore logically provides that "oversight of budget implementation for the House of Representatives and Senate […] is the exclusive remit of the Court of Audit". As such, Parliament is one of the institutions whose budget implementation is subject to the exclusive oversight of the Court of Audit.

The Court of Audit carries out an ex post facto review of the prior financial year. Each year, the Court of Audit presents Parliament with the public report for the financial year of the year prior to the one in which a review was just performed.

The latest public report by the Court of Audit, published in 2016, highlights certain "errors and shortfalls" in the Senate's activities, "primarily in relation to the provision of certain guaranteed employee rights, planning for public expenditures, the documents required to authorise some expenditures, as well as the obligation to pay taxes for the economic activities of the Center for Organizing and Promoting Events".[82] For the House of Representatives, the Court of Audit observed "certain shortfalls with no significant impact on its financial affairs in 2016. The Court of Audit's observations concern non-compliance with income-tax-related provisions of the Tax Code, the lack of a distinct inventory of national-government property in 2016, and non-compliance with the full body of legal decisions related to the organisation, accounting, and transmission of fiscal and legal liabilities."[83]

The conclusion that can be drawn from the Court of Audit's report is that, while certain shortfalls – such as non-compliance with certain income-tax and sales-tax requirements – were observed in both houses' activities, broadly speaking, the budget implementation of both houses of Parliament is satisfactory, and the issues discovered are of little significance. In reality, they are due more to a failure to adapt to changes in legislation than to purposeful violations of the law.

[82] The Romanian Court of Audit, Public Report, 2016, p. 53.
[83] *Ibid*, p. 54.

PART TWO

Funding and the physical status of elected members of the Parliaments in Europe

▶ First round table

Under the chairmanship of the Prof. Martin COLLET,

Professor at the University of Paris 2 Assas

Funding and the physical status of elected members of the Parliaments in Europe

A critical debate on the financing of the material status of parliamentarians in the EU

Mr Gilles TOULEMONDE[1]
Senior Lecturer at the University of Lille;
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The remuneration of politicians is a subject that raises a great deal of distrust among citizens. "Overpaid," "shady deals," "hidden supplementary compensation," and other such expressions are what one frequently hears, and which often end with a "they're all rotten" fed by antiparliamentarianism and populism. It has to be said that, for a long time, the assemblies and parliamentarians themselves shied away from revealing their compensation and other parliamentary expense allowances, divulging only what they were willing to make public. This attitude may have contributed to these reactions and, at times, the individual or collective behavior of parliamentarians may have added fuel to the fire of antiparliamentarianism. Take, for example, in 1906 when the French Parliament secretly and hastily (the senatorial committee report was drafted in less than two hours) approved to nearly double their compensation,[3] or when the British MPs ended up getting reimbursed for expenditure that apparently had nothing to do with their mandate (such as dog food or a duck shelter).

[1] The first part was written by Mr Gilles TOULEMONDE.
[2] The second part was written by Mr Georges BERGOUGNOUS.
[3] Law of 23 November 1906 raising the amount of the allowance from 9,000 to 15,000 francs.

Now, antiparliamentarian sentiments can no longer be countered with opacity, but rather by efforts of transparency, the degree of which vary from country to country. This greater transparency goes hand in hand with a desire to be more honest when it comes to financial issues related to parliamentary mandates. Hence, many countries (such as Spain and France) froze or reduced the parliamentary allowance during the 2008-2015 economic crisis. Despite numerous changes, the financial status of parliamentarians continues to be a source of antiparliamentarianism and, from time to time, certain revelations show that a number of grey areas still exist, as was the case for the funeral expense allowance for French parliamentarians. The aim of this presentation is to shed light on these grey areas by addressing, first of all, the parliamentary allowance (I), then the parliamentary expense allowance.

I. Parliamentary allowance based on the very principles of democracy

A representative democracy cannot avoid providing a parliamentary allowance. It is thus generally found, in one form or another, in EU countries (A), but its very nature is a subject of debate (B).

A. Common foundations, but various implementations

Parliamentary compensation is a sine qua non for representative democracies, as it both ensures a more universal form of suffrage and promotes the independence of parliamentarians. Developing universal suffrage does not increase the democracy of the institutions if eligibility is restricted to the wealthiest individuals. As Fernand Gloria put it, something free of charge "is nothing but a hidden tax."[4] The movement to democratise institutions thus appears to make parliamentary compensations obligatory, especially since parliamentary incompatibilities and conflicts of interest do not allow members of Parliament to have other sources of income for their subsistence.

Moreover, the parliamentary compensation favours the independence of members of Parliament in two ways. First, by ensuring the fully representative nature of the term of office. At the time of the Estates General in France, the representatives of the clergy, the nobility and the Third Estate could be compensated by their constituents, but they were therefore very dependent on them. The allowance breaks this link between elected officials and voters and thus fully ensures the representative nature of the parliamentary term of office. Today, it is only in assemblies like the German Bundesrat that the term of office of elected officials is not truly representative. This explains why Bundesrat parliamentarians do not receive any specific compensation. Since they are members of the Länder governments, they are compensated by their state.

The compensation also permits the independence of parliamentarians by providing them with a means of subsistence that protects them from temptation. Accordingly, Villèle defended the parliamentary allowance in 1817: "In the absence of a parliamentary remuneration, one can see the germs of corruption among the members of the Chamber."[5] Although this argument is valid, it also raises the question of the fair level of parliamentary compensation.[6] Beginning at what amount of compensation will parliamentarians become immune to temptation?

As regards the amount of the compensation, countries can be categorized into several groups according to their "profligacy" towards parliamentarians. The most generous are Germany, Austria, Italy, Luxembourg and the European Parliament (gross monthly compensation in excess of EUR 8,000) compared to less than EUR 2,000 in Romania and Slovakia. Croatia, Latvia and Slovenia only provide a simple reimbursement. Although this reveals a difference between rich and poor EU countries, the perspective changes if we compare the parliamentary compensation to average salary, or the allowance to the standard of living. The amount of the allowance is rarely determined in the Constitution itself (except in Belgium[7]), which merely provides for the very principle of the parliamentary allowance. Generally, a law sets the amount, which already constitutes a limit to Parliament's financial autonomy since the government and any second chamber can intervene in the procedure. In addition, the law sometimes determines the amount of the allowance in reference to salary brackets or levels, which is a second limit to Parliament's financial autonomy. In France, the Organic Ordinance of 13 December 1958 states that the amount of the compensation is equal to the average of the highest and lowest salaries for "off

[4] Fernand GLORIA, *De l'indemnité parlementaire*, Thesis, Caen, Imprimerie E. Adeline, 1902, p.2.
[5] Cited by Jean SECHET, *De l'indemnité parlementaire et autres avantages accessoires*, Thesis, Poitiers, 1909, pp.22-23.
[6] Mr Charles GIDE considered that it was impossible to set a fair level of the allowance that would protect parliamentarians against temptation: "What a singular way of applying arithmetic to morality!" Mr Charles GIDE, "L'indemnité des membres du Parlement," *RPT*, 1907, p.221.
[7] Art. 66 of the Constitution.

the scale" State jobs. Similarly, in Estonia, parliamentarians receive an allowance equivalent to 65 % of the salary of the highest-paid official. In the Czech Republic, Bulgaria and Slovakia, the parliamentary allowance is equal to a coefficient of the average wage: 2.45 times the average wage in the Czech Republic,[8] and 3 times the average wage in Bulgaria and Slovakia.[9] This method of determining the amount of the parliamentary allowance has two advantages: it protects citizens from any increases of this allowance that they may deem to be unfair and avoids any drastic reduction or elimination of this compensation for electoral or demagogical reasons.

However, the amount of the compensation may vary depending on whether the parliamentarian belongs to the first or second chamber. Of the 13 European States with a bicameral Parliament, five provide an identical allowance for MPs and senators: Spain, France, Italy, Poland and Romania. For the other eight the amount is different. It is rarely to the advantage of the senators (this is the case in the Czech Republic), and most often to the advantage of MPs (the Netherlands where senators only receive a quarter of the amount of the allowance paid to the deputies; Austria, where they receive half). The remuneration of parliamentarians may also vary if they occupy specific functions: president, vice-president, or committee chairman. Assembly presidents sometimes receive compensation equivalent to that of the head of the Government (Sweden, Denmark), which reveals the importance accorded to Parliament in the institutional system. The assembly president's salary is three times greater than that of a regular member in Romania, and is approximately double in Germany, Austria, Spain, France and the Czech Republic. It is only 30 to 50 % more than the basic members' allowance in Estonia, Finland, the Netherlands, Poland and Slovakia. These differences in the implementation of the allowance are largely explained by a fundamental ambiguity regarding the very nature of the allowance.

B. A legal nature under debate

Parliamentary activity requires an investment in time, finance, intellectual availability and personal sacrifices, to the extent that it may lead to a certain degree of professionalisation. The existence of a remuneration for parliamentarians also contributes to this trend. And the positive law on this remuneration seems to constantly hesitate between the idea of a parliamentary term of office and the idea of a parliamentary profession.

"The word 'compensation,' both in its common meaning and in the language of law, does not apply to the remuneration of work, but rather the reimbursement of advances, compensation for injury, compensation for sacrifice or loss of time."[10] Does the remuneration of parliamentarians compensate for the sacrifices made, in which case it is a true compensation, or does it remunerate the work of parliamentarians, and thus should be viewed as a salary? Hesitations about this issue are constant. Thus, in France, the Ordinance of 1 September 1789 employed the term "*traitement*," or stipend, of parliamentarians; the term "compensation" did not appear until Year III (1794).[11] In reality, this change in terminology represented a desire to increase public acceptance of a remuneration for parliamentarians by designating it as nothing more than a simple compensation for the sacrifices made.[12] However, although the term "allowance" has remained, its employment is no longer consistent with the reality of today's parliamentary allowance. It is broken down into a basic allowance calculated in reference to civil service salaries (EUR 5,599.80), accompanied by a residence allowance of 3 %, which does not correspond to actual reimbursements of monthly housing costs in Paris (EUR 167.99), and, finally, a duty allowance equal to 25 % of the sum of the other two (EUR 1,441.95). The latter appears to be a genuine allowance, but in fact is not since other reimbursements for expenses also exist; it is therefore merely a supplement to the payment, or dare we say "stipend", of French parliamentarians.

This ambiguity between compensation and salary is frequent. In the Netherlands, parliamentarians receive a "compensation" (*schadeloosstelling*), i.e. a real indemnity. However, they are also entitled to a summer bonus and an end-of-year bonus, like any employee. In Finland, Lithuania and Bulgaria, the amount of the allowance given to parliamentarians increases with seniority and, in Bulgaria, it increases according to the diplomas they have earned. In Luxembourg, parliamentarians receive a 13th monthly allowance, and in Austria and Portugal they are even entitled to a 14th monthly allowance, just like some employees. Conversely, in Latvia, even though the Constitution mentions the existence of a stipend for

[8] Law No 236/1995.
[9] Law No 120/1993.
[10] André Baron, *Du caractère juridique de l'indemnité parlementaire*, Thesis, Paris, A. Pedone, 1905, p.6.
[11] Ibid.
[12] Moreover, the Ordinance of 1789 had not been published. Jean Sechet, op. cit., pp.6-7.

parliamentarians,[13] they are only entitled to capped reimbursements from Parliament for their expenditure.

This ambiguity affects the financial and tax status of parliamentarians. If the remuneration of parliamentarians is simply a reimbursement, there are no grounds for taxation. If it is more a stipend or a salary, then it must be subject to income tax. For instance, in Croatia and Latvia, where parliamentarians are only reimbursed, the reimbursements of incurred expenses or compensation envelopes are not subject to income tax. When the allowance is more of a parliamentary stipend, it is subject to income tax, and only supplementary allowances are tax exempt in so far as they are mission expenses.

However, some singularities exist. Firstly, sometimes there are supplements to the basic allowance which are not true duty expenses, but which are not subject to income tax. This was long the case for the duty allowance in France and is still the case for the annual supplement Danish parliamentarians receive (EUR 8,210 and even EUR 10,947 for deputies from Greenland and the Faroe Islands). Similarly, 50 % of the Luxembourg parliamentarians' allowance is considered to cover duty expenses and is thus tax exempt. Secondly, sometimes the opposite is the case and allowances for certain duty expenses are subject to taxation. Thus, only two-thirds of the daily travel allowance for Swedish parliamentarians is tax exempt, and in the Czech Republic, the allowances for transportation and miscellaneous expenses are subject to income tax in full. The third particularity concerns allowances paid to those who perform certain functions (assembly president, vice-president, committee chairman, etc.). These are taxed in all countries, but are partly tax-exempt in the Netherlands.

Finally, the choice of the term "compensation" to refer to the remuneration of parliamentarians is not satisfactory. This reflects how difficult it still is to win public acceptance of the remuneration of parliamentarians. We should contemplate the words of Bourdon de l'Oise of 24 nivôse Year III (13 January 1795): "There are only three ways to exist: as an employee, a beggar or a thief."[14] To keep parliamentarians from being described as the latter two, we should use the term "stipend" or "salary" instead of parliamentary compensation, and leave "allowance" or "compensation" to designate the reimbursement of duty expenses.

[13] Art. 33 of the Constitution.
[14] Cited by Jean Sechet, op. cit., p.12.

II. Financing of the parliamentary expense allowance

The parliamentary allowance, or parliamentary salary so to speak, is only one facet of the financing of the material status of parliamentarians. Several strata can be added. First of all, there is the financing of the staff of the elected representatives. Several methods can be envisaged, from the provision of a dedicated appropriation enabling each parliamentarian to recruit his/her own staff (this is the case in Germany, France and the United Kingdom) to the centralisation of staff by the political groups (the Netherlands, Spain). In the latter case, the parliamentarian does not have his/her own personal staff, unless he/she pays them with his/her own funds. These mechanisms can, of course, be combined, as is the case in France and for the European Parliament.

Secondly, in one way or another all Parliaments reimburse expenses either directly or by providing benefits in kind. For example, they all provide a furnished office, phone lines, IT equipment, and other such advantages, which can even include transportation or residence facilities, as is the case in Denmark or France. However, all Parliaments do not cover the costs of a term of office in the same way. In some countries there is no specific mechanism other than the parliamentary allowance. This is true for Switzerland, Finland or the Netherlands, and, in Luxembourg, duty expenses are only taken into account via the non-taxation of a portion of the parliamentary allowance. In the main democracies, however, parliamentarians are reimbursed for expenditure related to their duties. But not all Parliaments use the same methods to cover expenses (A) or control them (B).

A. Two ways of covering expenses

There are two main methods: the first involves reimbursing expense claims, while the second consists of providing a fixed allowance. The first system is characteristic of Anglo-Saxon parliaments, while the second is common in parliaments influenced by Roman-Germanic law.

As for a private company, reimbursing duty-related expenses, upon presentation of proof, appears to be the simplest mechanism. In the United Kingdom, for instance, all the expenditure

involved in carrying out parliamentary duties are precisely defined and governed by the Scheme of MPs' Business Costs and Expenses. The Independent Parliamentary Standards Authority (IPSA), an independent agency established in 2010, writes and revises the Scheme and is responsible for monitoring and reimbursing members' expenses. The expenditure covered and reimbursed by the IPSA is inscribed in distinct, non-fungible budgets. In general, since these are mainly reimbursements of real costs, the method for fixing expenditure and expenditure ceilings is quite complex. It is based on certain criteria, and primarily whether the parliamentarian is in the London area, which consists of ninety-six districts. In addition, any payment or profit received as a result of the function performed, unless specifically exempted, is subject to income tax. Similar mechanisms prevail in the major democracies of North America. Members of the US Congress have a very large annual budget to cover the costs associated with the exercise of their duties (an average of EUR 1.17 million for the House of Representatives and more than 3 million for the Senate) in the form of a ceiling for repayments, calculated on the basis of fungible components. Canadian parliamentarians may claim reimbursement of expenses incurred in the performance of their duties within the limit of the amounts set each year by the Bureau, depending on the nature of the expenditure. The reimbursement mechanism based on expense claims is undoubtedly more similar to ordinary law, but it has its disadvantages. According to the compliance officer of the National Assembly, "the precise nature of the information... could foster (a climate of suspicion) by providing fodder for derogatory and absurd remarks."[15]

This is why countries of the Roman-Germanic tradition, such as Germany and France, favour a system with a flat-rate compensation or advance. For example, in the Bundestag, in addition to the basic parliamentary allowance, which is subject to income tax, and a staff credit, German parliamentarians receive a non-taxable, flat-rate expense allowance of about EUR 4,300 per month. Among other things, this allowance covers the costs of installing and operating the member's permanent office, accommodation costs in Berlin, travel expenses other than those paid directly by the Bundestag, and mission expenses within the territory of the Federal Republic. There is no precise definition of the expenditure that can be covered by this allowance and no supporting documents are required to receive it. However, it may be reduced in the event of an absence of the member of Parliament. Other countries in Europe use comparable mechanisms. In Switzerland, the elected representatives of both federal chambers receive a yearly contribution of around EUR 30,800 for staff and material expenditure. Members of the Spanish Parliament receive a "compensation," a non-taxable allowance to cover expenditure related to their parliamentary activities. The same applies in Belgium.

A similar mechanism existed in France until this year. Although some costs were directly covered by Parliament, the parliamentarians received a net monthly "representative compensation allowance" (IRFM) of EUR 6,109.98 in the Senate and EUR 5,372.80 for the National Assembly, paid directly to the parliamentarian. As it was not a component of the basic parliamentary allowance, since 2002 it had been defined in Article L.136-2 of the Social Security Code as a "special expense allowance" paid by the assemblies to all members and not subject to income tax. According to the law,[16] it was deemed to be used fiscally in accordance with its purpose, which precluded any control by the tax administration. Members simply had to attest, in an annual sworn statement, to have made use of their representative allowance in accordance with the current regulations. This system was the subject of criticism. After the election of Emmanuel Macron, who had made a campaign pledge about this matter, the legislators wished to increase transparency in the public sector and thus combat populist tendencies, characterised by a recurrent antiparliamentarianism. The initial draft law stipulated that the assemblies would implement a mechanism to reimburse members' duty-related expenses upon the presentation of supporting documents, but it was amended to give the assemblies the choice between a direct coverage of expenses, a reimbursement upon presentation of supporting documents or the payment of an advance.[17] Both assemblies chose to replace the IRFM with a monthly advance for expenses, amounting to an equivalent of EUR 5,373 in the Assembly and EUR 5,900 to the Senate, to cover a particularly exhaustive list of expenses defined by decrees from the parliamentary Bureaus.[18] The major difference with the previous system lies in the control to

[15] Annual public report delivered by Noëlle Lenoir, chief ethics officer of the National Assembly, to the president and Bureau of the National Assembly, November 2013, p.54.

[16] Article 81 of the General Tax Code.

[17] Article 4e of Ordinance No 58-1100 of 17 November 1958 on the operation of parliamentary assemblies, inserted by Law No 2017-1339 of 15 September 2017 on confidence in political life.

[18] National Assembly Decree No 12/XV of 29 November 2017; Senate Decree No 2017-272 of 7 December 2017.

which the use of this monthly advance will henceforth be subject.

B. A check to find a balance

It is in the quality of the controls that the relevance of the financing mechanisms for parliamentary duty-related expenses can ultimately be measured. A balance must be found between two pitfalls, which are also a source of suspicion about elected representatives: excessive and expensive red tape, and a laxity that could lead to the unjust enrichment of parliamentarians.

The expense claim system is not in itself a token of a virtuous process, as the UK example illustrates. The administration of the House of Commons provided reimbursements upon the presentation of a supporting document. However, this opaque mechanism gave rise to massive abuses, such as the reimbursement of invoices for furniture, inexistent mortgage loans, and even dog food and a duck shelter. Given the extent of the scandal, several ministers, as well as the speaker of the House, were forced to resign, and, in May 2009, the Parliamentary Standards Act subjected the reimbursement of the MPs' expenses to a case-by-case check and full transparency. The Independent Parliamentary Standards Authority collects, processes and publishes all of the parliamentarians' expense claims. It employs 79 people full time and had an annual budget of around EUR 7 million in 2015. More than 50,000 expense claims are thus published annually, and include the name of the MP concerned, the date and type of expense, a short description, the amount requested and the amount reimbursed. A compliance officer, independent from the IPSA, is responsible for carrying out all the investigations necessary to determine whether any undue repayment has been made to a member of Parliament. The maximum punishment for a false declaration is a fine and one year of imprisonment. Similarly, in the United States, the categories of authorised expenditure have been specified by the Chamber's governing bodies and the representatives are given a guide ("The Members' Congressional Handbook"). They must send all their expense claims to the appropriate administration. In Canada, all requests for reimbursement, with supporting documents, are examined by the Chamber's administration, which ensures they are compliant. On a quarterly basis, the president of the House of Commons publishes a report on the expenses of each parliamentarian on the Canadian Parliament's website. However, the cumbersome nature of the mechanisms put in place, which subject the expenditure of parliamentarians to a dual control by the public and an administrative authority in the interest of maximum transparency, has been highlighted. It was the refusal to enter into the details of expense reports that led France's two assemblies to choose the IRFM mechanism.[19] But the lack of a control of the allowance, or a definition of its use, can only raise suspicions about a drift towards unjust enrichment.

The absence of checks most often characterises fixed allowance mechanisms, as is the case in Germany (where no supporting documents are required for payment), Spain, Belgium, and, until this year, France.[20] The risk of unjust enrichment could thus become reality. In France, the Commission for Financial Transparency in Political Life noted that "the amount of the representative compensation allowance (IRFM) contributes, for the duration of a term of office, to an enrichment ranging from EUR 1,400 to EUR 200,000."[21] Thus, in the absence of a check, a list of prohibited expenditure has gradually been developed. In the European Parliament, the main expenses which may be covered by the flat-rate expense allowance are listed. In case of doubt, MEPs are asked to contact European Parliament authorities. In France, the Bureaus of the assemblies have prohibited the use of the IRFM to acquire real estate and have defined the authorised expenses.[22] Moreover, at the beginning of the present legislature, the legislators wished to go further by assigning the body responsible for parliamentary ethics, under conditions laid down by the Bureaus, the task of verifying that the expenditure for direct payments, reimbursements and advances corresponds to duty-related expenses. From now on, the departments of the National Assembly, under the authority of the quaestors, conduct checks on the expenses that it covers directly or reimburses upon supporting documents. Checks on other expenses covered by the monthly advance are carried out by the National Assembly compliance officer according to two procedures: at the end of the fiscal year, on all of the member's accounts; during the fiscal year, at any time, on expenditure made by the member from his/her advance on expenses. The annual review is organised in such a way that all members are randomly checked at least once during the same parliamentary term. If the

[19] See the article by Prof. Aurélien BAUDU, "L'indemnité représentative de frais de mandate des députés et des sénateurs: manne financière scandaleuse ou indemnité parlementaire justifiée?" *RFFP*, 1 September 2013, No 123, p.169.

[20] "If the president of each assembly could refer the matter to the body responsible for ethics for any request for clarification concerning a parliamentarian's use of his IRFM, this possibility was not used," notes Éric BUGE in *Droit de la vie politique*, PUF, Coll. Thémis, 2018, p.266.

[21] 15th report of the Committee on Financial Transparency in Political Life. Official Journal of the French Republic, No 21 of 25 January 2012, p.1404.

[22] In February 2015, the Bureau of the National Assembly made it clear that expenditure for the permanent office, MP and staff travel, communication, representation and entertainment, and MP and staff training costs could be imputed to the IRFM.

compliance officer notices an irregularity regarding these obligations, the member is required to reimburse the unduly-paid expenses, unless he/she appeals the officer's decision to the Bureau. In the Senate, checks are carried out by the Ethics Committee, accompanied by the Conseil Supérieur de l'Ordre des Experts-Comptables (French National Board of Chartered Accountants) and the Compagnie Nationale des Commissaires aux Comptes (National Institute of Auditors). As the press has echoed the reservations that the compliance officer, in an advisory and confidential opinion, expressed regarding the mechanism implemented in the Assembly (namely that it is partial, incomplete and falls short of the objectives defined by the legislators), only time will tell whether these mechanisms ensure effective control, without going to extremes and while restoring citizens' confidence in their politicians.

A critical debate on the financing of the material status of European Parliament representatives

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According to a former German MEP, "the issue of the Staff Regulations is a matter of symbol, an eminently political question. The challenge is for the European Parliament to become a genuine Parliament."[23] A uniform statute would guarantee the independence and equality of the members of the only supranational organisation elected by direct universal suffrage,[24] which is now composed of representatives of the citizens of the European Union, in accordance with Article 14 of the TEU. Given the numerous elements involved, defining the statute of MEPs is a daunting task. Indeed, it implicates all the rules relating to the fulfilment of the parliamentary mandate, eligibility and incompatibilities, privileges and immunities and the rules of conduct concerning conflicts of interest. The material status necessarily involves financial matters such as the parliamentary allowance, social security and the reimbursement of the various expenses incurred during the exercise of their mandate. Hence, the statute has two components, one institutional, and the other financial.

The problem of transparency as a value, a principle, is central to the European Union, which is not a State like those of which it is composed. This problem has gradually been linked to the question of the statute of Members of the European Parliament. The empowerment of MEPs is often presented as a long, almost 30-year march, but although progress has clearly been made in terms of the harmonisation and empowerment of the European Parliament, the process of empowerment, which must now go hand in hand with the need for transparency, is evolving.

At the start of the construction of the European Community, before the first elections by direct universal suffrage in 1979, the Assembly was made up of delegates appointed by the national parliaments. The status was mainly set at national level, although the Act on the election of representatives to the Assembly by direct universal

[23] A4-0426/98. Mr Willi ROTHLEY, a German socialist MP, was a rapporteur of the Statute for MEPs for a number of years. "The challenge of the Statute for Members of the European Parliament is important, since it is an existential cause for the European Parliament: its independence. The law wants it to be material by the allowance and moral through immunity." See N. CLINCHAMPS, "Le statut des députés européens: beaucoup de bruit pour… si peu," *Petites affiches*, June 2009, No 116, p.43.

[24] A. ARCHIEN, "Les incompatibilités applicables aux députés européens: une assemblée, vingt-huit régimes," July 2014, No 152, p.61

suffrage of 20 September 1976 introduced uniform electoral principles, incompatibilities at European level and established the principle of the independence of the parliamentary mandate.[25] In the early 1980s, successive steps were taken to bring the status into line with the European Parliament's regulatory autonomy, which was recognised by the Court of Justice.[26] Some functional allowances were fixed by the Parliament's Bureau, as well as additional social security benefits. Parliament's rules of procedure also defined certain rights and obligations of an institutional nature. Privileges and immunities were governed by the Protocol on Privileges and Immunities of the European Communities (PPI), annexed to the Treaty of Lisbon via Protocol No 7, which provides for a mixed regime. Despite these elements of communitarisation, the statute for MEPs was complex, very heterogeneous and there were large disparities in terms of MEPs' allowances, as they were decided at national level. This issue crystallised tensions between the institutions and was one of the symbols of the struggle engaged by the MEPs against the Council for the adoption of a single statute.

In 1979, a working group entitled "Statute for Members" rapidly concluded that there was no legal basis for this project. However, the Resolution adopted in 1983 by this group set out the broad lines and "pursued a global and comprehensive view of a statute for members: a financial status and a legal status."[27] This resolution incited the Commission to react; it proposed a draft revision of the PPI and delivered its opinion on the draft statute of the members. However, this momentum was stopped by the Council and buried by its president, who stated that "the great complexity of the issues and their political sensitivity in several Member States did not make it possible to envisage significant progress within a foreseeable period."[28] History has proven him right, since this question was not resolved until 20 years later. The adoption of the Treaty of Amsterdam was a decisive turning point since Article 138 authorised Parliament to lay down the regulations and general conditions governing the performance of the duties of its members. Negotiations between the Parliament and the Council continued on the basis of two resolutions of 1998 and 1999 reminding the Council of its duty of sincere cooperation. The areas of disagreement concerned the amount of the parliamentary compensation, the inclusion of elements of primary law in the Statute of Members, which caused compliance issues with the hierarchy of norms, national taxation which could supplement the Community taxation of MEPs' remuneration, and the reimbursement of the expenses incurred during the exercise of the mandate.

On the basis of Mr Willi Rothley's 2003 report,[29] Parliament adopted a decision and a resolution on 3 and 4 June 2003, which was more complete and advantageous than the compromise reached by the Luxembourg and EP presidencies on 23 June 2005, the entry into force of which was postponed to the 2009 elections. After many years of struggle, this *a minima* compromise satisfied neither the MEPs nor the European institutions, let alone the lawyers, since the two parts that form the statute of the members – institutional and financial – are divided. Provisions of primary law concerning privileges and immunities are excluded from the statute of members in the strict sense. Incompatibilities continue to be governed by a mixed regime, while the financial part, which comes from secondary legislation, is governed by the new Staff Regulations of 2005. This relatively complex architecture is complemented by national laws, thus leaving specific features unchanged. In addition, a framework established solely by the EP has recently been laid down to clarify the application of this complex legislative framework and close its shortcomings, with the adoption of the Code of Conduct, which entered into force on 1 January 2012, and its implementing measures adopted in 2013. The Statute of the European Parliament is thus highly unique. Its unique nature is the fruit of a long struggle and is expressed by its unique architecture (I). This statute is now supplemented by standards, which only the MEPs can control (II).

I. The special nature of the financial status of MEPs

The Staff Regulations adopted in 2005 focus almost exclusively on the financial system of MPs. The few institutional rights laid down in Articles 2 to 8 of the 2005 Staff Regulations are not, according to scholars, "of any more interest than that of a simple repetition."[30] On the financial side, the issue of the members' parliamentary allowance crystallised tensions (A). Further progress was made in regards to social matters and the reimbursement of parliamentary expenses (B).

[25] Law of 20 September 1976 (OJ L 278, 8 October 1976, p. 5).
[26] Decision, CJEU, 15 September 1981. *Lord Bruce of Donington*, 208/80 ECR, p.2205.
[27] A. POSPISILOVA PADOWSKA and H. KRUCK, "L'émancipation difficile des eurodéputés. L'histoire et le contenu du statut des députés au Parlement européen," *CDE*, No 3/2010, p.225 et seq.
[28] Ibid.
[29] Report on the adoption of the Statute for Members of the European Parliament, by Mr Willi ROTHLEY, A5-0193/2003.
[30] N. CLINCHAMPS, "Le statut des députés européens: beaucoup de bruit pour… si peu," op. cit., p.43.

A. The MEP allowance: the major breakthrough of the 2005 staff regulations.

The most important issue for members of Parliament was the recognition of equality between the members of the democratic institution. Indeed, disagreement about the amount of this allowance largely kept the negotiations from succeeding for many years. Prior to the entry into force of the 2005 Staff Regulations, MEPs were paid by their national parliaments. This system led to very high inequalities between MEPs, ranging from 1 to 15 times as much, and these inequalities increased after 2004. For example, in 2004, a German MEP received an allowance of EUR 6,878, while a Spanish MEP barely got EUR 2,500 per month; a Hungarian MEP only received EUR 760. France was at the top end of the scale with an allowance of EUR 6,735.[31]

The new 2005 Staff Regulations put an end to these inequalities. Article 9 of the 2005 Staff Regulations now provides that "Members shall be entitled to an appropriate allowance that ensures their independence" and Article 10 specifies that the allowance shall be equal to 38.5 % of the basic salary of a judge of the Court of Justice.[32] In the previous negotiations, MEPs called for it to be half of the judge's basic salary, but they did not win out on this point.[33]

Since 1 July 2016, the monthly salary of MEPs, provided for in the Staff Regulations, has amounted to EUR 8,484.05 before compulsory deductions, thus resulting in a net sum of approximately EUR 6,600. It is subject to Community tax as is the case for all European officials, but there are three major differences. Firstly, MEPs cannot deduct professional expenses from European taxes, nor can they take family or social deductions. Secondly, unlike EU civil servants, MEPs do not pay the special levy, also referred to as the crisis or solidarity levy.[34] Last but not least, their allowances may be subject to national taxes, as provided for in Article 12 (3) and (4) of the Staff Regulations, which immediately reestablishes the inequality between MEPs based on their country of origin. When these provisions came into force, many States said they wanted to make use of this option, such as France, the Netherlands, Sweden and Spain, while others did not, such as Bulgaria, Hungary, Luxembourg and Poland.

To fully comprehend the compensation scheme, the issue of incompatibilities must be examined. A number of inequalities between MEPs can be observed as the incompatibility regime has been weakly harmonised. The Act of 20 September 1976 contains a number of incompatibilities, and is complemented by the TFEU. European sources regulate issues of European incompatibilities. Thus, an individual may not become a MEP if he/she is a member of the government of a Member State, a member of the European Commission, a judge, advocate general or registrar of the Court of Justice, or an ombudsman.[35] Since the 2004-2009 legislature, MEPs cannot also be a member of a national parliament.

Domestic sources address these issues internally. As the structures and cultures of the Member States differ widely, the system of incompatibilities is very heterogeneous. In 2014, a number of Member States banned MEPs from cumulating their European mandate with that of any local authority. Some, like Belgium, prohibit cumulation with certain local executive functions. In 2013, a large proportion of French MEPs also held local office (40.5 %), while only 4.1 % of UK MEPs, 11.1 % of Spanish MEPs, 22.2 % of German MEPs, and 24.7 % of Italian MEPs cumulated a second mandate.[36] In France, Organic Law No 2014-125 of 14 February 2014 prohibiting the cumulation of local executive functions with the mandate of MEP or senator will apply for the May 2019 elections. Curiously, no EU text has found any incompatibility between the parliamentary mandate and the exercise of a private activity, which has been the subject of recent changes but circumscribed in a more atypical normative framework studied in the second part of the present study.

B. Progress on Social Security Coverage and Reimbursement of Expenses

Before the entry into force of the 2005 Staff Regulations, the MEPs received pensions from their national schemes, supplemented by certain additional social benefits approved and paid by the European Parliament which rebalanced the differences arising from the national schemes. The new Staff Regulations established a Community pension and consequently a uniform system. This retirement pension granted on termination of service does not depend on MEPs' contributions, but is financed directly and fully by the EU budget. Under the Staff Regulations, at the age of 63 former members are entitled to a retirement pension equal to 3.5 % of their salary

[31] J-L SAURON, *Le Parlement européen*, Gualino, 2009, p.32.

[32] Articles 9 and 10, Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom).

[33] To put this gap into perspective, it should be noted that, according to the draft 2003 Staff Regulations, MPs still had to pay a contribution of approximately EUR 1,500 to the pension scheme, whereas, according to the rules adopted in 2005, no contribution to the scheme was necessary.

[34] The special levy was introduced by Council Regulation (Euratom, ECSC, EEC) No 3821/81 of 15 December 1981 amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the European Communities, OJ L 386, of 31 December 1981, p.1, which added to the Staff Regulations Article 66a, which introduced an "exceptional levy affecting, by way of derogation from Article 3 (1) of Regulation (EEC, Euratom, ECSC) No 260/68, remunerations, pensions and allowances for terminating the service of duties. By way of derogation from Article 3 (1) of Regulation (EEC, Euratom, ECSC) No 260/68 and in order to take account, without prejudice to Article 65 (3), of the method for updating the remuneration and pensions of officials, a temporary measure, hereafter called the 'solidarity contribution,' concerning remuneration paid by the Union to officials in active employment shall be introduced for a period beginning on 1 January 2014 and ending on 31 December 2023."

[35] Council Decision 76/787/CECA, EEC, Euratom (OJ L 278 of 8 October 1976, p.1), amended by Council Decision 93/81/CECA, EEC, Euratom (OJ L 33 of 9 February 1993, p.15) and by Council Decision 2002/772/EC, Euratom (OJ L 283 of 21 October 2002, p.1).

[36] A. ARCHIEN, "Les incompatibilités applicables aux députés européens: une assemblée, vingt-huit régimes," op. cit., p.61 et seq.

for each full year of parliamentary service.[37] In addition, the Statute for MEPs has standardised the health insurance at the European level. It covers two-thirds of medical costs and the costs associated with the birth of a child. At the end of their term of office and if they do not hold another mandate or civil service, outgoing members are entitled to a transitional allowance of an amount equal to their parliamentary allowance, but which may not exceed 24 months.[38]

Another decisive issue was the reimbursement of expenses linked to the exercise of the parliamentary mandate. The Staff Regulations reformed the system of reimbursement of parliamentary expenses, such as subsistence costs, travel and other costs. Under the previous regime, the European Parliament could reimburse the costs related to performing parliamentary duties by virtue of its power to issue internal organisational measures, in particular the many travel expenses. It was a flat-rate system, in accordance with the principle of good administration, as the courts indicated in the case law.[39] This system was criticised for being costly and somewhat opaque. The current reimbursement scheme is relatively generous, but is counterbalanced by the severity of the punishments for MEP misconduct or neglect of duties. In the interest of transparency and excellence, the new 2005 Staff Regulations adopted the principle of the reimbursement of actual costs instead of a lump sum allowance, in particular for expenses incurred for the travel of MEPs.[40] Travel expenses are reimbursed on the basis of the attestation of attendance and on presentation of the relevant travel documents. Members are entitled to the reimbursement of the costs of a single return journey per parliamentary working week, between their place of residence or the capital of their Member State of election and a place of work or meeting.[41] Travel expenses within the Member State of election may also be reimbursed for no more than 24 return trips per calendar year for journeys by air, rail or sea, while the reimbursement of costs incurred by car travel is subject to a kilometer cap and depends on the member's place of residence. Expenses for travel outside their Member State in connection with the performance of their duties, known as "additional travel,"[42] is also reimbursed at actual cost, but for up to a maximum of EUR 4,264 per year.[43]

The flat-rate allowance is maintained for other general expenses, such as the cost of organising and operating a member's office, communication costs, and the purchase of office supplies. The amount of this allowance in 2018 is EUR 4,416 per month. However, the allowance is reduced by half for members who, without valid justification, do not attend half of the plenary sessions in a parliamentary year (September to August). Parliament also pays a flat-rate allowance of EUR 306 per day to cover all other expenses incurred by members during periods of parliamentary activity, provided they certify their presence by signing an official register opened for this purpose. The allowance is reduced by half if members do not take part in more than half of the votes by nominal call in plenary, even if they are present. For meetings outside the European Union, the allowance is EUR 153 (subject to signature of a register) and accommodation costs are reimbursed separately. Lastly, Members of the European Parliament may choose their own assistants within the limits of a budget laid down by Parliament.[44] The Bureau of the European Parliament adopted a number of measures to implement the Statute on 19 May and 9 July 2008 in order to clarify its application,[45] to the point that certain members of the European Parliament's Legal Service believe that "given the minimalist nature of the provisions of the Statute for Members, the implementing measures gain in importance, by setting the conditions for the exercise of financial rights, the amount of the allowances and the internal procedures"[46]; they also have the great advantage of being determined only by the Parliament itself! Thus, by adopting the implementing measures, the European Parliament won back the autonomy it lost with the adoption of the Staff Regulations, since they were submitted to the Council for approval.[47] The European Parliament also increased its autonomy when it developed and adopted a Code of Conduct which entered into force in 2012 and was supplemented with implementing measures in April 2013. On the one hand, these developments show that the European Parliament is particularly disciplined when it comes to the question of financial declarations and conflicts of interest, and, on the other hand, that the demands of transparency and integrity reinforce this singular status.

II. A Status Reinforced by the Demands of Transparency and Integrity

Adopted on 1 December 2011,[48] the Code of Conduct is annexed to the European Parliament's

[37] But not more than 70 % in all. Cf. Article 14, Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom).

[38] Art. 13, Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom).

[39] Decision, CJEU, 15 September 1981. *Lord Bruce of Donington*, 208/80 ECR, p.2205.

[40] Art. 20, Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom).

[41] Art. 18, Decision of the European Parliament of 19 May and 9 July 2008 on implementing measures for the Statute for Members of the European Parliament.

[42] Art. 15, Decision of the European Parliament of 19 May and 9 July 2008 on implementing measures for the Statute for Members of the European Parliament.

[43] Art. 22, Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom).

[44] See the contribution of Mr Caron and M-F CLERGEAU to this publication.

[45] EP Bureau Decision 2009/C 159/01 of 19 May and 9 July 2008 on implementing measures for the Statute for Members of the European Parliament.

[46] A. POSPISILOVA PADOWSKA and H. KRUCK, *op. cit.*, p.225 et seq.

[47] See Prof. A. POTTEAU's contribution to this publication.

[48] Adopting the Code of Conduct was deemed necessary following the scandal caused by certain Members of the European Parliament who had accepted money from certain journalists in return for tabling amendments. A. ARCHIEN, "Les incompatibilités applicables aux deputes européens: une assemblée, vingt-huit régimes," op. cit., p.61 et seq.

Rules of Procedure (A). The Advisory Committee on the Conduct of Members is responsible for ensuring compliance with the various provisions (B).

A. Regulated Conduct

One of the main interests of the Code of Conduct was to obligate MEPs to declare financial interests and specify any conflicts of interest. The Code of Conduct is intended to ensure that a member reports promptly and in a transparent manner any actual or potential conflict. A real conflict of interest exists when a member has a personal interest which could improperly influence the performance of his/her duties as a member of the Parliament.[49] Former MEPs who professionally engage in lobbying or representative activities which are directly related to the decision-making process of the Union must inform the European Parliament thereof and may not, for the duration of such commitment, benefit from the facilities granted to former members in accordance with the rules laid down for that purpose by the Bureau. These include access to buildings, libraries, and the various services offered to members.

In addition, Article 4 of the Code states that, "For reasons of transparency, members shall submit, under their personal responsibility, a statement of financial interests to the President using the form adopted by the Bureau." For example, the MEP must declare: professional activities during the three years prior to taking up his duties in Parliament, as well as participation during the same period in committees or boards of directors of companies, non-governmental organisations, associations or any other body having legal personality. The member must also declare any regular paid work carried out in parallel to the performance of his/her duties, whether as an employee or a self-employed person; any paid occasional external activities must be declared if the total remuneration for these activities exceeds EUR 5,000 per calendar year.

According to a January 2017 report by the French National Assembly, the income grid declared by MEPs was greatly criticised by NGOs for its lack of precision, which justified its revision during the last amendment of Parliament's Rules of Procedure on 13 December 2016.[50] According to information published by the High Authority for Transparency in Public Life at the end of 2014, of 74 French MEPs, thirty were carrying out a professional activity, as a consultant or in a liberal profession in the majority of cases.[51] As regards the French Members of the European Parliament, French law supplements and tightens their reporting obligations. Under the Law of 11 October 2013 on the transparency of public life, French MEPs must submit an asset declaration to the President of the High Authority and a detailed declaration of interests, which are made public.[52] The Code of Conduct also addresses the issue of the gifts MEPs receive during their term of office: "Members of the European Parliament shall, in the exercise of their duties, not accept gifts or similar benefits other than those of approximate value of less than EUR 150 offered as a courtesy or those offered to them as an expression of courtesy when they represent the Parliament in an official capacity."[53] Gifts received under the courtesy rules by an MEP representing the European Parliament on an official basis can still be accepted. In principle, they are the property of the European Parliament. The self-regulation that the European Parliament exhibits by adopting these provisions would be futile if the breach of its code of conduct remained unpunished. An Advisory Committee ensures that the provisions of the Code are properly applied.

B. Supervised Conduct

The Advisory Committee on the Conduct of Members is composed of five members appointed by the president at the beginning of his/her term of office from among the members of the Committee on Constitutional Affairs and the Committee on Legal Affairs, taking into account the experience of the members and the political balance. Each member of the Advisory Committee becomes president, in turn, according to a six-month rotating presidency. The Advisory Committee's 2016 report reflects the extreme attention the Committee pays to the conception and performance of its mission. It was called on to examine eight cases of possible infringements of the Code of Conduct, involving a total of 11 members, compared to five in 2015. For example, four referrals concerned members who had travelled to third countries and then failed to submit a statement of participation to events organised by third parties, even though they were under an obligation to do so under Article 6 of the implementing measures of the Code of Conduct, since their travel, accommodation or subsistence expenses had been paid by

[49] Code of Conduct for Members of the European Parliament "User Guide," July 2013.

[50] Report No 4391, Committee on European Affairs, D. AUROI and N. CHABANNE, "La prévention des conflits d'intérêts dans l'Union Européenne," January 2017.

[51] http://www.hatvp.fr/presse/declarations-dinterets-des-deputes-europeens/

[52] Art.11 L. No 2013-907 of 11 October 2013 relating to the transparency of public life, as amended by L. No 2017-1339 of 15 September 2017 for confidence in political life.

[53] Art. 5, Code of Conduct for Members of the European Parliament concerning financial interests and conflicts of interest

the authorities of non-EU countries. In the event of a breach of the provisions of the Code, the penalties incurred vary. They may take the form of a reprimand, a loss of the right to the living allowance, a temporary suspension, or the president may present to the Conference of Presidents a proposal for the suspension or withdrawal of one or more mandates or duties that the person concerned exercises in Parliament.[54] These penalties are criticised for not being sufficiently dissuasive. The European Commission then suggested increasing the sanctions for violations of the Code of Conduct by opting for a temporary suspension or permanent dismissal.[55] The president recently asked the Committee to assess the increasingly common phenomenon of sponsoring, when certain MEPs promote events of a commercial nature on Parliament's premises, in cooperation with third parties such as interest representatives or professional associations. The Committee submitted its evaluation to the president and emphasised the members' obligations to report financial interests and conflicts of interest, while stressing the key role of the quaestors in this matter. The Advisory Committee, wishing to promote its best practices at the international level, was represented at the plenary session of the Council of Europe's Group of States against Corruption (GRECO) in 2016. The president of GRECO stressed the need to mobilise decision-makers to address the identified shortcomings in the prevention of corruption among parliamentarians, judges and prosecutors. GRECO's sixteenth activity report indicates that there is always a degree of urgency to regulate conflicts of interest and ensure the stability and clarity of anti-corruption legislation. Thus, "the regulation of relations between members of parliament and third parties, in particular lobbyists, should also be considered as a priority." The president of GRECO offered a conclusion with which it is difficult not to agree: "Drafting regulations does not suffice. They are of little interest if they are not put into good practice"[56].

[54] Article 8 (3) of the Code of Conduct for Members of the European Parliament concerning financial interests and conflicts of interest: the imposed penalty may consist of one or more of the measures set out in Article 166 (3) to (5) of the Regulation.

[55] COM (2016) 627 final, EUROPEAN COMMISSION Brussels, 28.9.2016 COM (2016) 627 final *Proposal for an Interinstitutional Agreement on a mandatory Transparency Register.*

[56] Sixteenth general report on the activities of the Group of States Against Corruption, "Transparency of political financing," adopted by GRECO, Strasbourg, 14-18 March 2016.

[57] A methodological choice, however, leads us to concentrate here mainly, and outside the cases of a unicameral system, on the lower chambers of the European States in the hypotheses of a bicameral parliament. Because the structures, functions and organisation of the high chambers are too different from one Member State to another to allow for a satisfactory and relevant comparison.

A critical cebate on the financing of the material status of parliamentary groups in the European Union

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At the junction of institutional and political logic, parliamentary groups appear to be hybrid entities: part parliamentary bodies, part political formations. Inscribed in the Constitution, recognized by the assemblies, governed by the Chambers' Rules of Procedure, organized in a customary manner… a multitude of situations and hypotheses exist.[57]

However, we shall argue here that the financing of the material status of parliamentary groups is a *telling indicator* of the group's position in the balance of the parliamentary system, its ambivalences also sometimes illustrating, at least in part, the political, institutional and parliamentary culture of a State. Seesawing between two ideal models, indicators of the strength of the groups and revealing something about the system to which they belong: on one end, a tradition favouring a more individual, rather than collective, approach to parliamentarianism, as can be observed in France; and, on the other end, a "parliament of groups" (*Fraktionenparlament*) or

even a "State of parliamentary groups," to use the terms that characterise the situation in Germany.[58]

The purpose of this study is thus to examine this issue from a constitutional and parliamentary perspective, and from a political law point of view, so as not to study the financing of the groups in itself or for itself but rather for what it *reveals*, in the photographic sense of the word. Because the financing of parliamentary groups makes it possible to highlight the ambiguous nature of these entities, which have nevertheless become essential elements in the functioning of contemporary representative democracies, and measure how difficult it is for them to find their place and assert their political and legal identity between the Assembly in which they were formed, the party or parties they represent in parliament, and the members who constitute it.

The financing of the parliamentary groups appears, therefore, to be an indicator of the practices, balances and questions raised, more broadly, by the parliamentary groups which must reconcile and interlace several competing logics – institutional and political, individual and collective: a telling indicator of the place held by these groups (I), their power (II) and their evolutions (III).

I. An Indicator of the Place Held by the Groups

The question of the financing of the groups first shows a hesitation about *the nature* of these parliamentary bodies. They may have different legal statuses (private individuals in their own right, a body of the assembly, the truncation of a political party) but the financing of parliamentary groups shows, always and concurrently, the links and distance between parliamentary groups and political parties.

In some cases, parties and groups are the same, or almost. This is the case in the United Kingdom. This is to some extent the case in Scandinavian countries, even though an initial differentiation appears. In other cases, despite a distinction between the parliamentary group and the political party to which the MPs belong, the issue of the public financing of the group is raised when the political parties' accounts are inspected. For example, certain laws on the financing of political parties refer to the contributions paid by the assemblies to parliamentary groups. The link between the groups and the parties is thus obvious when the political parties have to integrate into their own accounts the contributions the assemblies pay to the parliamentary groups. Depending on the situation, this can lead to problems with regard to the recognised autonomy of Parliament and/or the groups.[59]

The public funding of the material status of the groups therefore also raises the question of the political and legal status of the parliamentary groups, which find themselves at the juncture of political and institutional logic. The hesitations of certain countries and the reforms carried out by others emphasise the presence and importance of parliamentary groups in the life and operation of the assemblies, their role in Parliament and the difficulty of recognising their place both in relation to the assembly, of which they can only be a particular body, and vis-à-vis the political parties, with which they should not be confused. This is because the ultimate challenge is pluralism and the representation of the political forces involved. French concerns about the legal status of the groups and the case law of the Constitutional Council on this point illustrate this.[60]

However, the issue of group funding is also indicative of another common issue: the *need* to give parliamentary groups the material and financial resources necessary for them to carry out their task or function. In other words, by providing funding for the groups, Parliament acknowledges their importance in the life of the assemblies they structure.

Beyond the choice of the instrument enshrining the principle of public funding for groups – the Constitution (in Portugal), the law (in Germany), the Rules of Procedure of the Assembly (in most cases) –, there is a certain degree of consistency in the *method of calculating* the amounts allocated to groups. In the parliaments examined, the budget allocated to the parliamentary groups, by the assembly itself, is usually made up of a flat-sum allocation given in the same way to all the parliamentary groups, to which is added a variable allocation that depends on the number of MPs or representatives belonging to the group. This makes it possible to adjust the financial resources to the numerical size of each of the groups.

In Spain, for instance, under the Rules of Procedure and upon decision of the Bureau of the Congress of Deputies, each parliamentary group receives a fixed allocation of EUR 30,000 and a variable allocation of EUR 2,000 per member every month. The way the fixed or variable allocation is calculated

[58] A. LE DIVELLEC, *Le gouvernement parlementaire en Allemagne*, LGBJ, 2004, p.185 et seq.

[59] For example, the contribution that the Spanish Congress of Deputies allocates to its component parliamentary groups — and, as elsewhere, the financial support that the regional parliaments can allocate to the regional parliamentary groups — is one of the resources of the Spanish political parties controlled by the Court of Auditors, which considers this a problem. Similarly, in Portugal, the links between the financing of parliamentary groups and those of political parties is a recurrent difficulty for the entities in charge of control.

[60] CC Decision No 59-2 DC, 17-18 and 24 June 1959; CC Decision No 71-42 DC, 18 May 1971; CC Decision No 2006-537 DC, 22 June 2006; CC Decision No 2013-664 DC, 28 February 2013; CC Decision No 2014-702 DC, 16 October 2014; CC Decision No 2015-712 DC, 11 June 2015. For the analysis of these decisions, see P. AVRIL, "Le statut de l'opposition: un feuilleton inachevé (Articles 4 and 51-1 of the Constitution)," *Petites Affiches*, 19 December 2008, No 254, p.9, and J.-P. CAMBY, "Les groupes politiques dans les assemblées parlementaires françaises après la décision du Conseil constitutionnel du 16 octobre 2014," *Mélanges J.-P-Machelon*, LexisNexis, 2015, p.161.

differs in other countries. In Denmark, a grant of EUR 39,000 per month is awarded to all groups with at least four members, but this grant is only EUR 10,000 for groups with less than four representatives. Added to this basic grant is another allocation of just over EUR 6,000 per representative, regardless of the size of the group. There are also cases, such as in Belgium, where the subsidy is granted according to group size, but there is a differentiation as to the amount of staff they may employ using the Parliament's budget. In practice, this means 1 group secretary per group plus one associate per group of less than 10 members, 2 staff per group of less than 20 members, 3 staff per group of 20 or more members, plus 1.15 staff per group member.[61]

There is also a homogeneity *regarding the purpose of the groups' budget*: administrative, secretarial, personnel and communication costs, as well as the remuneration of certain functions. The assemblies also organise the provision of premises or offices.

In Italy, the Chamber's Rules of Procedure provide that the contributions to the groups are to be used "exclusively for institutional purposes concerning the activity of parliament and the related study, publication and communication functions, as well as expenses relating to the functioning of the bodies and structures of the Groups, including those concerning remunerations." (Art. 15.4 of the Chamber's Rules of Procedure). An examination of the accounts of the German parliamentary groups reveals the same data: the remuneration of certain functions within the group (chair, spokesperson, etc.), the staff costs (which represent the largest part of the group's budget), communication and public relations, expert reports or studies ordered by the group, and operating costs. There is a specificity in Luxembourg where the Chamber's Rules of Procedure provide that "in order to ensure the functioning of the political and technical groups as well as the political sensitivities, the Bureau of the Chamber shall make available to them the necessary premises, facilities and operational appropriations calculated on the basis of their proportional representation in the Chamber," but above all that "on production of supporting documents, the political and technical groups are entitled to reimbursement, up to an amount to be determined by the Chamber's Bureau, of costs relating to the recruitment of staff" (Art. 16 of the Chamber's Rules of Procedure).

It remains to be seen what role the parliamentary groups can actually play given the resources allocated to them. Because although the nature of the potentially-covered costs is fairly comparable in the different systems examined, the budgetary resources made available to the groups differ substantially from one assembly to another. Examining the funding of parliamentary groups not only reveals the *place* that an assembly accords them, but also the *role* it allows them to play, thus indicating their degree of institutionalisation.

II. An Indicator of the Power of the Groups

– A few figures from the annual budget for parliamentary groups reveal three main categories:[62]

– in France, EUR 10 million for 577 MPs, i.e. EUR 17,331 per representative;

– in Spain, EUR 9 million for 350 MPs, i.e. EUR 25,714 per representative;

– in Portugal, EUR 9 million for 230 MPs, i.e. EUR 39,130 per representative;

– in Italy, EUR 30 million for 630 MPs, i.e. EUR 47,619 per representative;

– for the EU, EUR 63 million for 751 MEPs, i.e. EUR 83,888 per representative;

– in Denmark, EUR 18 million for 180 elected representatives, i.e. EUR 100,000 per representative;

– in Germany, EUR 88 million for 709 elected representatives, i.e. EUR 124,118 per representative.

The three main categories are: firstly, the assemblies that allocate a limited budget to parliamentary groups (e.g. France and Spain); secondly, assemblies that provide an intermediary budget to groups (to some extent Portugal or Italy); finally, assemblies that grant significant financial resources to parliamentary groups (Germany above all, but also Denmark or the European Parliament). These results illustrate the idea of a group funding scale, ranging from one model (France) to another (Germany). Above all, this reflects a conception of the parliamentary system.

The limited budget which the French National Assembly – and Senate – grants to parliamentary groups illustrates the restricted place the French Parliament gives to parliamentary groups. A form of resistance to these groups has deeply marked France's parliamentary history, despite the fact that they have been present for more than 200 years. The groups are important entities in the functioning of the Assembly, but they have always been treated with some distrust, giving preference

[61] Or for a group of 10 elected representatives: 1 group secretary + 11.5 full-time equivalents + one additional staff member. Or, for a group of 20 representatives: 1 group secretary + 23 full-time equivalents + two more staff.

[62] These figures should be treated with caution, since they sometimes result from the addition of different budget headings, which, of course, essentially overlap, but it is difficult to say that they correspond exactly. On the other hand, these figures are reduced, in each assembly, to a sum per representative — i.e. the budget allocated to groups divided by the number of parliamentarians comprising the assembly — to allow for comparison. This is more significant than a budget for each group, provided that: *first*, in some chambers, non-registered or self-employed persons form a group (e.g. mixed groups, Spain or Italy) while in others they are not counted at that level; *secondly*, the budget allocated to the groups is not distributed equally between the groups so that the resulting image would be very much distorted; and *third*, identical financial volumes do not correspond to the same realities depending on whether the groups are composed of 30 representatives or 250 members of parliament.

to an individual, rather than collective, approach to parliamentarianism. This has long restricted them to a sort of role of designation of other bodies of the Assembly, a reluctance that remains visible in budgetary terms, despite the constitutionalisation of groups in 2008, the transformation of their legal status (in the form of an association) as of 2014, and the increasing consideration of their existence and presence.[63]

Conversely, Germany is a "Parliament of groups" (*Fraktionenparlament*), or a "State of parliamentary groups" in the words of Uwe Thaysen. "Groups are omnipresent throughout parliamentary life."[64] They structure German parliamentarianism, which is essentially collective, and serve as Parliament's backbone. The strong internal organisation of the German Parliament is centred around the groups and "the best way for a parliamentarian to influence the decision-making process is to get involved in the various networks (political and specialist groups)."[65] The importance of the groups is therefore evident and reflected in the budget plan.

Among the more surprising cases one finds Portugal and Italy. Portugal because, upon reading the Constitution and observing the Assembly of the Republic, it appears that the Portuguese parliament is a parliament of groups in which the latter play an important role in the system and in the body's operation. The reason for its relatively small budget may lie in the fact that a number of prerogatives and means are granted to parliamentary groups, without necessarily weighing on the funding that the Chamber allocates to them (which is almost exclusively devoted to personnel costs). As a result, the groups have many ways of intervening in the parliamentary process, which is probably why they are so influential. And then Italy, because the budget allocated to the groups may seem large compared to the importance these groups appear to have in the country. But perhaps, more broadly, this is a manifestation of the importance political groups have in the Italian system.

Nevertheless, if the means allocated to the groups always serve approximately the same purpose, how can such disparities between the Chambers be explained? How do you explain the 1 to 8 ratio between France and Germany? What do groups that receive large budgets do?

The substantial amounts of money allocated to parliamentary groups have given rise to a high *degree of working power*. The level of public funding of parliamentary groups is thus a good indicator of how structured and organized the parliamentary groups are, and of the role they can play in parliament. In other words, it is an indicator of their institutionalisation and power within the system.

The best illustration of this is Germany. The German groups are the most and best structured groups, organised into many internal working groups, which allow for very early reflection and make groups the key places of exchange, debate and proposals between both the government and the majority and the majority and the opposition.[66] Working groups "ensure the preparation of committee sessions, both as regards legislative activity itself and its extension in the field of control (hearings of ministers or external figures, etc.). They have a general competence in their field to prepare the activities of their group: debates in public sessions (appointment of speakers, defensive points, etc.), preparation of group initiatives (proposals for resolutions, interpellations, questions) or examination of the initiatives of another group. The chairman-spokesperson is systematically the one who reports to the press to react to a given question."[67]

All of this depends on the resources made available to the parliamentary groups. In particular, the *staff potential*. This is the most important element in all assemblies because it determines the direction given to parliamentary groups. A large staff means a major share of parliamentary work will be done in the groups. This is the only way groups can carry out background and expertise work, and develop proposals and criticism.

Some examples illustrate the differences in this respect:

– in France, group staff represent approximately 100 people, with large variations between groups depending on their number of members and habits;

– in Denmark, for an assembly of 180 representatives, the parliamentary groups employed 232 full-time equivalents in 2016;

– in the European Parliament, for the 2014-2019 legislature, the socialist group alone employs around 250 staff. In comparison, the secretariat of the ecologist group, the sixth-largest group of the European assembly, is composed of approximately 100 staff;

– in Belgium, the total of the groups' staff potential is nearly 200 staff for 150 Members of Parliament;

[63] To that effect, see the rights recognised specifically for opposition groups and minority groups (on this point, P. Monge, *Les minorités parlementaires sous la Ve République*, Dalloz, 2015.

[64] A. LE DIVELLEC, *Le gouvernement parlementaire en Allemagne*, LGBJ, 2004, p.185 et seq.

[65] A. LE DIVELLEC, "Le parlementarisme en Allemagne: de l'exception au modèle européen," in O. COSTA, E. KERROUCHE and P. MAGNETTE (ed.), *Vers un renouveau du parlementarisme en Europe?* Ed. de l'Université de Bruxelles, 2004, p.205, especially p.217.

[66] On the possibility for groups to be working bodies, cf. D. CONNIL, *Les groupes parlementaires en France*, LGBJ, 2016, p.114 et seq.

[67] A. LE DIVELLEC, *op. cit.*, p.194.

– similarly, in Spain, the groups have around 200 staff distributed according to the size of the groups;

– finally, in Germany, it is estimated that between 800 and 1,000 people work for the parliamentary groups.

The situation in Norway is unique in that members of Parliament do not have personal staff. All of the work of parliamentary assistants is carried out *via* the groups which, for this purpose, receive a significant specific contribution (each year about EUR 440,000 per group plus EUR 70,000 per member).

In addition, in some cases a special subsidy is granted to *the opposition*. This can take on different forms. In Denmark, the allocation given to parliamentary groups based on the number of representatives varies depending on whether they are "simple" members of Parliament or MPs who are also members of the Government, since, in the traditional form of parliamentarianism (and contrary to practice in France), there is no incompatibility between governmental and parliamentary functions. This means that, in principle, groups receive (for the variable part) an allocation of EUR 6,000 per group member, but this is reduced by two-thirds for MPs who are also members of the government. In Germany a bonus is granted to opposition groups with a double increase of the grant: 15 % more for the fixed allocation; 10 % more for the variable part (per representative). In the UK's House of Commons, the phenomenon is very marked with financial support that is specifically allocated to opposition parties having obtained either two seats or a seat and more than 150,000 votes in the last general elections. This scheme, named "Short Money" after the man who promoted it, was introduced in 1975 and covers: 1) the amount necessary for opposition parties to fulfil their parliamentary duties (calculated according to the number of seats and votes received); 2) the payment of travel for opposition group members under the same conditions; and 3) a special allocation for the opposition leader's costs. In 2016/2017, the amounts thus allocated to opposition parliamentary groups alone amounted to EUR 10 million (EUR 9 million for general expenses; EUR 200,000 for travel expenses; EUR 800,000 for the opposition leader).[68]

Whichever form is chosen, this opposition premium marks a desire to give groups which do not support the government the means to play a significant role. Above all, it reveals a division of labour which is not based on a mythic view of the separation of powers between today's executive and legislative powers, but rather reflects the respective roles of the majority in its two branches (executive and legislative), which is responsible for determining and conducting the nation's policy, and the opposition which primarily carries out the task of control.[69] In order to do so, it must have the will and the means. But, on a broader scale, this reflects a respect for pluralism and the possibility for the forces involved to express their views.

In all, the public funding of parliamentary groups is oriented towards the work of parliament. So the level of group funding is also a good indication of the type of parliament concerned: a parliament of speech (in the United Kingdom) or a parliament of work (of which the Bundestag is an illustration); a parliament that favours plenary sessions or the role of the committees (in which the groups play a leading role); a parliament where the work is primarily technical in nature (again, Germany) or focused on policy (France and Italy).[70]

III. A Sign of the Evolution of Parliamentary Groups

The issue of the financing of the groups also raises that of its *control* and the issue of *transparency*, which are highly sensitive issues in our representative democracies. There is a double movement in this direction: on the one hand, there is an increased need for transparency, of which the European Union and the European Parliament are major players; and, on the other hand, a form of standardisation through a legal logic, which overcomes political logic and calls into question (or even blames) the patterns traditionally defined by the assemblies themselves as regards their organisation and internal operation.

The rules adopted by the different assemblies are therefore rather similar, even if they were established for different reasons (traditional transparency requirements, reforms linked to democratic transitions, reactions to political and financial scandals, etc.). These rules fit into two categories.

First of all, the texts often stipulate that funds given to parliamentary groups can only be used to finance actions relating to parliamentary activity. Article 16 of the Rules of Procedure of Luxembourg's Chamber of Deputies states that "the financial assistance granted to the political groups shall be intended exclusively to cover

[68] R. KELLY, *Short Money*, House of Commons, Briefing Paper, No 01663, 2016.

[69] On these issues, see E. THIERS, "La majorité contrôlée par l'opposition: pierre philosophale de la nouvelle répartition des pouvoirs?" *Pouvoirs*, 2012, No 143, p.61.

[70] On these different aspects, see C. VINTZEL, *Les armes du gouvernement dans la procédure législative*, Dalloz, 2011.

expenditure relating to parliamentary activities and may not be used to cover expenditure produced by the political parties." Similarly, in Germany, Paragraph 50 of the German Law on Members of the Bundestag provides that "the services concerned [...] may only be used by parliamentary groups to perform the tasks assigned to them in accordance with the Basic Law, this Act or the German Bundestag Rules of Procedure. Their use for the purposes of political parties is not permitted."

From this point of view, the most detailed regulation is that of the European Parliament, which precisely lists all the activities for which the group appropriations provided in budget line 400 cannot serve: to replace expenditure already covered by other budget headings within Parliament's budget, in particular expenditure relating to the Statute of Members; to finance any form of European, national, regional or local electoral campaign; to purchase real estate or vehicles; to fund political parties at the national or European level or the bodies which depend on them; to acquire a financial contribution from any other organisation or the property thereof.

Secondly, the assemblies establish procedural or group account monitoring obligations. Again, the rules are essentially the same. Parliaments generally require political groups to draw up their accounts, have them certified by an external body and, sometimes (but more rarely), to publish them, with penalties ranging from the publication of infringements in a report (such as that of the Court of Auditors in Germany) to the freezing of the group budgets or the obligation to reimburse inappropriately-used sums (in Denmark).

The strengthening of transparency requirements is clear. Each system is clearly making an additional step in this direction.[71] However, this issue reveals differences that could be considered cultural in nature. As has been pointed out, the most detailed rules in this area are those of the European Parliament. When the assemblies are questioned about budgetary issues, Denmark, Germany and Belgium give the most detailed replies. Similarly, it is often (and irrespective of the country concerned) the environmental or green groups of assemblies that provide the most information about their funding through the publication of budgetary or financial data on their websites. Especially as the question of the public funding of parliamentary groups can be added to that of other sources of funding: the dues from group members, of course, but also other sources, such as donations from private individuals which are not part of the public financing but occasionally increase the group budgets.

In France, a number of questions and criticisms concerning the use of parliamentary groups' financial resources emerged in 2014. In particular, the issue of a loan granted in 2012 by a group of the National Assembly to the political party of the same name was especially publicised, highlighting the uncertainties associated with the financing of parliamentary groups and, more specifically, the use of the funds thus paid, but also – and this brings us back to our point of departure – questions relating to the legal status of these groups and their political and institutional positioning in the assembly and in relation to political parties. The limits of the legal framework were subsequently updated. In order to address this issue, the French National Assembly and Senate adopted a variety of measures for the "good management and financial transparency of groups." The Rules of Procedure of the Chambers were amended to require groups to set up as an association[72] and the Bureau of the National Assembly (like that of the Senate) clarified the rules governing the aid granted to groups: determination of the destination of funds, presentation of accounts certified by an auditor, publication of the accounts.[73]

From the position of groups to their most recent developments, without forgetting their influence in the assembly and the balance of the system and practices, the financing of the material status of parliamentary groups highlights contemporary issues for European Parliaments: the interplay of institutional and political logics; a preference for an individual or collective approach to parliamentarianism and, where appropriate, its inflections; the regulation of political life by law. But, even more so, the question of the financing of parliamentary groups appears to be an indicator of parliamentarianism. In other words, it is the manifestation of a political, institutional and parliamentary culture.

[71] On this issue, see D. CONNIL, "Un pas de plus vers la transparence, l'exemple des groupes parlementaires," in E. FOREY, A. GRANERO and A. MEYER (eds.), *Financement et moralisation de la vie politique*, Institut Universitaire Varenne, 2018, p.35.

[72] Resolutions of 17 September 2014 at the National Assembly and 13 May 2015 in the Senate.

[73] Bureau of the Senate Decree of 9 July 2014 and Bureau of the National Assembly Decree of 23 July 2014.

Second round table

Under the chairmanship of Prof. Jean-Eric GICQUEL,

Professor at the University of Rennes

The funding and physical status of the non-elected members of parliaments in Europe

A critical debate on the financing of the material status of former parliamentarians in the EU

Mr Jérôme GERMAIN[1], *Senior Lecturer at the University of Lorraine*
and Mr René DOSIÈRE[2], *former MP of Aisne and honorary member of the French Parliament*

An archaic privilege or a democratic necessity? Is the existence of a material status for national parliamentarians starting at the end of their term of office still necessary? In the event of defeat in the national parliamentary elections, or a withdrawal or permanent retirement from political life, or even a resignation in favour of another public mandate, is it justified to provide former members of Parliament a post-mandate material status? Instead of only comparing the situations in France and Germany, as is the case in most of our work, we propose here to extend our study to all EU countries. Is this status the vestige of an outdated conception of notability or, worse, a self-granted *carte blanche* or windfall for the political class? In this case, this status could be viewed as an authoritarian archaism or abuse of power that has been surpassed by the evolution of egalitarian mentalities and the contemporary demand for political transparency.[3] The political class does not have to have a higher material standing than the rest of society, especially in times of budgetary austerity and public debt crisis. And the Constitutional Court must ensure that the legislature does not place its special interest above the general interest. A well-understood concept of public interest shows, on the contrary, that not only elected representatives, but also voters, need a protective status of members of parliament, including after their term of office, in order to protect them from corruption by economic or foreign interests. The post-mandate material status of parliamentarians is not only a right of former MPs. It represents, in this context, the protection of democracy by preventing the bribery and corruption of elected members during their term of office, in preparation for the post-mandate period.

Under certain conditions, this post-mandate status guarantees the independence of MPs to avoid compromises before, during or after the term of office. The benefits in cash or kind that this statute provides for have the same justifications as the allowances that permit elected

[1] The first part and the introductory words were written by Mr Jérôme GERMAIN.
[2] The second and final remarks were written by Mr René DOSIERE.
[3] G. CARCASSONNE, "Le trouble de la transparence," *Pouvoirs*, N°97, 2001, p.17.

parliamentarians to fulfil their mandate. However, since the latter has been completed, they are only justified if they serve a certain purpose. On the one hand, they must facilitate the professional reintegration of the former MP or the preparation of a new election, especially in the context of non-overlapping of mandates.[4] On the other hand, they should not put MPs at a disadvantage in the calculation of pension rights compared to workers without a political career.

An end-of-term allowance, the amount and duration of which vary from one State to another, pursues this objective.[5] The same would apply to returning to a job held prior to the term of office or the offer of benefits in kind for the purpose of conversion.[6] In this perspective, rights to a retirement pension, the generosity of which is also subject to questioning, appears to be justified as well.[7]

The post-mandate material status of MPs should make it possible to monitor the evolution of their income and remunerated activities in order to deter conflicts of interest or to protect private interests during their term of office. Other elements of the post-mandate status are, however, difficult to justify in this perspective. They do not dissuade parliamentarians from trying, during their term of office, to please a potential employer, thus putting him in their good graces. Whether it concerns the privileges of the former presidents of the French Senate or the special identity card in Portugal, or even a chauffeur, like in Hungary, the granting of life benefits or benefits for any purpose other than the prevention of corruption and venality therefore seems questionable.[8] Far from protecting democracy, such benefits may contribute to discrediting it.[9]

This narrow justification for this material status calls for a double-check of this status, or it may be misunderstood by public opinion. The first check occurs when the texts relating to this status are drafted. The second, in the implementation of this statute by the former members of Parliament.

The check at the time of drafting raises at least two legal questions. Who is competent to draft the general and specific texts applicable to this status and its financing? The constituents, Parliament, each assembly, the government? The answer to this question determines the type of control over the adopted text. No checks will probably be carried out if the text is included in the Constitution or adopted by a parliamentary resolution. On the other hand, review by the administrative court or the Constitutional Court will be difficult to avoid if the statute is established in a law or regulation.

Control during the use of this status by former members of Parliament raises more technical legal questions. Does it come under the competence of the constitutional, administrative, financial or criminal courts?[10] Could independent administrative authorities like the IPSA[11] in the UK play a role in setting the amounts paid and controlling post-mandate income? In France, since 2012 the Caisse des Dépôts et Consignations has granted the return-to-employment allocation (AARE) for non-civil servant former MPs, a mission previously carried out by the National Assembly. This arrangement seems more protective than a financial management entrusted to the assemblies or the Ministry of Finance. To get a full picture of the situation, consideration should also be given to non-jurisdictional controls. The usefulness of administrative controls could be compared to the effectiveness of those carried out by Courts of Auditors and other Supreme Audit Institutions (SAIs). Finally, the contribution of parliamentary scrutiny, which is always more committed to measuring performance and financial transparency, should also be assessed in this area.

I. The Post-Mandate Financial Status of National MPs in EU Member States

Unfortunately, we will only be able to touch upon most of these topics briefly given the short amount of time we have for this presentation. We will focus on the most important financial components of the post-mandate material status. We will not be able to address the funeral grants and social assistance provided after the transition allowance, for instance. After discussing the transition allowance (A), retirement pensions within EU Member States will be analysed (B).

A. Transition Allowance

In terms of the transition allowance, there is a clear difference between traditionally economically liberal countries or those hard hit by the 2011 crisis, on the one hand, and more cohesive or more prosperous States on the other. We will examine three points: the amount awarded, the conditions required and the expected duration.

The amount awarded. In some Member States, parliamentarians do not receive any transition allowance at the end of their term of office. This is the case, for example, in Greece (since 2011), because of the economic crisis; in the Netherlands, due to its economic liberalism; and in

[4] H. QAZBIR, "Le mandat parlementaire face au nouveau régime du cumul," *RFDC*, No 3, 2015, p.633 et seq.

[5] In Germany, former members of the Bundestag receive a transitional allowance (*Übergangsgeld*) for one month per year of office. It is capped at 18 months and currently amounts to EUR 9,550. It is degressive, in the sense that it is deducted from the former member's other income two months after the end of the term of office.

[6] Former French local elected officials thus enjoy a right to reintegration into the labour market, including the return to a former employment contract after the term of office as well as the right to refresher training.

[7] While in France the former members of Parliament benefit from a special pension scheme, in Austria, former members of Parliament are automatically subject to the general scheme.

[8] A. BAUDU, "La situation matérielle des anciens députés et sénateurs, un 'privilège' parlementaire?" *RFDC*, No 4, 2009, p.697 et seq.

[9] See in this sense Resolution 2127 adopted in 2016 by the Parliamentary Assembly of the Council of Europe entitled *L'immunité parlementaire: remise en cause du périmètre des privilèges et immunités des membres de l'Assemblée parlementaire.*

[10] CS, 28 December 2009, *Mme A.*, Ress. No 320432, The French Council of State refused to check the cancellation of a parliamentary pension in the name of the autonomy of parliamentary assemblies.

[11] Independent Parliamentary Standards Authority. See below.

Portugal (since 2005), with the aim of increasing the moral integrity of public life. The transition allowance is sometimes equal to the parliamentary allowance. This is particularly the case in Germany, Belgium, Denmark, Spain, Hungary and the Czech Republic. It can thus be viewed as a continuation of remuneration. The transition allowance is often a percentage of the parliamentary allowance. When the allocation is provided for a short period of time, the percentage is high. In Italy, Slovenia and Sweden it amounts to 80 % of the parliamentary allowance. In Austria, it amounts to 75 % of the parliamentary allowance. When the duration of the allocation is longer, the percentage is smaller. In France, for example, it amounts to only 57 % of the parliamentary allowance.

The conditions required. In some Member States, parliamentarians do not need to prove an insufficient level of revenue to receive the transition allowance. This is the case in Spain, Estonia and Hungary (on request), for instance. However, they have to prove an insufficient level of income in many Member States in order to qualify for a transitional allowance. This is true for Belgium and Slovenia. The insufficient income prerequisite for the transitional allowance often confers on it a specific nature. It is thus deductible from other professional income in Germany after one month. It is even deductible from income from labour and capital in Finland. The transition allowance may also be gradually decreased. This is particularly the case in France or Sweden.

The expected duration. A minimum term of office is often required: two years in Spain, six months in Slovenia. The duration of the payment of the transitional allowance is fixed in some States. It is thus still three months in Austria, Latvia, Luxembourg and Poland. In principle it is six months in Estonia. The standard duration is even two years in Spain. When the duration of the benefit is short, the lump sum nature of the allowance is accompanied in some Member States by a one-off payment (Estonia, Latvia, Hungary). In Spain, the single payment is foreseen in case of dissolution.

However, in many Member States the duration of the allocation is indexed on the number of years spent in Parliament. The principle is one month's allocation per year of office. This solution is found in Germany or the Czech Republic, in particular. It may exceptionally be two months for each year of office. Belgium has such a mechanism. In States with no fixed duration, the maximum duration of the transition allowance is most often capped. The ceiling is rather low in economically liberal countries: five months in the Czech Republic and six months in the United Kingdom. Other states provide for a more generous ceiling: three years in Finland; in France 30 months, if the member has reached the age of 50, and 36 months after 55 years; it is also 18 months in Germany; and 24 months in Belgium and Sweden.

The old system guaranteeing parliamentarians an annuity until retirement is becoming extinct due to the financial efforts and social sacrifices demanded by the citizens. It has therefore been repealed in Austria, Finland and Portugal. It only remains in Sweden for former parliamentarians who were entitled to it before 2014, and in Spain for parliamentarians who met the conditions before 2011.

B. Retirement Pension

The affiliation of former parliamentarians in the general pension scheme seems to be more economic than the creation of a specific parliamentary pension. Although most often funded by the budget of the assemblies, parliamentary pensions tend to increase parliamentary expenditure. This may be the reason why the submission to the general scheme is more widespread than the benefit of a specific, more advantageous regime.

The general scheme. In some Member States, the absence of a specific parliamentary pension seems to be traditional. These countries are found primarily in the east of the European Union: Hungary, Poland, Slovakia and the Czech Republic, for example. In other countries, former members of parliament are assimilated to civil servants at the time of retirement, which is more advantageous (Latvia and Luxembourg). Other Member States abandoned their specific parliamentary pension arrangements before the 2011 financial crisis. One reason for this was the criticism of political privileges, as in Austria in 1997. Another reason can be found in international competition and the adaptation to economic globalization, like in Estonia in 2003 or in Portugal in 2005. The financial crisis explains the disappearance of parliamentary pensions and the alignment of the parliamentarian system with the general scheme in at least two states: Spain in 2011 and Greece in 2012.

Specific schemes. In States with a special parliamentary pension, a minimum period of contribu-

tion entitles members to a pension. The minimum period is one year, for example, in Germany and Denmark. The amount of the pension may be capped, especially if it is in supplement to occupational pensions. This ceiling is 67.5 % of the parliamentary allowance in Germany and 75 % in Belgium. The age at which parliamentarians may begin receiving benefits is often at a high level corresponding to the statutory retirement age. It is 67 years in Germany and 65 years in Finland and Italy. However, there are many derogations. Members may receive a reduced pension beginning at age 63 in Germany. The duration of the mandate also allows former MPs to receive benefits in Italy from the age of 60. Members elected prior to a certain date may also claim their rights at a younger age: 60 years in Denmark for members elected before 2007. The system of funded parliamentary pensions is not yet developed. It replaced the pay-as-you-go system in the United Kingdom. Due to the financial risks, the funded system requires independent asset management supervision, like that conducted by the IPSA in the United Kingdom.

II. The Financial Status of Former Members of Parliament in France

When I decided not to run for re-election in June 2017, I became an honorary member of Parliament, a title awarded to former members of Parliament who have served more than twenty years in the National Assembly and/or Senate. In this capacity, honorary members receive an ID badge allowing access to all the premises of the two chambers. If the honorary member does not have another occupational activity, he/she continues to be covered by the specific social security scheme. This means that there is a connection between active and retired MPs created by the parliamentary status implemented by virtue of the financial autonomy of the National Assembly.

This connection dates back to the beginning of the 20th century when the two chambers (Assembly and the Senate) decided, by internal resolution and not by law, to set up a special social security scheme to provide pensions for former members of Parliament.[12] It is therefore not a "special pension scheme," which would have required a law, but a non-detachable specificity of the parliamentary status, as recognised by the Council of State: "The pension scheme of former members shall form part of the Statute of the Members of the Parliamentary Communities, whose special rules result from the nature of their duties; whereas this status relates to the exercise of national sovereignty by the members of Parliament; in view of the nature of this activity, it is not for the administrative judge to hear any disputes concerning the pension scheme of members of Parliament."[13] As a result, as pointed out by Aurélien Baudu, it stipulates that "the pension of the former member is not severable from Parliament's constitutional tasks and parliamentary status."[14] The same reasoning applies to the other material and financial aspects put in place, over time, for the benefit of (active or retired) members of Parliament, such as social security and emergency funds, by virtue of a long democratic French tradition in which "the allocation is as comprehensive a compensation as possible for the sacrifices made by the Nation's representatives for the good of the public."[15] It is true that the parliamentary mandate causes such a strong break in one's career that some people cannot bear the sacrifices and risks involved. The tangible benefits of the parliamentary status give all citizens equal access to a parliamentary mandate. Of course, these benefits vary over time and must be adapted to changes in society. As parliamentarians themselves decide about such matters, the exercise is difficult. In France, it is all the more difficult since, from the beginning, our country has had to deal with a recurrent antiparliamentarianism[16] that, at certain times, including the present, reaches a burning point. The "tangible benefits" thus automatically become "undue privileges."

This is the case with the *return-to-employment allocation* (a specific unemployment benefit for members of parliament) which appeared in the 2000s. It ensures defeated MPs, who meet the two conditions of belonging to the private sector and being under the age of 62 (after which the MP receives a retirement pension), guaranteed income equal to the basic parliamentary allowance for a period of six months. The amount then decreases every semester until the maximum duration of three years is reached.[17] In addition, this allocation is decreased by the amount of other income received by the person concerned. Finally, the sums awarded are financed exclusively by a compulsory contribution paid by all members of Parliament, including those from the public sector who will never benefit from it. This system is based on solidarity, fairness and frugality. And yet it has been treated

[12] The Resolution was adopted on 23 December 1904 and is supplemented by a law of an article authorising gifts and bequests to the special fund. It works with an obligatory monthly contribution levied on members' salaries. The first payments were made in 1909, and four years of contributions were necessary to receive a pension at the age of 55. On 28 January 1905, the Senate adopted a similar resolution.

[13] CS, 28 December 2009, *Mme A.*, Ress. No 320432.

[14] Cf. A. BAUDU, "La situation matérielle des anciens députés et sénateurs, un privilège parlementaire?" *RFDC*, No 80, 2009, p.697 et seq.

[15] E. Pierre, *Traité de droit politique, électoral et parlementaire*. Paris, 1919.

[16] Since the introduction of universal suffrage (for men) in 1848 and the setting of a parliamentary allowance. Cf. Alain Garrigou, *Mourir pour des idées, la vie posthume d'Alphonse Baudin*, Les belles lettres, 2010.

[17] In 2007, this concerned 30 people; in 2012, 44 former members of Parliament; and 85 former members of Parliament in 2017. The degressive nature of the allocation and the taking into account of other revenue lead to a strong decrease of the number of beneficiaries by the end of one year. After 24 months, the number of individuals concerned becomes marginal, less than five.

as a "golden parachute" because it is specific to parliamentarians. So it is a privilege! With a view to appease public opinion, the new majority of the National Assembly decided to replace it, as of 1 January 2018, with a system modelled on the general retirement scheme. Now the allowance paid to defeated MPs is capped, for two or three years depending on the age of the person concerned, at 57 % of the (basic) salary,[18] with the possibility to cumulate it with a limited professional activity. Although the funding is still provided by members of Parliament, a contribution from the Assembly's budget may be envisaged, if necessary. The new scheme is more expensive (+ 30 %) and not as fair (no progressive decrease) but the main purpose is achieved: the members are treated like any ordinary employee. The Senate, for its part, has maintained the previous system. Legislative provisions still exist which require private companies to reinstate returning employees at the end of their first term of office as members of Parliament.

The retirement pension of members of Parliament has been substantially amended in recent years, concurrently with the general pension scheme. The retirement age rose from 55 (in 2003) to 60 (in 2007), and finally to 62 (in 2010). Since 2012, civil servants have been prohibited from receiving both an occupational pension and the parliamentary pension. In addition, since 2017, elected civil servants have been assigned to non-active status, i.e. they lose their right of promotion during their parliamentary term. While the pension was calculated according to a specific system, in which each year of contribution counted double, the rate of contributions was aligned with the general system for salaried employees in 2010 and the duration of the contribution increased.

In 2012, the compulsory system of double contribution was replaced by an optional complementary system, which, in turn, was eliminated in 2018. All these changes result in a substantial reduction of the MP pension: after 5 years of service, the monthly allocation dropped from EUR 1,500 (yesterday) to EUR 678 (tomorrow), which represents a decrease of 55 %. The Senate, whose pension scheme is partly financed (50 %) by the financial revenue from its investments (the capitalisation system), has kept a specific system and reserves the right to amend it in the context of the universal scheme envisaged by the president of the Republic. To give a few general figures, the median gross monthly MP pension is EUR 3,200 in 2018; at present, there are 1,321 retired members. The amount of the pension increased following the (somewhat forced) retirement of many members of Parliament in 2017. In the Senate, the average amount of the pension is around EUR 4,600.

Apart from the pension, former members of Parliament have not benefited from any special advantage since 1 October 2018. On this date, the free rail transport granted solely to the honorary members of Parliament (or a quarter of retired MPs) was eliminated (it was retained in the Senate in the form of an annual ceiling of EUR 3,000). Only two members of Parliament, once retired, receive special advantages: the former presidents of each assembly. They are provided with a vehicle and driver, a staff member, an office (at the National Assembly) and an accommodation (in the Senate). These benefits were granted for life. In 2007, the National Assembly limited its duration to 10 years, followed recently by a decision to end it in 2022 for the two former presidents still receiving it. The Senate reports little about the benefits provided to its former presidents.

This special treatment for the State's third and fourth figures comes close to that for the former presidents of the Republic and former prime ministers (first and second figures of the State). Since 1985, former presidents have been entitled to a furnished and equipped apartment, including maintenance and fees, an official car with two drivers, a cabinet of seven staff members and two employees for the residence. Moreover, rail and air travel are also provided free of charge. The legal basis for these benefits was fragile: a personal letter from the then prime minister (1985) to the former living president. A decree from the president of the Republic of October 2016 intervened to formalise these advantages which are reduced by half after five years, and the annual cost of which is approximately EUR 1.5 million per beneficiary. However, a former president's remuneration is modest: an allocation, set by law in 1955, which currently amounts to a gross annual amount of EUR 65,000. The small amount of this allocation explains why, as former presidents, they have a lifetime seat on the Constitutional Council; when they serve in this capacity, they receive a remuneration of EUR 172,000 per year. This only concerns Valéry Giscard d'Estaing. On the basis of a decree, former prime ministers are supplied with a car and driver and secretarial staff

[18] The taxation of the entire allowance beginning in 2017 removes the distinction between the basic allowance (EUR 5,600) and the duty allowance (EUR 1,500). However, only the basic allowance serves as a reference when calculating unemployment benefits. But when it comes to calculating the retirement pension, the total allowance is used as a reference.

for life. These individuals are also given police protection befitting their circumstances.

There is a final benefit for former members of Parliament, which has just been made public, i.e. the funeral allowance. First established for members alone by decisions of the Bureau of 14 September 1814, and supplemented on 18 March 1877, it was extended to include spouses and former members when the Social Security Fund was set up in 1948. It has just been capped at EUR 2,350. The Senate, for its part, did not change the amounts of the benefit it grants, the average amount of which is approximately EUR 5,000.

To conclude this presentation, two comments will be made. The reduction and even elimination of the advantages granted to former members of Parliament was done abruptly without any consultation with the Amicale des Anciens Députés (Former Members of Parliament Association), which manifests a kind of disdain that was badly tolerated by the persons concerned, who continue to belong to the ultimately restricted family of parliamentarians. The concern shown by the new majority, whose parliamentary culture is limited, to bring members' living conditions into line with those of private sector employees will, in the long term, limit the sociological recruitment of public representatives by concealing the differences between an elected office and a professional occupation. Secondly, it must be pointed out that, from now on, representatives (and former representatives) elected by universal suffrage are less well treated than those elected by indirect suffrage. In my opinion, this situation is not conducive to strengthening the parliamentary function. But that is not the subject I was asked to address.

A critical debate on the funding of parliamentary collaborators in the EU

Mr Matthieu CARON[19], *Senior lecturer at the University of Valenciennes*
and Marie-Françoise CLERGEAU[20], *Former Quaestor of the National Assembly*

In January 2014, the Council of Europe's Group of States against Corruption (GRECO) recommended that France reform its conditions for the use of parliamentary assistants, by drawing on good practices from other Member States and, in particular, prohibiting the hiring of family members as assistants.[21] Does this mean that France lags far behind on this issue compared to its European partners? It would be wrong to hastily make such an assumption, seeing how the status of parliamentary collaborators was viewed as negligible by all European parliaments until recently. The "little people" of the parliaments, pejoratively called "briefcase carriers" (or *portaborse*) in Italy, parliamentary assistants never seemed to have deserved a proper status in France, no more than elsewhere in Europe.

Since 2012, under the influence of Claude Bartolone then François de Rugy, a lot of progress has been made in France, where a (social, material and ethical) status is being set up. Is this status-in-the-making based on the best

[19] Mr Matthieu CARON, member of the IDP of the University of Valenciennes (EA No 1384), wrote the introductory remarks and part one of this contribution.

[20] Ms Marie-Françoise CLERGEAU, MP of Loire-Atlantique in 1997-2017 and National Assembly quaestor from 2012 to 2017, wrote the second part of this contribution.

[21] Groups of States against Corruption (GRECO), *Corruption Prevention: Members of Parliament, Judges and Prosecutors*, 27 January 2014, p.11.

European standards? Do such standards exist? Even if they do, is France not in the process of devising standards that could set a precedent? By examining European, German, Belgian, British, Spanish, Greek, Italian and Luxembourg parliamentary law to better understand French parliamentary law, our study intends to answer this question by pursuing a dually comparative approach. Comparative first in that it seeks to put into perspective the similarities and differences in the statutes for parliamentary collaborators in the European parliamentary systems (I). Comparative also in that it tries to show that, contrary to what the *Penelopegate* scandal may have led one to think, France is rather advanced in terms of regulating the status of parliamentary collaborators (II).

I. A classification of the status of parliamentary collaborators in EU member States

At the National Assembly and the Senate, the members of Parliament have a very high degree of autonomy in terms of the recruitment and remuneration of their staff. In the National Assembly, since 1975,[22] all members may freely recruit their assistants,[23] determine their remuneration and working conditions,[24] and dismiss them for personal reasons.[25] In the Senate, parliamentarians have also been considered employers since 1976: they recruit their staff on a discretionary basis,[26]determine their tasks and can revoke them *ad nutum*. Such an organisational autonomy can be found in many European countries, but there is a great variety of recruitment and financing models (A). Upon analysis, it appears that the status of collaborators was largely neglected by the legal texts in all the Member States (B).

A. Five models for the financing of parliamentary collaborators in the European Union

There are at least five models for the employment of parliamentary collaborators in the various EU Member States.

The *parliamentarian-employer model*, in which the MP employs his or her employees on the basis of a private law contract and by means of a budget envelope provided by the chamber to which he/she belongs. This system is found, in particular, at the French National Assembly and Senate, the German Bundestag, the British House of Commons, the Italian Chamber of Deputies, the Luxembourg Chamber of Deputies, the Council of Greece[27] and the European Parliament in the case of "local assistants."[28] However, the amount of the staff allocation varies considerably: EUR 10,581 per month for a French MP,[29] compared to EUR 7,638 for a senator; EUR 24,164 for Members of the European Parliament; EUR 20,870 for a German MP; EUR 13,594 for a British MP; and a gross sum of EUR 3,583 per month for a Luxembourg MP.[30] Normally, in this parliamentarian-employer model, the employment contract is managed by the parliamentarian himself (direct management) or delegated in part or in full to the parliamentary institution or to an association[31] (delegated management).

The *political group-employer model*, in which the political groups employ staff which they then make available to members of Parliament. This mechanism was chosen by the Spanish Congress and the Norwegian *Storting*.[32]

The *parliament-employer model*, in which the collaborators are employed by the Parliament. This concerns the "accredited assistants" of the European Parliament[33] and the staff of Belgian MPs, for instance.

The *political party-employer model*, in which members of Parliament do not have personal assistants but their political party is subsidised to make employees available to their representatives in Parliament. This is the model used in the Swedish *Riksdagen*.

Finally, the *mixed models*, in which parliamentary assistants can be recruited and/or employed by various authorities. In the Finnish *Eduskunta*, "parliamentarians may have either a personal assistant employed and paid directly by Parliament but recruited on his proposal, or share an assistant with another MP, hired by his group."[34] In Belgium, the staff are indeed employed directly by the House of Representatives but "the groups have the benefit of staff they choose, and each representative also has a staff member he/she recruits."[35] Another example: in the European Parliament, several members may form a consortium to hire one or more accredited assistants or hired in the Member States as local assistants.

The parliamentarian-employer model is clearly the most widespread in the Member States. This model is also found in the US Congress, the Canadian Chamber of Commons as well as the Quebec National Assembly.[36] Another common denominator for the parliaments of most Western

[22] Decree of the Bureau of the National Assembly of 13 November 1975.
[23] See Art. 18 (2) of the National Assembly Rules of Procedure and §6 and §8 of CC Decision No 2014-705 DC, 11 December 2014.
[24] On this point, see especially J.J. Urvoas, *Rapport de l'Assemblée nationale No 1108 et 1109 relatif aux projets de lois sur la transparence de la vie publique*, 5 June 2013.
[25] CF. Art. 1233-1, L.1234-5 and L.1234-9 of the Labour Code.
[26] See Article 102a of the Senate Rules of Procedure.
[27] https://curia.gr/vouleftes-staxronia-tis-krisis-i-eklegmeni-elit/
[28] On this point, see especially Council Regulation (EC) No 160/2009 of 23 February 2009, OJEU of 27 February 2009.
[29] Decision of the Bureau of the NA of 24 January 2018.
[30] Cf. Article 126 (9) of the Law of 8 June 2004 and the Luxembourg Parliament Rules of Procedure.
[31] In the French Senate, the Association for Managing Assistants of Senators (AGAS) is responsible for the administrative management of the Senate's staff.
[32] Secretariat General of the Presidency of the National Assembly, *La prise en charge des frais liés à l'exercice du mandate et le crédit collaborateur dans les parlements étrangers*, April 2017, p.8.
[33] Accredited assistants to the European Parliament "shall be legally employed directly by the European Parliament and shall work on its premises (...). Accredited assistants are contractual in public law and are subject to some of the provisions applicable to officials of the Parliament" (Ibidem). In other words, they work in Brussels, Luxembourg or Strasbourg and have an EU law employment contract directly concluded with the Parliament.
[34] Ibid.
[35] Ibid.
[36] Secretariat General of the Presidency of the National Assembly, *Le crédit collaborateur dans les Parlements étrangers*, April 2017, p.3-4.

democracies: the absence of a comprehensive status for parliamentary assistants.

B. The absence of a full status of parliamentary collaborators: a common denominator of all member States

No parliament of the EU Member States has adopted a complete statute for parliamentary staff. However, in most Member States there are a number of disparate rules: requirements for professional diplomas or qualifications; definition of tasks and pay scales for the different staff; regulations on family employment; monitoring of the effectiveness of the work carried out; ethical obligations to meet.

In general, there *are few cases where the conditions of professional qualifications or diplomas are required* to be eligible for employment as a parliamentary assistant. In France, to have the right to be a senator's assistant, one must have the Baccalaureate or, failing this, 15 years of professional experience. However, no diploma is required to be an assistant in the National Assembly, nor in the Italian Chamber of Deputies, the Spanish Congress, the Council of Greece[37] or the Luxembourg Chamber of Deputies. By contrast, the Bundestag requires a university degree for *"scientific collaborators."* Similarly, assistants accredited by the European Parliament must provide evidence of a minimum level of qualification (a higher education degree or a secondary qualification giving access to post-secondary education and three years of professional experience).[38]

Moreover, some parliaments have defined pay scales and functions. This is not the case in France, which, for the time being, leaves its members full freedom to define the *tasks of their staff and the salaries* associated with them. In the Bundestag, although the missions are defined by the members, four functions have been established with a salary scale: typists and clerical assistants (EUR 1,770 to EUR 3,400 gross/month); secretaries and management assistants (EUR 2,200 to EUR 4,700); deputy administrators (EUR 2,400 to EUR 5,100); scientific collaborators (EUR 3,100 to EUR 8,000). The same applies in the United Kingdom, where the independent administrative body in charge of Parliament's internal management, the IPSA,[39] has "defined families of jobs with associated pay scales to which the MPs must adhere."[40] Similarly, in the European Parliament, "two function groups have been defined for accredited assistants: the first includes support and secretarial duties, and the second drafting and consulting work; there are 19 associated salary grades, ranging from EUR 1,792 to EUR 8,253 gross per month for full-time positions."[41] The European Parliament also set the example, as of 2009, in regards to the regulation of the hiring of family members.[42]

Since the late 2000s, *the ban on employing (and therefore financing) family members* has spread, with a more or less broad interpretation of the concept of *"family."*[43] In the European Parliament, the ban is aimed at the first degree of kinship, since the staff allowance may not be used to finance the employment of a spouse, a stable non-marital partner, parents, children or brothers and sisters.[44] The Bundestag "bans the employment of a person with whom the member has, or has had, in the past, any family ties or alliance or registered partnership."[45] In the United Kingdom, it was first decided in 2010 that a member of Parliament could no longer hire more than a single *"related person"* (or *"connected party"*) of his family and family life. Since April 2017, members of Parliament can only continue to employ these related persons if their employment is financed using private resources.[46] In Belgium, a member may not hire his or her spouse or a person living with him or her, nor kin or relative by marriage up to and including the second degree of kinship. In France, following the Penelopegate scandal, the Law of 15 September 2017 prohibited the recruitment of direct family members (spouse, parents, parents-in-law, children or stepchildren),[47] but the scheme remains imperfect as MPs may still hire their brothers, sisters, brothers-in-law, sisters-in-law, former spouses or partners, nephews and nieces along as they inform the Bureau and the body responsible for professional ethics. Overall, a movement is thus growing within the main democracies in favour of prohibiting the employment of family members, even though the practice is still authorised in Switzerland, Italy, Spain, Greece and Portugal, and appears to be tolerated (but relatively uncommon) in Luxembourg and Sweden.

Another central yet delicate issue[48] is the *effectiveness of the work carried out by parliamentary assistants.* In the first place, it is apparent from our observations that the responsibility for this control generally lies with the parliamentarian-employer, which is hardly satisfactory. In her 2013 public report, Mrs Lenoir, the French National Assembly's Chief Ethics Officer, thus stated that "positions, of convenience or not, which do not correspond

[37] The Greek Official Journal states that "subject to his/her confidence, any member may hire the employee of his/her choice in accordance with his/her own selection criteria" (https://nomoi.info/???-?-284-2001-???-18.html).

[38] Articles 126 and 128 of Council Regulation (EC) No 160/2009 of 23 February 2009.

[39] The Independent Parliamentary Standards Authority (IPSA) was established by the Parliamentary Standards Act of 2009.

[40] Secretariat General of the Presidency of the National Assembly, op. cit., p.12.

[41] Cf. Article 43d of the Decision of the Bureau of the European Parliament, op. cit.

[42] Secretariat General of the Presidency of the National Assembly, op. cit., p.9.

[43] For an overall picture, see: P. Bas, *Rapport du Sénat No 607 sur le projet de loi organique rétablissant la confiance dans l'action publique*, 4 July 2017, p.62-63.

[44] Article 43d.

[45] Secretariat General of the Presidency of the National Assembly, loc. cit. However, members of the German parliament may use private funds, with separate contracts, to employ a close family member.

[46] On this point, cf. the impact study for Draft Law JUSC1715753L/Bleue-1, p.44.

[47] Cf. spec.: Article 14 of Law No 2017-1339 referred to above.

[48] On this point, see: J. Benetti, "Quel contrôle sur les contrats de collaboration parlementaire? Retour sur une impasse juridique," *Constitution*, 2017, p.47.

to actual work in Parliament or in a constituency are deemed unacceptable, especially when they prove to represent a high percentage of the MP's staff allocation."[49] Secondly, there are no specific arrangements, in criminal or civil matters, in any Member State designed to control the effectiveness of employees' work, with the classification of fictitious employment still governed by the ordinary law. The difficulty of assessing whether employment is real resides in defining the parliamentary assistant's job description, as has been illustrated in particular by the scandals involving the European Parliament assistants of two French political parties: the National Front and the Modem.[50]

Finally, despite the absence of a permanent status, some Member States, in the image of the United Kingdom or France, are beginning to lay down *rules of conduct specific to parliamentary collaborators*. In France, Article 1-I-10° of Organic Law No 2013-906, codified in Article LO 135-1 of the electoral code, obliged the members of Parliament to make public the names of their collaborators and any professional activities they may have.[51] Since July 2015, the Code of Conduct for Members of the House of Commons similarly binds the UK MPs to report the identity of their staff and, where appropriate, the family relationship between them. In the European Parliament, staff are obliged to declare any ancillary activities they carry out or wish to exercise and obtain the approval of the parliamentary administration, which verifies the risks of a conflict of interest in the cases submitted to it.[52]

In sum, although the parliaments of the EU Member States have devised, as a result of needs and events, legal provisions governing the staff system, none of them have created a complete and unified status for the latter. Only the European Parliament's assistants were given an outline with the Staff Regulations of 23 February 2009. In addition, France may light the way by adopting a text defining the status of parliamentary collaborators which would draw on foreign models while also surpassing them. The truth is that this work was initiated during the XIVth legislature by National Assembly President Bartolone and Marie-Françoise Clergeau before being supplemented by the work of De Rugy's group on "Working Conditions at the Assembly and the Statute of Parliamentary Assistants."[53] Considered a straggler in such matters not long ago, France might become a forerunner in regards to the status of parliamentary collaborators.

II. How France has caught up with the other EU member States since 2012

While France was a bit late in dealing with the issue of the recruitment of family members, since 2012 it has caught up with the other EU Member States in legal, budgetary and ethical terms (A). It is even very advanced in terms of the social status of staff (B).

A. Progress in legal, budgetary and ethical terms as regards the status of french staff

Much progress was made under the XIVth and at the beginning of the XVth legislatures, which brought France closer to European standards. During the XIVth legislature (2012-2017), several measures were adopted at the initiative of Claude Bartolone: authorisation for assistants to enter the "sacred perimeter," i.e. the rooms adjacent to the Chamber, during the sessions; the creation of a professional card and a 10 % increase of the staff allocation. In addition, following the Sirugue Report of 27 February 2013, the rules of the "voluntary staff" system, which could give rise to conflicts of interest because sometimes the volunteers were lobbyists; the introduction of a system to combat harassment[54] or the possibility for staff to appeal to the chief ethics officer of the Assembly.[55]

At the beginning of the XVth legislature, the Law of 15 September 2017 and the progressive implementation of the nineteen recommendations of the De Rugy working group's report could make France a source of inspiration for the other EU Member States. Article 12 of the Law of 15 September enshrines the existence of parliamentary collaborators on a legislative basis, even though their status has hitherto been covered by internal rules in Parliament.[56] Article 14 of the same law prohibits the hiring of family members by members of Parliament. Finally, the De Rugy Report prefigured much of the legal, budgetary and ethical developments: creation of official job descriptions (proposal No 1); the establishment of a legal framework for teleworking (proposal N° 5) or the drafting of a specific code of ethics for staff (proposal No 6). Since 1 January 2018, this report has already led to another increase in the staff allowance, which increased from EUR 9,618 to EUR 10,581 per month.

Despite this increase, France is still lagging behind in terms of the staff allowance. In comparison with

[49] N. LENOIR, *Rapport public annuel de la déontologue*, 20 November 2013, p.76.

[50] Both of these parties are accused of hiring staff who were not working for the European Parliament but only for their respective parties. The EU Court recently held that it is up to the MEPs to prove the effectiveness of the employee's work (T-634/16, *Montel v. Parliament*, 29 November 2017). An appeal was lodged before the CJEU.

[51] On this point, see: F. MELIN-SOUCRAMANIEN, *Les progress de la déontologie à l'Assemblée nationale*, 17 June 2015, p.78-80.

[52] Secretariat General of the Presidency of the National Assembly, op. cit., p.12.

[53] F. DE RUGY, *Pour une nouvelle Assemblée nationale*, December 2017.

[54] Bureau of the National Assembly Decision of 20 November 2013.

[55] Article 8 of the National Assembly Code of Ethics adopted in 2016.

[56] Unfortunately, Article 12 states that it is only up to MPs and senators to monitor the performance of their staff.

the European Parliament, Germany (or the United States!), France offers too little means to members of Parliament for them to build a team capable of dealing with the professionalism of governmental administration. At a time when the number of MPs is being reduced to supposedly strengthen Parliament's power, it would be absolutely essential to think about this issue on the basis of what happens abroad. In the United States, a member of the House of Representatives can recruit up to 18 employees and receives an envelope that is six times higher than that of a French MP! On the other hand, France has clearly taken the lead over other European parliaments in terms of the social status of parliamentary assistants, for which it deserves to be applauded.

B. Social progress

It is necessary to discuss the collective agreement of 24 November 2016 and the inclusion of social dialogue in the Law of 15 September 2017. In 2012, trade union representatives and an association of parliamentary assistants called on the questure of the National Assembly to establish the conditions for social dialogue in the Assembly between the MPs and their assistants. Bearing in mind that President Bartolone was in favour of establishing a staff statute, the Clergeau note, sent on 3 June 2013, took stock of the situation the employees had reported and made suggestions on how to improve their status.[57] Mr Bartolone subsequently instructed the quaestors to enter into a social dialogue with the assistants' representatives.

The first step was to obtain an evidence-based diagnosis of the staff's condition from the Secretariat-General. This document was sent to the quaestors as well as the trade unions and staff associations to lay the foundations for dialogue. However, at the meeting of 10 July 2013, I clearly realised that my quaestor colleagues were averse to any collective agreement. I thus informed President Bartolone, who supported me and asked me to chair a "working group" to introduce changes which could be implemented immediately. We therefore opted for small steps rather than a big leap. This group met eight times, from 10 October 2013 to 10 March 2016, to conceive the staff regulations.

Noting the reluctance of a majority of my MP colleagues on the need to introduce such a statute, I used three levers to spur progress, starting with the creation of an organisation of parliamentarian-employers. First lever: I first relied on the precise, continuous and particularly reactive support of the Questure Financial and Social Management Service. This service provided me with figures for each scenario, thus contributing to the credibility and rigour of our exchanges with the staff representatives. The second lever was the report which I had commissioned from a law firm specialising in social law which analysed and assessed the content and form of a collective agreement while concurrently making recommendations.[58] In particular, it demonstrated that issues such as working time could not be dealt with without a collective agreement! The third lever came slightly later: several MPs were ordered to pay heavy allowances to former staff for unpaid overtime. All of a sudden, the MP employers became aware of the legal uncertainty to which they were exposed.[59] As a result, the quaestors and the chairmen of the political groups finally came to the same conclusion as me: the need for a collective agreement. Accordingly, on 26 January 2016, during his address to the staff, Mr Claude Bartolone expressed his wish to see such an agreement made. However, before starting the negotiations, the employers needed representatives. An *ad hoc* association was thus established on 27 April 2016 and chaired by Mr Michel Issindou, a member from the Isère region. More than 300 members joined the association between April and September 2016. It immediately mandated the quaestors to conduct negotiations. I was enthusiastic but quickly measured the difficulties we would face before reaching such an agreement: the tendency to give in to one-upmanship and the dispersion of staff unions, as well as the intangible but legitimate position to introduce a provision on the continuation of social dialogue following the signing of the agreement. Thus, at the fifth negotiation meeting on 20 July 2016, the trade unions refused to sign an agreement, as they felt that the guarantees on sustainability were insufficient. I had a moment of misunderstanding: yes, the trade unions had to abandon some of their demands, but the parliamentarian-employers had also come a long way! In 2012, creating an employers' association was not even envisaged, let alone the conclusion of a collective agreement. That goes to show just how novel this draft agreement was; this was a major first in the history of parliament.

After this moment of misunderstanding, I took advantage of the suspension of parliamentary proceedings until the end of September 2016 to

[57] This note has been reproduced in full, without citing me, in the report by J.-J. Urvoas, cited above.

[58] See the BELIER and C. LE GOFF report submitted to the quaestors B. ROMAN, M.-F. CLERGEAU and P. BRIAND, *Mémorandum sur les modalités juridiques d'adoption d'un instrumentum portant conditions générales de travail et d'emploi des collaborateurs parlementaires de droit privé*, June 2015, 22 pp.

[59] On this point, see: J.-P. CAMBY, "Contentieux de droit privé lié aux collaborateurs," in "Parliamentary Acts," *Répertoire Dalloz de contentieux administratif*, 2014, § 25-29.

talk with Michel Issindou, but also Claude Bartolone and my quaestor colleagues. As a result, I was able to submit a new draft collective agreement to the trade unions on 20 October 2016, which was adopted on 24 November 2016. Although this agreement was partial, it had the merit of existing and showing that it was possible, in France, to sign a conventional text between political employers and the representatives of their staff. Fundamentally, it allowed for four major achievements: the introduction of a fixed daily rate which gave employees the possibility to benefit from four weeks' rest in addition to the five weeks of paid vacation; the reinstatement of the severance pay when the contract ends due to the end of the mandate; an exceptional bonus of EUR 2,000 in 2017; and official recognition of the social security and compensation scheme most favourable to employees (meal allowance, supplementary pension allowance, 13th month bonus, seniority bonus, and child care allowance in particular).[60] However, this agreement was still fragile because the few MPs who had supported it did not stand for re-election or were not re-elected in 2017.

Fortunately, the Law of 15 September 2017 institutionalised this social dialogue in the National Assembly and even in the Senate. Article 12 (III) of the Act provides that the "Bureau of each assembly shall ensure that a social dialogue is carried out between representatives of parliamentary employers and representatives of parliamentary collaborators." Articles 18 and 19 organise the procedure for the dismissal of staff in the two chambers, while a decree of 22 December 2017 provides for personalised employment counselling for staff made redundant for any reason other than a personal reason.[61] Lastly, it should be pointed out that Proposal No 8 of the De Rugy Report to make membership in the parliamentarian-employer association compulsory is currently being implemented. Moreover, of the 19 proposals being implemented, most are likely to significantly improve the social status of staff, such as the development of vocational training and the safety of career paths or the institution of salary references.

Overall, France seems to be on the right track. However, nothing is guaranteed: the outcome of the reform conferences launched by President De Rugy remains uncertain. Furthermore, the Senate is lagging far behind as regards the status of staff. Finally, we would like to believe that we need to be more ambitious than the legislature and the De Rugy working group were in revaluing the status of staff, as this is a politically existential question for the future of our parliamentary democracy[62].

[60] On the main advances made, see F. DE RUGY (Prés), op. cit., p.51.

[61] Decree No 2017-1733 of 22 December 2017, OJ of 23 December 2017.

[62] "Accorder davantage de moyens aux collaborateurs, c'est doter le Parlement de davantage de pouvoirs," *Le Monde*, 10 April 2018.

A critical debate on the funding for parliamentary officials in the EU

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Please excuse the brief, if not lapidary, nature of this introduction, which will only provide a minimal definition of the parliamentary civil service, since there is no common definition for all States: it concerns all staff, irrespective of their status, placed at the service of the assembly.[64] From a purely accounting standpoint, staff whose salary is directly paid by the assembly is not a sufficient definition since the European Parliament pays for some of the parliamentary and group staff. The succession of legislatures and majorities has no influence on the careers of these agents, as their impartiality protects them and is an obligation of their job.[65] It also safeguards the assemblies of governments or private interests, including those of Member States that may seek to put pressure on their agents to change the meaning of the legislation.

Impartiality is thus guaranteed and a demonstration of the autonomy of the assemblies (autonomy does not mean freedom) which determine, within the framework of general regulations, the conditions of the recruitment and remuneration of staff. At the juncture of regulatory and financial autonomy, the financing of parliamentary officials reveals the limits of these autonomies, as the economic conditions impose a (generally accepted) limitation of operating expenditure, and staff expenditure in particular. This quest of frugality (II) should not, however, lead the assemblies to undermine the impartiality that the special, but costly (I), status of parliamentary officials protects.

I. A Costly Status

Whether or not they have a special status, parliamentary officials have a basic salary comparable to that of other civil servants. The assemblies then adopt measures that are more (A) or less (B) openly meant to compensate agents for any hardships that the statutes cause for the agents.

A. The French Compensation System

The assemblies have no control over the salaries of parliamentary officials since they are determined by reference to a career gross index and pay scale. They can control some variables, however, which determine the number of grades and grant allowances. They were thus able to increase the number of grades to make it possible to reward officials at the end of their career who had not been able to access a quota grade but deserved a higher remuneration. Similarly, the quaestors may grant allowances and determine how they are calculated. The first allowances date back to the 19th century and were paid in kind. Such as the heating allowance dating back to the time when the administration granted coal to unhoused members of staff, or the clothing allowance established to cover the costs of footwear, laundry and linen. Others were aimed at offering a compensation for the obligations laid down in the Staff Regulations. Thus, in order to compensate for his/her total availability, the secretary-general has living accommodations on the Assembly premises. Other staff receive an allowance which is not limited to staff working in the legislative field. Thus, they are all impacted by the organisation of extraordinary sessions, even if they had planned to take vacation time at these dates. For the same purpose, officials, whether they are concerned by this or not, received compensation for night-time work and a parliamentary term allowance. In 2017, the administration decided to overhaul the allowance system. All of the allowances, including the most archaic, were combined into a single allowance: the compensation for the hardships of service.[66] This is paid to all active staff and is meant to replace all previous allowances. However, Article 73 (4) of the Rules of Procedure on the or-

[63] The authors would like to thank the officials of the assemblies who agreed to reply to their questions.
[64] See V. TOCANNE, "Les structures administratives des Parlements, perspectives comparatives," *RFAP*, No 68, 1993 p.505-506.
[65] EU law prefers to use the term of loyalty.
[66] Art. 73 of the Rules of Procedure on the organisation of services for the staff of the National Assembly.

ganisation of services for the National Assembly staff expressly maintains "the advantages granted to staff under all previous texts." Consequently, the assembly did not modify the principle of financial compensation for mission-related hardships and it is possible to give an objective estimate of the cost of the impartiality it protects. Thanks to these mechanisms, the National Assembly's parliamentary officials multiplied their basic salary by two. Other assemblies are less open about the existence of such compensation mechanisms.

B. Schemes without Open Compensation

At the European Parliament. The salary grid for civil servants is common to all EU institutions. It is laid down in the Staff Regulations for the Parliament and Council, which are updated annually by the Commission. The Parliament thus cannot modify the salaries of its officials by means of allowances, like in France. However, it preserves a certain degree of autonomy, since it controls the rules governing career advancement. Although promotions are based on an annual evaluation, advancement is automatic and the staff move up a grade every two years. However, there is a cap for a standard career and, beyond that maximum grade, promotion remains linked to a change of position. These adjustments are not financially neutral and are accompanied by measures designed to protect officials from any pressure their States may exert. Officials are thus exempt from national taxes on salaries, wages and emoluments paid by the EU. In addition, an expatriation allowance is paid to staff members assigned to one of the Parliament's sites in a State of which the staff member is not a citizen, or a foreign residence allowance when, in addition, he or she does not reside or work at the site in a six-month period prior to this assignment. The Parliament, like all other EU institutions, therefore bears the costs of granting a special status. These mechanisms make it possible to offer management staff a remuneration equivalent to that obtained by the parliamentary officials of the French National Assembly once the various allowances have been applied. For example, the monthly salary of a secretary-general in the European Parliament can be up to EUR 19,881.81, which is comparable to that of the secretary general of the French National Assembly (EUR 17,300). The European Parliament is not alone in failing to compensate openly for the various constraints related to these missions. Other assemblies also refuse to recognise a difference between the salaries of parliamentary officials and those of members of other public authorities.

Germany and the United Kingdom. When asked about the remuneration of its staff, the Bundesrat's administration stated that the salaries were not different from those of the other public functions of the State.[67] However, it seems that the amount of the salary depends on aptitude, level of education, the articles of association, but also elements left to the secretary-general's appreciation, which thus adjusts the salaries. In Great Britain, the principle is also that Parliament officials, state officials without special status, receive a salary equivalent to that of other public officials. There are, however, specific features. In this way, the Senior Commons Structure (SCS) can obtain a variable and personal performance-related bonus. For the period 2016-2017, these annual and non-consolidated premiums, which cannot serve as a calculation basis, fluctuated between GBP 2,500 and GBP 6,500. The clerk of the House, the equivalent of the secretary-general, is responsible for assessing the work of the officers and granting them the premium, the amount of which he/she determines. A comparison with the salary received by the secretary-general of the National Assembly demonstrates that, even though the two systems are based on different principles, the level of remuneration of these senior officials is similar. In fact, for 2016-2017, the clerk of the House's salary amounted to GBP 175,000 to 180,000, or approximately EUR 16,640 per month, while that of the secretary general of the National Assembly is EUR 17,300 per month. The allowance scheme in France allows officials of the National Assembly to reach a level of remuneration equivalent to that of their colleagues in the parliaments studied. However, in France and elsewhere, the operating costs, and more particularly those of staff, put a strain on the budgets of parliaments, which try to limit their progression.

II. A Budget Adapted to Economic Imperatives

Different solutions have been used to reduce personnel costs: staff reduction accompanied by a redeployment of resources (A) or the greater use of contract staff or external providers (B).

A. A New Pragmatic Organisation

This new organisation does not change the structure of the services. In a nutshell, the administration

[67] See the ECPRD study, Enquiry No 1475, *Parliamentary financial and administrative autonomy.*

remains bipolar: agents are assigned either to logistical services, where they manage administrative matters; or legislative services, where they collaborate in the drafting of laws. It is simply a question of the human resources department adapting the general organisation to the objectives of reducing costs. The first measure chosen by the assemblies is a reduction of staff (1), but its financial impact remains limited and the authorities have looked for other means (2).

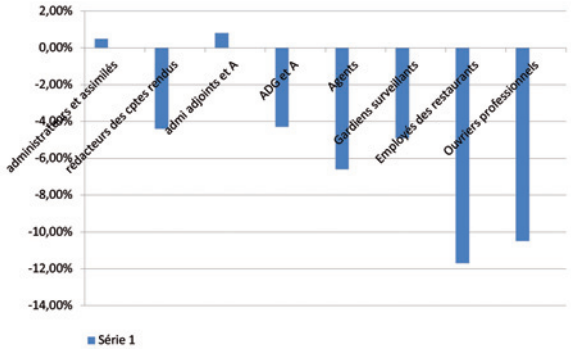
1) Staff Reduction

In the European Parliament. The Interinstitutional Agreement of 2 December 2013 imposed a 5 % staff reduction on EU institutions, bodies and agencies by 2017. At the end of 2017, the European Court of Auditors[68] concluded that, despite some delays, the objectives were met: job vacancies were deleted and staff leaving the service were not replaced. In compensation, the weekly number of working hours increased to 40 hours without salary adjustments.[69]

This table, however, seems to show a constant increase in staff numbers from 5,597 in 2005 to 6,743 in 2017, which represents an overall increase of 20.48 %. From 2013 to 2017, the progression was less rapid, but staff numbers continued to increase (+ 0.9 %). Various factors and events explain this discrepancy with the Court's conclusions. On the one hand, the political groups were not concerned by the downsizing of the workforce, some of whom were allocated to them by the Parliament; their number rose by 120 between 2012 and 2017. On the other hand, 93 jobs were created between 2012 and 2017 to internalize the IT services and strengthen the security services, among other things. To this must be added the 26 positions created following the recognition of Gaelic as an official language. Although the Parliament eliminated 162 jobs from 2012 to 2017, it won't reach the target until 2019, by eliminating another 119 jobs.

Despite the commitments, one can question the viability of such a staff reduction policy. Is it relevant when the Parliament needs to prepare for the accession of Croatia which will further increase its needs? Moreover, the figures show that, despite the downsizing, the staff costs for all the institutions combined increased by 11.5 % from 2012 to 2017. Salary adjustments and increases linked to promotions and advancements have not succeeded in achieving the expected savings. Although it can be seen that, on its own, the staff downsizing policy, in the short term, is an insufficient response to the need to reduce costs, it should be noted that it has been put in place in other assemblies.

In France. The graph below shows the steady decrease of the workforce from 2013 to 2016 that affects the legislative (-4.3 %) and administrative services (-6.8 %). The staff reduction policy predates 2013, so that in 15 years the overall staff of parliamentary officials in the National Assembly decreased by 15 %, dropping from 1,314 in 2002 to 1,112 in 2017.



Evolution of the number of active staff by category of the NA's parliamentary officials (31/12/2013-31/12/2016)[70]

This reduction reaches 25 % if only the "secretarial" functions are taken into account:[71] there were 242 managerial assistants in 2002 and only 182 in 2017. Similarly, the number of agents decreased by almost 25 % from 2002 to 2017, dropping from 524 agents to 394. However, the number of administrators is stable: 173 administrators in 2017 as in 2002.

[68] Short case study on the 5 % staff reduction, carried out at the request of the Council.

[69] The House of Commons also increased weekly working volume from 35 to 36 hours. The administration, however, has provided for compensatory measures, including a 1 % consolidated salary increase.

[70] 2016 National Assembly Social Report. ADG = Management and Administrative Assistant and A = assimilated

[71] On 1 February 2016, the bodies of the administrative secretaries and secretaries of departments were merged into the bodies of the managerial and executive assistants.

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Staff	5,597	5,801	5,933	5,940	6,081	6,285	6,537	6,684	6,743	6,786	6,739	6,797	6,743

Staffing trends in the EP (2005-2017)

Année	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Effectifs	173	173	175	177	175	168	172	175	183	176	181	181	179	183	182	173

Staff of National Assembly Advisers and Administrators

However, there was a significant fluctuation in this workforce: from 168 (in 2007) to 183 (in 2010 and 2015). Thus, the only veritable stability was in 2002-2003 and 2017; a more precise study reveals a decrease in the number of staff, with an average of 176.73 over these 15 years. These restrictions have an impact on the work of administrators, who are ultimately fewer in number while the parliamentary work has increased as a result of the 2008 constitutional review. Once again, it seems that the staff reduction policy has reached its limits and the assemblies have developed other means to reduce staff expenditure.

2) Policy for the Redeployment of Resources

In France. This redeployment policy concerns administrators and assistant administrators, whose maximum number is subject to quotas. Noting the increasing needs of the legislative services, the administration decided to assign almost all of the administrators to these departments. Thus, of the 173 administrators accounted for in 2017, 144, or more than 80 %, were assigned to the legislative services. The administrative tasks formerly carried out by these administrators were transferred to assistant administrators. In the same movement, the tasks that were usually carried out by the assistant administrators were entrusted to the management assistants.

In the European Parliament. In the framework of the 2018 budget, the branches of the budgetary authority approved the creation of 76 positions for the political groups. Since this was meant to be a budgetarily neutral measure, they decided to offset these positions in the Parliament's organisation chart. This measure was implemented while the 5 % staff reduction target was in effect. In preparation for this new reduction, in December 2016 the secretariat-general's managerial teams identified a number of measures in a transformation plan which set objectives for the directorates-general.[72] They must identify their medium-term priorities in order to ensure the dynamic allocation of their human resources to the activities concerned while assessing whether certain non-strategic needs may be suspended if necessary. Using contractual employees and outsourcing is also encouraged. As is the case in France, the plan also proposes to upgrade the assistant (AST) positions to administrative (AD) positions, in connection with the introduction of a new category during the last revision of the Staff Regulations: the SC category which is entrusted with secretarial tasks. In terms of salary and advancement opportunities, this category is much less advantageous than the AST category. Thus, a fixed number of AST jobs were converted into SC jobs and future secretarial recruitments must be carried out on these jobs. This revision of the Staff Regulations also introduced more intermediate grades. Promotions are awarded at a faster rate than in the past, but their magnitude is lower; employees must work 30 years to reach the final grades. Today, the desire to cut operating expenditure is present in the majority of the parliaments studied. They have all tried to downsize staff, with relative success, which has led the assemblies to turn to contractual agents for certain tasks.

B. Recourse to Staff from Outside the Civil Service

1) The Use of Contractual Employees

In Great Britain. Parliamentary officials are civil service officers, in the civil service of the State, who have chosen to be assigned to Parliament. The competitive exam is not intended, as is the case in France, to recruit staff especially for Parliament, without any Government connection which could require of them an attitude contrary to impartiality. This is guaranteed by other means and the competitive exam is only a marginal form of recruitment reserved for management staff. The UK assemblies thus turn to contractual employees to fill permanent jobs, including open-ended contracts. Other parliaments use contracts, but on an exceptional basis.

The European Parliament. The table below shows that the logistical services, but also the legislative services, use contract staff.

It can be seen, however, that this call for resources outside the organisation chart is carried out in different proportions depending on the type of support. While the proportion of contract staff in legislative services amounts to 11.3 % (263 out of the 2,321 staff), the figure is 26.7 % in services related to logistical support (1,124 out of the 4,217 officials concerned). The technical dimension of these occupations and the need for expertise in these areas explain this difference. At the outset, the recourse to contractual agents made it possible to temporarily replace officials on leave. Even if the maximum duration of a contract is set at 6 years, it is now one of the elements of the staff expenditure reduction policy, as the contract staff is called upon to make up for the lack of official positions. The contract staff are not based on posts, but require appropriations. They are not subject to the reduction target of 5 % and their

[72] All the projects are brought together in the Parliamentary Project Portfolio to be completed by 2019. The transformation plan of each directorate-general must accompany its Strategic Execution Framework, which identifies: the mission of the directorate-general, its medium-term objectives, the strategies it envisages and the projects accompanying those strategies.

Typologie DG	Métier	Fonctionnaires	Temporaires	Contractuels	Total effectifs
Support législatif	Support législatif	1.279	57	149	**1.485**
	Support juridique	92	8	7	**107**
	Communication	567	55	107	**729**
	sous-total	**1.938**	**120**	**263**	**2.321**
Support logistique	Gestion du personnel	328	28	74	**430**
	Logistique et infrastructures	347	26	316	**689**
	Multilinguisme	1.468	108	74	**1.650**
	Finances	170	12	29	**211**
	IT	429	26	61	**516**
	Sécurité	146	5	570	**721**
	sous-total	**2.888**	**205**	**1.124**	**4.217**
	total	**4.826**	**325**	**1.387**	**6.538**

Table of the Distribution of the Staff of the European Parliament

number is not subject to quotas, unlike officials whose maximum number is laid down in the establishment plan. This trend attests to the desire to reserve the protective status, which is costlier for the public service, only for staff engaged in sensitive tasks, since it is linked to political action. The approach appears to be legitimate: is it necessary to require officials assigned to maintenance, foodservice, etc., to comply with ethical obligations that are multiplied by the particular nature of the employer, a political institution? Shouldn't this status be reserved for staff who perform special duties in connection with the political mission and require other staff to comply with the rights and obligations stipulated in the contracts? The administration of the French National Assembly has also considered these questions.

In France. Article 8 of the Ordinance of 17 November 1958 requires recruitment by competition without, however, prohibiting any contract. It only prohibits the long-term occupation of a position by a contract worker. Open-ended contracts are prohibited, as is the appointment of contract staff outside the framework of a competition. Contracts are thus concluded for a maximum duration of 3 years and may only be renewed once.[73]

However, the contract is no longer a means of filling temporary or seasonal needs, but has also become one of the elements of the staff expenditure reduction policy. The figures show an ever-increasing use of contract staff. From 2014 to 2016, the contract staff rose by 100 % in the administrative services and by 130 % in the legislative services. These statistics cannot hide the relatively low number of contract workers: 48 in the administrative services and 21 in the legislative services in 2016.[74] This low number is explained by the fact that the assemblies are not free to use contracts as they see fit. Apart from when it meets a specific need, contracts can only be used if the service demands it and if there is no equivalence in the civil service. The National Assembly, for example, recruits videographers or works managers by contract because there is no longer an active branch in the National Assembly's civil service. Similarly, the Assembly is no longer actively recruiting first category trade workers, which will lead to the disappearance of this category and the use of contracts. The civil service drivers are also being phased out, particularly as the Assembly resorted to contract workers even before this division was set to be eliminated.

Why these complicated arrangements? Because replacing officials with contract staff reduces operating expenditure, the expenditure which is the most affected by successive presidents' decisions not to increase the amount of the allocation entered in the draft budget. Savings in the short- and medium-term since, pursuant to the Ordinance of 17 November 1958, the National Assembly prohibits the extension of contracts beyond 6 years, the cost of seniority is therefore lower than that of an official who advances up the salary grid simply thanks to the passage of time. This search to reduce costs has also led the assem-

[73] There are special contracts: cabinet contracts to form the cabinet of the president of the Assembly. This is a separate budget line and salaries are determined by the president. Then there are the personality contracts allowing for the recruitment of house staff for the president and the quaestors and staff assigned to the secretariat of the committee chairs and vice-chairs. These are open-ended contracts since the duties cease when the personality loses his/her position.

[74] As a reminder, the National Assembly currently has 1,139 officials, all departments combined.

blies to entrust missions to private service providers.

2. Outsourcing

The European Parliament. The IT, building management and maintenance, and communications technology sectors largely rely on service providers who are managed by civil servants. All the canteens and restaurants on the three sites are also managed by external service providers. However, there was a reverse movement in regards to security following the terrorist attacks. Parliament recruited contractual staff directly to ensure the loyalty of the security officials, which could not be guaranteed only by having civil servants oversee the service providers. Elements which set the limits on the use of staff from outside the public sector.

At the National Assembly in France. Subcontracting is common in construction, IT, foodservice and maintenance. It can also lead to complicated arrangements. The foodservice staff are employed by an association[75] funded by an allocation from the National Assembly and the price paid by the patrons. This arrangement provides accounting flexibility insofar as the association has its own budget line and, above all, flexibility in the management of staff, as it can make use of private-law contracts more freely. Similarly, it can outsource the management of certain tasks, such as the laundry service, to other entities. Outsourcing could be seen as a sustainable way to overcome the rigidity of the 1958 Ordinance and reduce the weight of operational expenditure. However, the Administrative Court, through its case law on transparent public bodies, has ruled against the widespread use of this economic option. Moreover, the National Assembly has re-internalised certain services. This was the case, at the end of the 2000s, of the reprographic services. This example underlines the disadvantages of reducing operating costs by outsourcing sensitive technical services. These services are responsible for reproducing documents, which is a technical, if not mechanical, task. In fact, care should be taken to ensure that it will remain so and that no one is aware of the documents or their content. This obligation of discretion is one of the traditional obligations of parliamentary officials and may be undermined by a private service provider subject to economic constraints.

The assemblies have identified many ways to limit the budgetary impact of staff expenditure.[76] All of them have revealed their limitations: the reduction in workforce has not led to significant savings. However, it has placed the assemblies in a difficult position, with the number of officials appearing insufficient to cope with the increase in parliamentary work. To ensure a continuity of service, the assemblies have recruited more contract workers. However, these economic methods appear problematic. Admittedly, the recourse to contract staff may be presented as a means of protecting the costlier staff status by reserving it for the officials who participate directly in the legislative and management functions. It may appear to be a means of ensuring the permanence of the parliamentary civil service's principle of impartiality while meeting the need to reduce costs. However, there is nothing to limit the increasing use of contracts nor the extension of this solution to the administrative functions. Accordingly, at the National Assembly, the Rules of Procedure only provide for high thresholds, which means no minimum requirement can be imposed on the Assembly.

The duties of officials, for which they are financially compensated, and in particular their impartiality, ensure that the parliamentary opposition is treated in the same manner as the members of the majority. It is based on the assumption that the administration has no political opinion and will respond to all requests, regardless of who is asking, with the same diligence, and protects the National Assembly against external interests, the government or groups. Therefore, the status of officials cannot simply be envisaged in terms of its cost. It is a matter of protection not only of the officials but the National Assembly which employs them and, more generally, the rule of law. It is therefore desirable that the announced reforms consider this reality, and it is to be hoped that the secretaries general of the National Assembly, entrusted by its president to reflect on "the shape, status, organisation and career of the parliamentary civil service,"[77] will remember the objective reasons for the cost of the parliamentary officials. ■

[75] The Association for the Management of Administrative Restaurants of the National Assembly. The National Assembly boutique is also managed on the same model.

[76] In Belgium, members have even agreed to reduce their compensation in order to secure a sufficient number of parliamentary officials. In the 1980s-90s, they demanded strict compliance with budgetary autonomy, refusing to meet the savings targets presented by the government.

[77] The report points out that their proposals aim to modernise and boost the parliamentary civil service without looking first for the savings "that will result in better management." Report to the President of the National Assembly, 16 May 2018.