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HOW TO REFORM THE EU BUDGET? HOW TO LIMIT AND HENCE TO TRUST THE EU LEVIATHAN?

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ABSTRACT

Constitutions should say no. The treaty of Lisbon, though no real constitution, definitely says yes to almost all possible spending and taxing possibilities of the European Union (EU). There is no limitation to the tasks the EU can do; the principles of subsidiarity and proportionality are, in this respect, no effective safeguards for restraints in the political process. In a public consultation paper, the European Commission asks its citizens and Member States to come up with ideas how to reform the EU Budget. The key research challenge of our paper---to answer the consultation paper---is to give a novel angle from the point of constitutional economics towards the selection among the alternative budgetary powers made available to the EU. Our central question is: How to reform the EU Budget? Our central goal is to limit and hence to trust the EU Leviathan.

Keywords: Constitutional Political Economy, EU budget

BACKGROUND AND APPROACH TO THE PROBLEM

After the rejection of the draft Constitutional Treaty (2004) in 2005 by French and Dutch voters, a revised Treaty (2007) is put up for ratification in the Member States. If ratified, it will enter into force on 1 January 2009. A revision of the budgetary powers of the EU, however, should be a priority. Why? If the 'no' of the French and Dutch citizens was a revolution, the truth counts that at least half of all historic revolutions were fiscal revolutions (Nef, 2002). Citizens do want to feel protected from an almost automatically ever-growing EU budget. If it should grow, it should grow willingly and by the consent of the citizens. Hence the consultation call by the European Commission (2007) is, in the words of Dalia Grybauskaite (European Commissioner for Financial Programming and Budget), indeed, a 'unique, may be once-in-a-lifetime opportunity', to discuss a fundamental review of the EU Budget.

The road towards a revised budget as suggested by the Commission's consultation paper, just as the approach after the rejection of the draft Constitutional Treaty, can be a very toilsome process inside the realm of partisan

(Member States') advocacy. Solidarity, for instance, has to be bought with financial pet projects for individual Member States. Or, alternatively, budget reform is discussed by the direct application of abstract ethical norms in a vacuous (without a model of governmental-political behavior) institutional setting.

Moreover, fiscal decision-making is often based on the rule that policies have to pose as little resistance as possible for the majority that must approve of them. The feeling, often, dominates that someone else pays (Spicer, 1995). To trust on the goodwill of the Member States or the members of the European Parliament is no solution either. In the four years before 2005, no member of the US congress has on total voted for a reduction in government outlays, though the rhetoric to speak of fiscal discipline was on the rise (Dircksen, 2005).

The paper shifts the grounds for the debate on the reform of the EU budget towards a fundamental review: it focuses on the choices among quasi-permanent constraints (within which alternatives should the EU's budgetary powers be exercised) and not, as is usually the case on choices within given constraints. The paper adopts a rule-based perspective on the EU Budget: we do choose budgetary rules of which we know that, once selected, they will remain in being over an indeterminately long sequence of budgetary periods. We should take literally Grybauskaites remark about an "once-in-a-lifetime possibility". The rules are quasi-permanent and long-lived. Members States are unable to predict with precision what their position will be at any particular moment in the future. In particular, they are presumed to be unable to identify their position (a veil of ignorance) either as payer or as spending beneficiary in a sequence of separate budgetary periods. History shows that these kinds of debate about a framework for political action, not an instrument thereof, have been possible and fruitful (Buchanan, 2001; Elster, 1991).

The paper, also, stays within the framework of an individualistic market economy. Why does the Treaty of Lisbon (2007) set out individual freedom as one of the core values of the EU? It is a good in itself; it represents human nature. We can only make real choices based on individual freedom. Freedom is also essential to develop as a moral being. Man is first and for all a spiritual being. The choices, e.g., we make to help other people, have to be taken in freedom.

Individual freedom, however, is also a necessity for our economic order: the market economy. Not only, quite visible, the climate and the physical characteristics of the Member States do differ, but, less visible, though of more importance, also men in their preferences and knowledge do differ. A market economy, as has been emphasized by the Austrian-born economist Friedrich Hayek, is to make optimal use of those differences in knowledge (1982, Vol. 1). Hence, the problem in a market economy is not to give the central authorities, be it Brussels or a local government, all the extra knowledge it needs to pursue policy. The problem is to give each individual all the extra knowledge he needs, mostly in the form of price (profit) signals, so he can decide for himself how to pursue his own goals. In this way, society does make use of often-unique knowledge of local circumstances and preferences that do differ in time. Knowledge that is difficult to

centralize. An idea as valid for individuals as for countries and has found its expression, though unsuccessfully as a real constraint on the EU budget, in the idea of subsidiarity.

The focus of the paper is on the normative evaluation of budgetary rules. We do also suggest that those rules do create trust and facilitates a robust democratic debate. The emphasis is not, as is usually the case, based on a benevolent EU, to enhance economic efficiency (making the EU 'work better') and/or to increase the equity of budget rules. We will put to test a different approach: an analysis that we define by the limits it places on the powers of Brussels, an egoistic despot, to 'tax and spend'. Though the model of a budget-maximizing Leviathan-like EU bureaucracy, a discretionary agency, may seem extreme, the norms laid down may possibly prove acceptable as embodying a minimax strategy: to ensure that the best remains a possibility by guarding against the worst.

POLITICAL ECONOMY

In the middle of the previous century, Hayek (1939; cf. Hayek 1949, pp. 255-72) wrote that democracy can only under very restricted conditions be transposed to a supra-national organization. His American counter-ego Milton Friedman said the same as far as finances are concerned. If you apply both ideas to the situation in Europe, we have to conclude that the EU is not only missing the necessary homogeneity to form clear policy goals in a democratic way, but it misses as well the stimuli not to waste money.

FRIEDRICH HAYEK

Why is it so hard to expect concrete policy goals and fiscal constraint from the European parliament--the most democratic institution of the EU? Of course, very general objectives (e.g., prosperity for everyone) will be easy to agree on. After that, however, it becomes difficult. Concrete objectives will be difficult to formulate. The countries of the EU differ too much in culture, history and economic development. Every choice supposes a balancing of the pros and cons (cp. Hayek, [1944], 1986, p. 168). The revised Services Directive of 2006, e.g., is supposed to show the social face of the EU. No worker from Eastern Europe, however, will be glad with the 'social protection' of the revised directive or the 'social clause' in the new Treaty of Lisbon. Within a relatively homogeneous country like the Netherlands, however, the original directive would be no problem. Every plumber from the north of the Netherlands is welcome in the south. Likewise, the Netherlands, e.g., is supporting with a low price of gas a national pride: the agriculture of vegetables in greenhouses in the west of the country. However, the very same solidarity for a, e.g., Spanish national pride is something completely different. The same goes for the other way around.

Hence, if a parliament cannot give and agree on policy objectives, the European Commission remains de facto the administration. Often below the guise, that it concerns only a technical affair. That is hard to maintain. Over a change in policy, no matter how technically it does look like, the parliament belongs to decide. Moreover, also the Commission has to do with the various wishes of the Member States that do make up the members of the Commission.

Besides that, large countries will never transfer their economic power to Brussels. The course of events re the reformation of the Pact on Stability and Growth in the early years of this century and watered down version of the original rules in 2005 is characteristic thereof. It is naïve to expect the same reforms if a few small countries had broken the rules. Therefore, we can expect that the new rule on decision-making by the way of a qualified majority, to be introduced in 2014, based on the double majority of Member States and people, 55% of the Member States representing at least 65% of the Union's population, will be violated if it should be of a disadvantage to large countries.

MILTON FRIEDMAN

The EU, also, has hardly any incentives not to waste money. As Milton Friedman says, the best guarantee not to waste money is that the same person both owns and does spend the money ([1979], 1981, p. 146). For then we can expect that you loan on the penny and sees to it that you do get value for your money. Members of parliaments or commission members, however, do spend others men's money, on behave of, often again, other men. That is almost a guarantee for ineffective and inefficient spending. Of members of a local parliament we can expect some restraint in spending the taxpayers' money of their own citizens. What to think, however, of an Eastern-European member of the EU parliament who does spend the money of West-European taxpayers at projects in Eastern Europe? To satisfy the members of parliament of Western-European countries pork-barrel legislation will rise. Not much different as is presently the case in the US where the support of congressional representatives has to be bought with financial presents (pet projects) for their local constituents. In short, we will see more signs along the roads that state, 'This project has been realized with the help of the EU'. A project, if the Member State had to decide and pay for itself, it would not have spent the money on.

In sum, cultural and political differences make it difficult to have a fiscal constitution in the sense of an all-out democratic process in which majorities do decide. We can transpose democracy to a supra-national organization only under very restricted conditions (cp. Gillingham 2003). It is, however, the popular thing to do. The solidarity and trust that is necessary for concrete policies within the EU is very tenuous. Even within one country if things do differ like language (Belgium), religion (North-Ireland) or economic development (North and South-Italy) solidarity is hard to find. All of these situations do characterize the situation within the European parliament. Policies, no matter how good the intentions

behind them, which are possible for each of the countries separately, are no option for the EU as a whole. Europe lacks the necessary homogeneity; priorities cannot be set. To transfer authority and hence policy to Brussels has its limits. Hence, of an (in the future) democratically chosen Chinese parliament with its approximately 3000 members we can expect more priority setting than by the 751 members of the European parliament. China with its fifty minorities but overwhelming majority of almost 95 per cent Han Chinese is more a unity than the 27 members of EU are.

CONSTITUTIONAL POLITICAL ECONOMY

Constitutional economics is both thinking outside the box and back to basics. For the EU it is scientifically largely uncharted territory. For James Buchanan the European constitution is an opportunity, EU citizens need to grasp, for going back to constitutional basics (1991, 1996a). The constitutionalist mindset, however, that says that persons owe loyalty to the constitution rather than to the government, is (has become) foreign to European thinking (1996b, 2003; cp. Hayek, 1960). The idea that there are, or should be, any limits on the powers of the government has largely passed from the contemporary scene. This lack of a constitutional mindset is also part of the problem this research program has to tackle.

Of central importance is that constitutionalism can be the core of fiscal constraints in which subsidiarity (the primary liability for the solution of problems lies with the smallest functional unit) and the consent of free individuals (trust), two of the main problems of the EU, are of central importance.

JAMES BUCHANAN

In constitutional economics (Buchanan, 2001), we define the rules of the socio-economic-political game. We have to make two sorts of constitutional decisions. First, we must choose from possible constitutional (so-called higher law) rules. Behind a veil of ignorance, countries and people choose electoral and non-electoral constitutional rules. No one knows his future position. (Of all the Member States, Germany broke the rules of Pact on Stability and Growth. Though beforehand Germany was a most unlikely candidate.) It is at this initial constitutional decision stage, where we choose the basic fiscal arrangements, that citizens not only can really control the state, but widespread public agreement is possible (Brennan and Buchanan, 2000). This since the prospect for general agreement changes dramatically if we allow for some introduction of ignorance and/or uncertainty into the Member States' calculus. The prospects of agreement relate directly to the predicted length of life of the tax reform. Then we will tend to opt for rules that are 'fair'. Hence the measures to be discussed below are meant not just for the upcoming, 2013, sixth financial framework but 'forever'. Besides, it is always easier to secure agreement on a set of rules than to secure agreement

for example on who is our favorite player. The tone of the discussions is theoretical and argumentative. Gains for all members are real.

Second, we have to state rules for day-to-day policies within the framework. Making decisions by majority ensures the workability of the political process. The tone of the discussions is one of weighting up interests and bargaining (Elster, 1991). Ordinary politics, post constitutional choice, tends to be conflictual. The reformed EU treaty, however, gives unanimous consent a smaller role, without making the distinction between the just-mentioned two sorts of decisions.

Part of the difficulty of our answer is constitutional illiteracy. We have to shore up constitutional understanding: the choice by individuals, who are related one to another in an anticipated set of interactions, of a reciprocally binding constraint. Rules and institutions rather than outcomes should be the focus (Hayek, 1960; Sowell, 1999). In general, orthodox public finance, with its emphasis on the direct application of normative criteria to tax arrangements, does not give us an understanding of observed fiscal processes in the EU nor is it a basis for improvement on grounds that are acceptable to the taxpayers. As we do test in this paper, the logic of a constitutional approach can give such an interpretation, just as it gave an analytic interpretation of the popular tax revolts sweeping across the U.S. in the late 1970s. A constitution contains a principle-based limitation of the role of government in society and defines the basic rules for ordinary politics. A constitution is a framework for political action, not an instrument for action.

THREE METHODS TO CONSTRAIN THE EU LEVIATHAN

If political and cultural differences do exist, and freedom of choice and free initiative of citizens is important limiting constitutional rules do make sense. There are no unique constitutional solutions; several combinations of electoral and non-electoral rules are possible. Also, which reform of the EU budget is necessary? We can look back and learn from history. We look at what did shape the American fiscal constitution (Friedman, 1986; Hayek, 1960; Sowell, 1999). If the problem is to carry over tasks to supranational authorities, as is the case in the Treaty of Lisbon, we do feel protected if these supranational authorities can act on three provisions. Firstly, and most importantly, on provisions that lay out the (limited) range and scope of activities that are appropriately to be undertaken. Secondly, on provisions that state a bicameral fiscal (constitutional) framework, and thirdly, on nondiscriminatory rules.

THE TASKS OF THE EU

If the problem is how to establish a limited government, we can look at the constitution of the U.S. In the U.S., two authorities are of interest: the authorities in each of the states and the federal government in Washington. Is that not too

much government? Not if both authorities compete with each other in the sense that they each have their own branch of power. We can guard a branch if a constitution does support us. Further, as has been said by James Madison, one of the founders of the American constitution, in the U.S. constitution the central authorities do have little and limited and the states do have many and large competences. The former has powers related to foreign policy and national defense. The latter has powers related to the criminal justice system and the protection of the family. In the Treaty of Lisbon, however, the opposite seems to be the case: there seems to be little that does not fall under the jurisdiction of Brussels. The Treaty describes tasks that the EU has to do under all circumstances (e.g., customs, competition and monetary policy, fishing, trade and the internal market policy), tasks that can be appropriated if necessary (e.g., environmental policy and consumer protection) and tasks the EU supports (e.g., tourism) (Treaty, 2004 and 2007).

Power, however, wants more power, all to the good or to the bad. Hence, every possibility, how artificially, the EU will use to enlarge it. The manner of subsidizing activities, for instance, enormously enhances the influence of the EU. Suppose the EU gives a subsidy of 50% to a certain activity. That is almost blackmail; no local government, in their good mind, is opposed to it. For the local authorities the gains of the activity has to be only halve of the total costs (cp. Edwards, 2005). The pressure to accept the subsidy is enormous. 'Matching' grants do unlock an acute gold rush.

Even, however, if the given task for the (federal) central authorities is small, the pressure for growth is enormous. For instance, the EU authorities do have a stake in border crossing interests. Title 1, art. 3: 2 and 3 of the new treaty says that 'The Union shall offer its citizens an area of freedom ... without internal frontiers and that the Union shall establish an internal market'. That, however, is a license for government involvement; at least it was in the US, in approximately everything. Look at what did happen in the US. According to the constitution, the federal authorities may not meddle with agriculture in the separate states. Yet---with the constitutionally rule and power of the authority over interstate trade in hand---it states how many acres in the separate states have to remain wasted. How can the federal authorities motivate this? A farmer did grow grain on his "wasted" land and fed the grain to his cattle. At first site, no interstate trade seems to take place. The Supreme Court, however, did argue that if the farmer had not grown grain on his wasted land, he would have bought it. He, also, influenced the price of grain on the market and so interstate trade (Snyder, 1998).

In general, even if there is a clear separation of powers and limitation of tasks, as in the US, central government often grabs the possibility to enlarge its powers. What then can we expect of the description of tasks in the treaty? In general, the tasks of the EU tasks are many and hard to control by a democratic decision-making process. A process in which everyone thinks that other people do pay for a certain policy and changing majorities have to be bought, time and again. An ever-increasing government budget might be expected.

The principles of subsidiarity and proportionality did not give any restraint in the past and will probably not do in the future. The principle of subsidiarity says that ‘in areas which do not fall within the EU’s exclusive competence the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can, by reason of the scale or effects of the proposed action, be better achieved at the Union level’ (art. 5: 3, 2007). Under the principle of proportionality, ‘the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’ (art. 5: 4, 2007).

THE INSTITUTIONAL STRUCTURE OF EU DECISION-MAKING

For Hayek it is necessary to create a Legislative Assembly (upper house) that states the rules and a Governmental Assembly (ordinary legislature or parliament) that administrates within those rules (1982, Vol. 3). A new and differently elected and organized Legislative Assembly should draw up semi-permanent fiscal rules, and should not be subject to influences of particular groups. In the EU, however, there is an intentional combination, the decision-making (institutional) triangle, of the European Commission, the European Council and European Parliament. All of whom state what the budget is and make the policy within it (Treaty, 2004 and 2007). Consequently, the proposed change in policy of the EU from unanimity to majority rule is no effective constraint on the exercise and growth of EU power (Brennan and Buchanan, 2000).

Constitutional economics is both thinking outside the box and back to basics. For the EU it is scientifically largely uncharted territory. Hayek’s model of bicameralism for fiscal powers for example, to my knowledge, has never been part of any political agenda. It is thinking outside the box of mainstream public finance. In due course, the separate “taxation chamber” can even grow into an institution where all legislation in the EU is made independently from the direct policy use of it.

THE RULE OF LAW AND EU NONDISCRIMINATORY RULES ON SPENDING

Democratic politics should be more than groups or Member States each seeking to further particular interest. The ultimate justification of collective action should be the persuasive force of nondiscriminatory objectives (Hayek, 1960). For Buchanan and Hayek this means the extension of the legal tradition in Western civil order of nondiscrimination, the rule of law, to the workings of ordinary politics: not limiting benefits to members of identified groups or countries. Nondiscrimination is already the rule on the taxing side but not on the spending side of the EU budget. The principle disqualifies all programs that target persons and Member States who

qualify in accordance with identification by ethnicity, location, occupation, industry, or activity (Buchanan, 2000).

CONCLUSION AND SUMMARY

The EU treaty misses an essential ingredient that should be present: a process by which whoever has the power can be constrained. This will in effect give a basis for the founding values of the EU, especially the ones of freedom and the rule of law. In general, the EU budget hovers between one that redistributes money between members and one that achieves certain EU-wide policies. The budget is the cause of many of the bitterest arguments between the Member States. Often, the objective of spending seems to be to achieve acceptable net balances rather than agreed policy. It has been said that the EU budget has never been used as a means to meet the objectives of the Union but rather as a negotiating tool for its members.

If fiscal dissatisfaction in the EU is the result of a growing tendency in which majorities do decide, and hence does give changing majority coalitions political authority and hence the opportunity to finance their special interests, within that framework we can never solve the problem. There is another possibility. From the point of view of constitutional economics three things are necessary. One, we need a fiscal constitution on the bases of a clearly enumerated list of tasks for the EU. Second, we have to split fiscal powers: the establishment of a separate legislative branch of the EU that does state the principles of taxation and another branch that makes policy inside those rules. Presently, however, often majority by means of the European Commission and the European Parliament does set the fiscal rules as well as does make policy inside those rules on a seemingly endless list of possible tasks. Third, EU benefits should not be limited to special groups or countries.

In the wake of the demise of the proposed Constitution, instead of the present non-constitutional approach, a model constitution for the EU budget can become an agenda-setting focal point for a future EU policy. A fiscal constitution is a means proportionate to the problem at hand. A fiscal constitution (1) can be a real possibility. In history, constitutional debate has always been possible and fruitful. (2) It creates trust between the states. A shared framework facilitates a robust democratic debate. (3) It makes subsidiarity a real possibility. The market economy functions within a limited government. Moreover (4) it substitutes for improving the morals between Member States. Just as the market economy does the same by steering self-interested human behavior within a constitutional order of private property.

In sum, the paper shows how we can use the reformed new EU budget by imposing constraining rules to promote solidarity and trust in the setting of an EU Leviathan. Instead of emphasizing efficiency, to up-date goals and means, and/or to aim at greater fairness the paper shifts the emphasis to the making of authentic

rules: the design of possible constraints on a revenue-maximizing EU. Because of their voluntary consent (an internal criterion based on the desires of the Member States themselves) it is acceptable to the Member States that are to be subject to it. No external criteria, and hence no agreement over the goodness or badness of these criteria used, e.g., allocative efficiency or equal treatment for equals, are necessary. The shared framework of a model EU budget (politically independent fiscal rules) creates trust and social cohesion between the Member States, the European Parliament, Commission, and Council of Ministers. It facilitates a robust democratic debate within a consistent, transparent and reliable policy and legislation framework. Member States can anticipate making appropriate behavior adjustments, including those made over a long-term planning period. The paper gives the analytical arguments in support of three appropriately designed budgetary measures (moderately permanent features) re the EU Budget Review: a clear limitation of tasks, a split in budgetary powers, and the rule of law applied to budgetary benefits.

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