COUNCIL OF THE EUROPEAN UNION	**Brussels, 16 June 2010**

11115/10

LIMITE

JUR 267
BUDGET 39

CONTRIBUTION BY THE COUNCIL LEGAL SERVICE [*]

to the	Outcome of proceedings of the Budgetary Committee of 14 June 2010
Subject:	Role of National Parliaments in the budgetary procedure and the respect of the pragmatic budgetary calendar agreed between the European Parliament, the Council and the Commission

1. At the meeting of the Budgetary Committee of 14 June 2010, the representative of the Legal Service replied to questions concerning the role of National Parliaments in the Budgetary procedure after the entry into force of the Lisbon Treaty, in connection with the so-called pragmatic budgetary calendar. At the request of the Presidency, this note takes up and further develops the essential points made.

---

[*] **This document contains legal advice which is protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and which the Council of the European Union has not released to the public. The Council reserves all its rights in law as regards any unauthorised publication.**

2.   As agreed between the European Parliament, the Council and the Commission on 30 November 2010[1], the transmission of the Council's position on the draft budget for 2011 under the Lisbon Treaty has to take place before the end of July 2010. This represents an acceleration with respect to the timetable foreseen in Art. 314 TFEU; it is however acknowledged by all parties concerned that such acceleration is unavoidable in order to secure timely agreement on the budget by both arms of the budgetary authority before the end of year n-1. As a matter of fact, the budgetary practice before Lisbon followed a similar pattern.

3.   The Lisbon Treaty provides for an active role of National Parliaments in the functioning of the Union (Art. 12 TEU).

As a matter of principle, the fact that the budget has become a legislative act (see Article 314, introductory phrase, in conjunction with Article 289(3) TFEU) triggers the implementation of Protocols no. 1 and no. 2.

Protocol no. 1 concerns the Role of National Parliaments in the EU and Protocol no. 2 concerns the application of the principles of subsidiarity and proportionality. Both Protocols foresee (in their Article 4) that an issue cannot be placed on the provisional agenda of the Council for decision before eight weeks have lapsed from the transmission of the relevant legislative act directly from the Commission to the National Parliaments.

Article 5 (3) TEU provides that the principle of subsidiarity does not apply in areas which fall within the exclusive competence of the EU. It follows that Protocol no. 2 , which deals with the control of subsidiarity, is not applicable in the case of the Union's Budget, which is by definition an exclusive Union competence. Protocol no.1, however, insofar as it deals with the

---

[1]   See the Joint declaration on transitional measures applicable to the budgetary procedure after the entry into force of the Lisbon Treaty, doc. 16792/09 of 1.12.2009

information of the National Parliaments on the Union's legislative process, must be complied with[2].

4.   Although work on the draft budget has begun in early May, the sheer volume of the finished document and the resources needed for its translation result in the Commission being unable to officially transmit the budget in all national languages to the two arms of the budgetary authority and the National Parliaments before June 22. That means that the Council cannot in principle place the point on its agenda and take a position on the draft budget until the last days of August. The pragmatic calendar would thus be delayed for at least one month, thereby putting into jeopardy the timely adoption of the budget.

5.   Should it so wish, the Council could however shorten the 8-week period on grounds of urgency, as Article 4 of protocol No 1 allows it to do, thus making it possible to respect the agreed pragmatic calendar. Under Article 3 (3) of the Council Rules of Procedure, it is for the Council to decide, with the same voting rule as the decision on the Council's position on the draft budget (i.e by QMV, see Art. 314 TFUE) to shorten the period, by way of a derogation. In practice, the two decisions will be taken at the same time; the Note to Coreper/ Council should make that clear, in order to confirm any suggested agreement made in this respect at the Budgetary Committee. A recital in the decision adopting the Council's position on the draft budget should state the reasons for the urgency justifying the derogation.

---

[2]   It should be observed, however, that the legal situation is far from being clear-cut. There is a potential contradiction between the eight weeks time-frame of Article 4 of protocol No.1 and the one -month minimum period which the Treaty gives the Council in order to establish a position and transmit it to the European Parliament (see article 314 (2) and (3) TFUE). In other terms, if there were no pragmatic calendar and the proposal containing the draft budget were only transmitted on 1st September, as the Treaty allows, it would be materially impossible for the Council to respect the eight -weeks delay without violating Article 314 TFUE. A compromise approach seems thus necessary in order to solve this contradiction in a constructive manner, for example along the lines suggested at the end of this note.

6. Discussions with the Commission should be started in due time before the introduction of the proposal containing the draft 2012 budget, so as to accelerate the transmission of that proposal and thus avoid, to the extent possible, the need to derogate again from the eight-week period in future budgetary procedures. At the same time, Member States Governments could be invited to explore informal arrangements with their respective National Parliaments, so that substantive information on the annual budget is available to the latter well before the official transmission of the Commission's proposal.

_____