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The decision-making procedures for the European
Union's finances in the Constitutional debate

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Abstract

The paper accounts for the veto player system that dominates the decisions on the medium-term expenditure ceilings (the Financial Perspectives) and on the revenues (the Own Resources Decision) and for the joint decision-making mode that has been gradually introduced for the European Union's annual budgetary process. This two-tier system has been confirmed by the new Constitutional Treaty, which does not substantially innovate the intergovernmental procedures governing the medium term programming and financing. With respect to the annual budgetary process, the Constitutional Treaty institutionalises the rules which have been necessitated by practical constraints outside the Treaty machinery: the new process is modelled on a modified version of legislative Codecision and provides for incentives to the parties to agree on the budget draft decided by the Conciliation Committee.

Key words: EU finances, EU budgetary procedure, Codecision procedures, Veto player analysis.

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1. Introduction

The European Union (EU) budget represents has a modest size with respect to the national budgets and with respect to the pervasive role of the Union's policies and interventions: 112 billions in 2006, nearly 1,01% of the enlarged EU GNI. However, the decision making process for the EU finances presents a rather complex system: financial decisions are taken by different authorities, are adopted through very different procedures and give rise to acts belonging to different categories. Seen in its historical perspective, it is also an illuminating example of the intertwining of super-national and intergovernmental elements that is so specific of the EU processes.

The Rome Treaty entrusted the competence over the Union's finances to the member States, both for the expenditure and for the revenue side. This inter-governmental practice benefited from a qualified majority voting rule which allowed the regular approval of the budget during the '60s and avoided the problems that the ordinary legislation met because of the application of the Luxembourg compromise. The procedure was modified in the '70s by the introduction of super-national elements in the form of the upgrading of the European Parliament's role: this represented the first substantial involvement of the Parliament in the Union's decision making process, a sort of test bed for its subsequent assignment of competencies in the legislative field.

The EU finances are currently decided by a mixture of inter-governmental and super-national decision making practices. The power over the annual budget is shared by the two budgetary authorities, the Council of Ministers and the European Parliament. The budget is however framed by a medium-term financial programming decided at intergovernmental level. The setting of the revenues, the way they are calculated and the ceilings on the expenditures depend on a two-tier veto player decision making system:

2. the Own Resources Decision, taken unanimously by Council of Ministers;
3. the Financial Perspectives, decided unanimously by the European Council.

A super-national element is inserted in the decision on the Financial Perspectives, as they must be adopted by means of an Interinstitutional Agreement which is jointly approved by the Commission, Council of Ministers and the European Parliament.

The aim of the paper is to analyse the intertwining of super-national elements in the originally inter-governmental decision making structure for the EU finances, focussing on its effects on the strategic properties of the procedures, on the formal institutional interactions and on what the European institutions can do on the basis of their rules. The paper leaves aside the issues of the preferences of the actors, of coalition formation and of the voting rules. Searching for the insertion of super-national elements, particular attention will be devoted to the reform of the procedures for the EU finances introduced by the Constitutional text. Although it is not sure that the Constitution will be definitely approved, as it has been rejected in the French and Dutch referenda, however, it provides for a thorough rationalization of the procedures: legislative codecision has become the reference model for super-national decision making and also the budgetary procedure has been tuned to it. The Constitutional reform however implies the institutionalization of the negotiation *fora* (interinstitutional agreements, trialogues, conciliation meetings,...) which currently support the budgetary process and which have proved so useful in sustaining repeated interactions among the budgetary institutions and in channelling inter-institutional conflict into cooperation.

The remainder of the paper is structured as follows. Section 2 discusses the procedures for the EU finances which are based on a veto players system, i.e. the Financial Perspectives and the Own Resources Decision, presenting also the changes introduced by the new Constitutional Treaty. Section 3 analyses the super-national elements which are present in the EU finances decision-making process, notably the Interinstitutional Agreement and the annual budget. Section 4 analyses the process leading to a revised version of the budgetary procedure in the new Constitution. Section 5 resumes the main findings.

2. The veto player framework

A strong intergovernmental element is embedded in the EU finances decision-making process, as the main framing decisions on revenues (the Own Resources decision) and expenditures (the Financial Perspectives) are set by the EU institutions which voice the member States' interests, namely the European Council and the Council of Ministers.

2.1 The negotiation on the expenditures: the Financial Perspectives

In the Financial Perspectives, an overall ceiling on the own resources, expressed as a percentage of the EU GNI, limits the size of the annual budget. Leaving a margin for unforeseen contingencies under the own resources ceiling, the Financial Perspectives set for each year the budget total payment appropriations and the commitment appropriations for each line of expenditure: revenues automatically adapt to the expenditures, given the EU balanced budget requirement.

The Financial Perspectives were first introduced by Jacques Delors in 1987/88, as a means to reduce the conflicts between the EU budgetary authorities and to provide for sufficient resources to implement the policies decided in the Single European Act: they represented “a move from bargaining to authority, from budgetary chaos to order” (Laffan, 2000, p.733). The Financial Perspectives combine institutional and distributive issues (Lindner, 2006), establish political priorities and concentrate the budgetary conflicts at the time of their renewal. By establishing the Financial Perspectives, the European Council curtails the flexibility of the annual procedure and prevents major shifts between the main spending blocs: the European Parliament and Council of Ministers are left the manoeuvre only within the fixed ceilings of expenditures when deciding the annual budget. Thus, the Financial Perspectives “limit the scope for supranational decision-taking in the annual budgetary procedure” (Enderlein et al., 2005, p.16).

The decision on the Financial Perspectives is based on intergovernmental negotiation among the Member States. Although the Commission prepares the first draft, it is not the agenda-setter: it has not significant control over the outcomes of the process, as the European Council decides as a

sovereign body and can radically change the overall budget and the lines of expenditure proposed by the Commission. In December 2005, at the end of the negotiations for the 2007-2013 Financial Perspectives, the European Council agreed on a budget of 862.3 billion euro, 273 billion euro less than the original proposal from the Commission in 2004.

However, the Commission can decisively orientate the European Council's decision, as it is assigned the role of preparing the focal points for discussion and bargaining and to act as a mediator in the negotiations. In the last renewals of the Financial Perspectives, this mediating role has been increasingly taken by the European Council Presidency, while the Commission has been left the task of framing the negotiations (Laffan, 2000).

The European Council decides by unanimous consensus of its members and no final nor formal voting is explicitly foreseen, although in recent years it has been increasingly used, given some member States' intransigence on controversial issues. The request for unanimity gives each country a veto power, i.e. "a property right in the *status quo*" (Klick and Parisi, 2003, p. 87) and, in presence of side payments and transaction costs, it allows for significant strategic behaviour: member States can falsify their preferences and indulge in opposition to make pressure on the other States, to gain side-payments or simply to keep the situation unchanged. The negotiation on the Financial Perspectives has repeatedly provided the member States with such opportunities for strategic hold-up, especially in presence of diametrically opposed interests (for example, the 'net contributors' club' vs. the net beneficiary countries) and has displayed a strong *status quo* bias, as demonstrated by the difficult and prolonged discussions.

However, other elements counterbalance the *status quo* bias:

- i. increases in the amount of side payments that spur 'integrative negotiations' (Laffan, 2000).

Side payments can be provided by one or more member States increasing their contribution to the EU budget or reducing their share in the EU expenditures to move negotiations on from political impasses. In the 2007-2013 Financial Perspectives negotiations, this role was

played by UK, which accepted to cut its rebate by 10,5 billion euro over the seven-year period¹.

- ii. vote and position trading, which is possible given the multi-annual dimension of the Financial Perspectives. Vote trading makes veto power ineffective: in exchange for the promise that their preferences will be decisive in the future on another issue, players may accept an outcome that they do not prefer over the *status quo* (Tsebelis, 2002). This explains why “new policies are adopted that, in themselves, are known by all observers to be disliked by many if not most of the member states who, nonetheless, unanimously give their assent to them” (Salmon, 2003, p.13). Also the impossibility to reach an agreement can often be explained by the too high prices some States would have to pay to make their proposal be approved by the other member States.
- iii. the multi-dimensionality of issues of the Financial Perspectives where budgetary and non-budgetary issues are dealt in conjunction. The higher the dimensionality of the issue space, the higher the possibilities to depart from the *status quo* and the less it matters the number of veto players and the unanimity requirement (Selck, 2006). The importance of this ‘grand bargain’ (Laffan, 2000) dimension was originally intuited by J.Delors: “au lieu de discuter séparément de tel ou tel sujet, il fallai faire un compromis général qui ferai la part du pour et du contre dans l’ensemble de ce qui était sur la table” (Delors, 2004, p. 246).

The strain between the *status quo* bias and all the above integrative elements explains the gradual and modest increases in the EU budget since the introduction of the financial programming: the own resources ceiling has increased from 1,15 % EU GNP in 1988 to 1,27% in 2006, while the total appropriations for payments have changed from 1,08 % to 1,12% EU GNP in the same period.

¹ To the provision for side payments to support progress in integration are now commonly ascribed the main failures of the EU budget, which is considered by many scholars an inappropriate tool for fostering common goals (Gros and Micossi, 2005; Buti and Nava, 2003), unable to expand the provision of public goods in new areas of integration, such as internal and external security or foreign policy (Tabellini, 2003).

2.2 The medium-term financial programming in the new Constitution

Since its opening, the Convention discussed the role of the Multiannual Financial Framework, as the Financial Perspectives were renamed: there was broad consensus on the idea of formally establishing them in the Constitution as a binding framework for the annual budget, no longer based only on voluntary cooperation among member States and EU institutions. However, the Convention was deeply divided over the adoption procedure: “while some members proposed the adoption by the Council following consultation of the European Parliament, others wanted to apply the legislative procedure or *ad hoc* procedures for joint adoption by the European Parliament and the Council of Ministers” (European Convention, 2003a). The European Parliament and the Commission advocated the Parliament’s role as a co-legislator, suggesting the introduction of a Codecision procedure, either budgetary Codecision (European Parliament 2003, §. 10) or Codecision for legislative acts (European Parliament, 2002, §.6). Both would have implied substituting for the current veto player system and introducing super-national decision making modes.

The IX Working Group and the Discussion Circle on the budgetary procedure (European Convention, 2003b) agreed instead on a solution not distant from the current procedure. The final draft presented by the Convention (art. I-54, European Convention 2003c) transferred the decision-making power from the European Council to the Council of Ministers deciding by qualified majority voting², after obtaining the consent of Parliament, given by a majority of its component members. Enderlein et al. (2005) argue that this downgrading of the political decision level could undermine the character of the Financial Perspectives as a negotiating device, a multi-dimensional policy space where both budgetary and non-budgetary issues are dealt together.

The Convention’s draft did not meet the favour of the all member States in the Intergovernmental Conference and an even more conservative solution prevailed in the

² The voting procedure was not specified, but § 4 of article I-54 (European Convention, 2003c) provides that the first Financial Perspectives after the Constitution is signed should be adopted by the Council of Ministers by unanimity: the logical consequence seems to be that qualified majority voting should be the normal procedure.

Constitution's final text: it states that the Financial Perspectives have the *status* of a European law of the Council of Ministers and require unanimous approval (art. I-34 §. 2, Treaty Establishing a Constitution, 2004). This institutionalises the dominant role of the Council of Ministers acting in a system of veto players: the provision for a *passerelle* towards qualified majority voting by no means implies that it should be employed, given that the use of this bridging clause is made difficult by the Constitutional provision (art. IV-444, Treaty Establishing a Constitution, 2004) granting veto power to national Parliaments.

The request of the European Parliament's consent voted by a majority of its members would seem to introduce a sort of veto power for the Parliament. However, this should not effectively impinge on the Council's supremacy: previous historical experience in the negotiations on the Interinstitutional Agreement (see *ultra* § 3.1) shows that the Parliament has always used its veto power only to indulge in opposition and to extract concessions. Finally, the Constitution provides no solution for the cases of conflict between the Council and the Parliament.

2.3. The negotiation on the revenues: The Own Resources Decision

The nature of the revenues and the way they are calculated are set by the Own Resources system³, introduced by the Luxembourg European Council (1970) to replace the direct contributions from the member States. The decision-making process (art. 269 TEC) is tune according to strict intergovernmental modes: the Commission's proposal on the Own Resources is adopted unanimously by the Council of Ministers after consulting the European Parliament; then, the Council recommends that the member States ratify it, like any international agreement entailing consequences for the national finances.

This procedure gives the whole decision-making power to the Council: the Commission, which submits the draft, is not the agenda-setter, as it has no control over the process and the

³ The system is currently based on the Council of Ministers' decision (2000/597/EC), as amended by Regulation 2028/2004, and on two implementing regulations (n.1287/2003 and n.1553/89).

outcome. The draft is voted by Council at unanimity both to approve and to amend it. The Parliament must be consulted, but its opinion is not binding.

The request for unanimity in the Council creates a veto players system, where the number of the actors and the difference in their preferences determine the policy stability of the *status quo* and the alternatives that can defeat it (Tsebelis, 2002). This system gives “all the decision-making power to the government with the least interest in changing the *status quo* [and it inserts] a powerful lowest common denominator bias in the Council deliberations determined by the preferences of the least integrationist member government” (Garrett and Tsebelis, 1996, p.281). Indeed, the Own Resources system has produced relatively stable distribution of the member States’ contributions to the EU budget since the introduction of the GNP resource in 1988: adjustments of the VAT resource regime, of the UK rebate and of its financing have not entailed major changes in the sharing of the budgetary costs (Kauppi and Widgrén, 2004).

The Convention was seen as the occasion to rethink also the Own Resources system. However, discussions on the adoption procedure ended early, as the decision on the financial resources of the Union impinges on the national Parliaments’ taxation powers: both the Convention’s draft and the Constitution confirm the current system of veto players (art.I-54, Treaty Establishing a Constitution, 2004): the European Law of Council of Ministers that will set the Own Resources will require unanimous consensus and no *passerelle* for the introduction of qualified majority voting is provided for; the Commission is not upgraded to an agenda-setter role and the Parliament’s role is limited just to consultation.

3. The insertion of joint decision-making modes

The shift from the strict intergovernmental framework towards joint decision making modes began in the '70 with the reform of the budgetary procedure. The next step was the provision that the Financial Perspectives negotiated by the European Council should be jointly adopted by the Commission, the Parliament and the Council of Ministers.

3.1 The Interinstitutional Agreement

The Financial Perspectives are a “political decision” which is somehow binding for the other European institutions: after the European Council’s approval, they are jointly negotiated and adopted by the Commission, the Council of Ministers and the European Parliament by means of an Interinstitutional Agreement on the budgetary discipline. The nature of the Interinstitutional Agreement is that of “a gentlemen’s agreement”, a contractual instrument not mentioned in the Treaties, which do not recognise it any legal effect⁴. It does not change the distribution of competencies assigned by the Treaties, but it has far reaching consequences on the freedom of action of the subscribing institutions which cannot unilaterally modify them. As any commitment device, the Interinstitutional Agreement ties the hands of the institutions which sign it: the Council of Ministers accepts to control the agricultural expenditure, which is its privilege as a compulsory expenditure; the European Parliament limits itself when voting amendments to the non-compulsory expenditures; the Commission has reduced scope in preparing the preliminary draft budget.

In negotiating the Interinstitutional Agreement, each one of the three institutions act as a collective veto player (Tsebelis, 2002), as each one’s consent is necessary to change the *status quo*. The different voting rules also play a role in the inter-institutional bargain: the Commission endorses the decision by simple majority and the European Parliament votes a resolution also by simple majority⁵. As the Council must implement the political decision on the Financial Perspectives taken by the European Council, it endorses it by a vote under unanimity, which means that there can be abstentions but no vote against. Thus, in principle, it should be much easier to gain a majority in the Parliament and in the Commission, than to gain a unanimous vote in the Council: an Interinstitutional Agreement that receive the unanimous vote of the Council is very likely to

⁴ The Court of Justice never pronounced itself on the judiciary value of the Interinstitutional Agreement, but acknowledged their utility, as they are based on the principle of loyal co-operation among institutions which the Treaties promote.

⁵ The Parliament’s legal service concluded in 1999 that the requested majority was simple majority (art. 198 TEC), although some Members of the Parliament asked for qualified majority decisions, given the nature of certain provisions included in the Interinstitutional Agreement.

attract the majority of votes in the Parliament and in the Commission. This would make the Council the critical player in the game: however, as the Council is the expression of the Member States and duplicates their preferences, its unanimous consensus to the Interinstitutional Agreement can be taken for granted after the European Council decision.

On the contrary, the Parliament has always shown dissatisfaction with the European Council's proposals and has repeatedly menaced to veto the Interinstitutional Agreement, mainly on grounds of its providing for insufficient resources. However, the Parliament's threat of not signing the Interinstitutional Agreement was not credible and was disregarded when the Financial Perspectives ceilings lay significantly above what could be obtained by the application of the Treaty's provisions on the budget (Lindner, 2006). Also when the Financial Perspectives ceilings have been close or beneath to what was obtainable by the ordinary provisions of the Treaty⁶, the Parliament's opposition did not prove that strong, given the simple majority requirement and the Council of Ministers' granting of concessions, either improvements and benefits from the institutional side of the budget (opinion exchanges on the financial priorities, concert on compulsory expenditures) or small increases in the budget⁷.

The Interinstitutional Agreement will disappear in the Constitution's new provisions for the adoption of the Financial Perspectives: this will eliminate a *forum* for negotiation and a conflict-reducing device. This tendency towards the institutionalization of contractual instruments, which have voluntary nature, will probably increase "the tendency for negotiations over a new Financial Perspective to confirm the existing spending structure. Budgetary actors could simply prevent

⁶ The Parliament estimates that, had it used the instrument it is entitled to by the Treaties, the Maximum Rate of Increase of the non compulsory expenditures, it could have increased the budget by nearly 33 billion over the 2000-2004 period (European Parliament, 2004).

⁷ In the negotiation for the 2007-2013 Financial Perspectives, the Parliament initially rejected the European Council conclusion on grounds of its prevailing over the Parliament's powers and of its providing for insufficient resources: the Parliament asked for at least a 12 billion increase in the budget (European Parliament resolution, 18 January 2006). On April 2006 the negotiations for the signing of the Interinstitutional Agreement ended with a final increase in the budget by 4 billion euro.

change by relying on the automatic prolongation of the *status quo*. Also the threat to exit the Financial Perspective or to veto its renewal has so far served as a healthy warning to all actors involved, thereby forcing them to cooperate” (Enderlein et al., 2005, p.18).

3.2 The annual budgetary procedure

Article 203 of the Rome Treaty gave the first rules for the budgetary procedure: the draft budget presented by the Commission was to be discussed, modified and approved by the Council voting by qualified majority. Within a month, the Parliament either approved the budget or did not react to it (in both cases the budget was approved) or amended it: in this latter case, the Council deliberated on each amendment by qualified majority. This procedure left the Council the primary role in the budgetary decisions: in fact, the Council could modify the Commission’s draft by qualified majority voting and unanimity was not required even when the Council discussed and approved the Parliament’s amendments.

This procedure was different from the ordinary procedure for legislation, consultation (Art. 250 TEC): the preliminary budget draft prepared by the Commission was not considered a legislative proposal, but a *sui generis* act which disappeared when the Council adopted the budget draft. Thus the Commission’s right did not correspond to an effective agenda-setting power. The procedure worked quite well until 1970 and the budget was always regularly approved. The request for qualified majority voting in the Council avoided the problems that ordinary legislation met during those same years because of the application of the Luxembourg compromise.

The Luxembourg Treaty (1970) and the Bruxelles Treaty (1975) modified the original procedure, upgrading the power of Parliament, while not improving the agenda-setter role of the Commission. The empowerment of Parliament was meant to strengthen the democratic legitimacy of the Community⁸: the Parliament’s involvement in the budgetary decisions was the first step, as it

⁸ The Parliament’s involvement in the budgetary process coincided with a major advance in the Community’s integration process spurred by the Aja Conference (December 1969) and by France President G. Pompidou’s

preceded both the decision to elect Parliamentarians by universal direct voting in 1976 and the upgrading of its legislative power by the Single European Act in 1987.

The first power assigned to the Parliament by the Luxembourg Treaty was on the expenditures, divided into two groups: the compulsory expenditures (CE)⁹, which the Parliament can modify, while the Council retains the final say on them; the non-compulsory expenditures (NCE), which the Parliament can amend and over which it keeps the final say. The Parliament's modifications to the compulsory expenditures were divided again into two types: those that increase total expenditure and those that do not increase it. The first ones must be approved by the Council by qualified majority, otherwise they decay; the second ones can be refused by the Council by qualified majority, otherwise they are approved.

The Luxembourg Treaty stated that the non compulsory expenditures must be limited by a Maximum Rate of Increase (MRI), a statistical indicator ascertained by the Commission. A higher Maximum Rate of Increase can be decided by the Council and the Parliament when required by the Community's activities: this decision often caused conflicts, as the Parliament asked to exceed the Rate to "promote its policy preferences [..... and] to expand policies falling under the non-compulsory heading so that it had the final say over a larger part of the budget" (Laffan, 1997: 83-84). The Bruxelles Treaty further expanded the Parliament's power and the reasons for conflict by granting it a 'margin for manoeuvre', i.e. a sum on whose destination the Parliament can freely decide and which it can use to increase the non compulsory expenditures or to create new expenditures.

The delegation of budgetary powers to the Parliament does not correspond to standard principal-agent models, as the Parliament enjoys significant autonomy with respect to the member

commitment to solve all the institutional quarrels that had caused a stalemate of the Community's activities since the 1965 crisis. On the link between transfers of sovereignty and the exacerbation of the legitimacy deficit in the EU, see Auel and Rittberger (2006).

⁹ The compulsory expenditures are the expenditures "necessarily resulting from the Treaties or from acts adopted in accordance therewith" (art. 272 TEC).

States (Pollack, 1997). Its independence and the absence of rules in the Treaty to solve disputes between the budgetary authorities¹⁰ led to annual conflicts on the division of the budgetary powers for nearly a decade. After the introduction of the Financial Perspectives, however, the annual budget has been approved without major obstacles. One of the main causes of conflict, the Maximum Rate of Increase, was in fact neutralized, as the annual increases in the non compulsory expenditures decided by the Parliament are subject to the ceilings of the medium-term programming: as already noted, this implicitly modifies the Treaties' provisions on the sharing of budgetary powers.

Besides, the 1988, 1993 and 1999 Interinstitutional Agreements increased the recourse to negotiation to solve conflicts outside the formal structure of the annual budget cycle: four dialogues and two conciliation meetings¹¹ now punctuate the procedure, which is described in Article 272 TEC and illustrated in the Appendix - Figure 1. The extensive use of negotiation has made the distinction between compulsory and non compulsory expenditures less relevant and has extended the power of the Parliament over the whole budget (Enderlein et al., 2005).

Negotiation is essential to avoid inter-institutional conflicts, as the procedure designed by the Treaty encourages inter-institutional opposition. The strategy "amend" would be in principle preferable for both the Parliament and the Council to retain power over the expenditures assigned to them. Items of expenditure which are not amended at the first readings, cannot later be modified; besides, whenever the Council and the Parliament reach an agreement over an item, there may no be subsequent changes. Thus, if the Parliament accepts the Council's decision on the compulsory expenditures at its first reading, the Council cannot return to it on its second reading; if the Parliament accepts an item of non compulsory expenditures entered in the draft budget at its first

¹⁰ The absence of detailed institutional arrangements, which limit the scope for interpretation, can be ascribed to the presence of conflicting polity ideas among the member States, which "will be less able to specify the details of the rules governing future interaction among the execution coalition. As a result, the potential for rule interpretation is likely to increase" (Lindner and Rittberger, 2003, p.451).

¹¹ Dialogues are attended by the Chairman of the Parliament Committee on Budgets, the President of Council of Ministers (Budgets) and the Commissioner for the budget. Conciliation meetings are attended by the members of Council (Budgets) and a Parliament's delegation, while the Commission acts as mediator.

reading, neither it nor the Council can return to it in the second readings. Inaction on the part of one authority implies the approval of the draft budget in the version approved at the previous reading by the other authority.

Agenda-setting power is given to the Council on the compulsory expenditures, as their modification by the Parliament increasing the total expenditure must be approved by the Council at qualified majority voting during its second reading, otherwise the Council's position holds in the final text. On the contrary, the Council votes on the Parliament's modifications to the compulsory expenditures that do not increase the total expenditure and on the Parliament's amendments to non compulsory expenditures only if it wants to reject them: as rejection at qualified majority voting implied 62 votes out of 87 in the EU-15, it has always been more difficult for the Council to reject than to accept the Parliament's amendments/modifications. The Parliament has an agenda-setting power on these expenditures, although a weaker one than if the Council's unanimity were required.

4. The reform of the annual budgetary procedure in the Constitutional debate

4.1 The Convention's proposal

The current budget procedure has always been criticised for being too long and complicated: its reform was included among the goals of the Convention. The first suggestions came from its Working Group IX: "the European Parliament and the Council of Ministers shall on a proposal from the Commission [...] jointly adopt the Union's budget" (Art. 40, European Convention, 2002). The "jointly adoption" implies the rejection of the distinction between compulsory and non-compulsory expenditures and the extension of Parliament's influence over the whole budget. The same view was shared by Parliament (European Parliament, 2003) and by the Commission (European Commission, 2002). The Parliament suggested that, in case of disagreement, the Council would retain the final word on the revenues, while the Parliament would retain the final word on the expenditures within the limits set by Council's decision on the own resources.

The proposal was submitted to the Convention (European Convention, 2003a) and was redrafted twice by the Presidency. The Circle on the budgetary procedure suggested the introduction of a simpler procedure and the “consolidation of the rules which have been necessitated by practical constraints outside the Treaty machinery” (European Convention, 2003b, p.12).

The final draft (Art. I-55, European Convention, 2003c) drops the ‘jointly adoption’ and provides in article III-310 for a complete description of the procedure (Appendix - Figure 2), modelling it on Amsterdam legislative Codecision, with some reminiscences also of the previous Maastricht version¹². In the Convention’s proposal, the number of readings is reduced to one plus conciliation. The main difference with respect to Amsterdam Codecision is that, if the Conciliation Committee does not reach an agreement or if only the Council rejects the joint draft, the procedure does not end but continues, like in the Maastricht version. However, differently from Maastricht Codecision, the draft is passed not to the Council, but to the Parliament for a final decision: the Parliament thus becomes the agenda-setter and may confirm its amendments by a majority of its members and three fifths of the votes cast. The Council has no veto power on the Parliament’s decision.

¹² The first version of Codecision was introduced by the Maastricht Treaty (ex art. 189 b). The main novelties were the introduction of a third reading and of a Conciliation Committee, composed of an equal number of members of the Parliament and of the Council, while the Commission acts as a mediator. If the Council in its second reading disagrees with even a single amendment made by Parliament, the draft bill is referred to the Conciliation Committee. If the Committee reaches an agreement, its proposal has to be finally approved by the Parliament (by majority voting) and by the Council (by qualified majority voting). If the Conciliation Committee does not reaches an agreement, the procedure provides for a third reading by the Council, which can revert to its previous common position (i.e. the text approved by the Council before the conciliation procedure, possibly with amendments proposed by the Parliament). The Parliament can only reject the Council’s proposal by absolute majority, otherwise it is adopted: at this stage the Council is the agenda-setter, making a take-it-or-leave-it proposal to the Parliament. The asymmetry between the Council and the Parliament in Maastricht Codecision was later modified by the Amsterdam Treaty, as the Parliament disliked the fact that a disagreement in the Conciliation Committee did not imply the rejection of the draft bill, but passed it again to the Council. In Amsterdam Codecision (Art. 251 TEC), if the Conciliation Committee does not reach an agreement the bill is definitely rejected. Therefore, the text agreed on in the Conciliation Committee is established as the actual game equilibrium (Hix, 2002).

In summary, the hybrid version of codecision proposed by the Convention increases the power of the Parliament in the budgetary procedure, as it gives it the last word in case negotiation in the Conciliation Committee fails, with no possibility for the Council to veto the proposal. The procedure combines a joint decision mode (the Conciliation Committee) and a clear allocation of power resources (final word to the Parliament, no veto power to the Council in the last stage).

4.2 The debate in the Intergovernmental Conference

The Convention's proposal for the budgetary procedure raised conflicts among the member States because of the Parliament's increased power¹³. During the first months, the Italian Presidency of the Intergovernmental Conference (IGC) acknowledged to be unable to reach consensus over an alternative. Slight modifications to the Convention text crept in only in December 2003, in the Presidency proposals for the Brussels European Council, starting the process of progressive limitation of the Parliament's powers by including, in the final stage, a veto power to the Council on the Parliament's amended text.

As the European Council failed to reach an overall agreement, a thorough revision of the procedure was accomplished by the Irish Presidency, providing for a detailed account of the cases in which one or both budgetary institutions fail to take a decision or reject the joint text approved by the Conciliation Committee (IGC 73/04) and confirming the veto power to the Council. Dissatisfaction on the part of some member States and of the Parliament forced the Irish Presidency to work out another version at the end of May 2004. The new version (IGC 78/04) rebalances the power of both institutions, granting the Parliament the possibility to confirm its amendments only in case the Council rejects the joint text and depriving the Council of its final veto power.

¹³ With respect to the budgetary procedure, the ECOFIN at Stresa (September 2003) asked that, "where the Conciliation Committee does not approve a joint text, or if the Council rejects the joint text, a budget shall be adopted, providing, in the case of each budget item which is subject to disagreement, the lowest amount proposed either by the Council or by the Parliament or, where it is higher, the figure in the budget law for the previous year" (IGC 37/03). The Italian Presidency decided not to adopt these proposals, which had triggered a wave of protests from the Parliament.

This last proposal was included in the 2004 final version of the Constitution (now art. III-403, Treaty Establishing a Constitution, 2004). The budgetary procedure (Appendix - Figure 3) presents the new budgetary procedure, which now strictly resembles Amsterdam Codecision¹⁴. Thus, if the Conciliation Committee does not reach an agreement, the budget draft is rejected and the Commission prepares a new draft. However, some difference remains: 1) the Parliament may confirm its amendments if, during the vote on the joint text, the Council rejects it while the Parliament approves it. 2) The new procedure provides for a detailed specification of the moves for the Parliament and the Council deciding on the joint text.

4.3 Comments on the budgetary process in the new Constitution

The Constitution's budgetary procedure does not radically innovate with respect to the current one. The adoption of Codecision formalises already robust practices of cooperation among the institutions: a formal Conciliation Committee substitutes for the current dialogues and conciliation meetings. One formal change has been the assignment to the Commission of the task of preparing not a "preliminary draft", but the definitive "budget draft", which the Commission can amend up to the conciliation stage: however, this does not upgrade the Commission to a real agenda-setter's role.

Besides, changes have been made to further tune the procedure to a joint decision mode: the IGC Irish Presidency strove to design "an approach which would strongly encourage and facilitate the achievement of agreement in the Conciliation Committee" (IGC 75/04). The incentives for the budgetary institutions to reach an agreement in the conciliation stage can be found in:

1. the elimination of the possibility for the Parliament to confirm its amendments, if the Conciliation Committee does not reach an agreement. This increases the Parliament's commitment to an agreement in the Conciliation Committee. Had the IGC not done so,

¹⁴ Codecision has been included in the Constitution as the ordinary legislative procedure for the European laws. Article III-396 of the Constitution reproduces art. 251 of the Treaties with some minor changes: for example, the Parliament's first opinion is called a first reading; the Council's decision is simply called its "position".

Council would have probably behaved as the Parliament did in the ‘90s to obtain the modification of Maastricht Codecision: it would have committed to always veto the Parliament’s text, thus forcing a change in the procedure;

2. the set of strategies and outcomes for the Council and the Parliament when they decide on the Conciliation Committee’s joint text, as Table 1 shows: as the joint text is submitted *en bloc* to both institutions, the situation can be assimilated to a simultaneous moves one-shot game. The combination of strategies “*adopt-adopt*”, “*not decide-not decide*” or “*adopt-not decide*” leads to the approval of the joint text. Rejection, combined with any of the other strategies, leads to a new draft budget, except when the Parliament approves the joint text and the Council rejects it. This entails a punishment for the Council, as the Parliament can confirm its amendments unconditionally and the Council has no remedy for this. No punishment is provided for the Parliament.

Table 1. Strategies for Council of Ministers (CM) and European Parliament (EP) after the Conciliation Committee

	CM approves the joint text	CM does not decide	CM rejects the joint text
EP approves the joint text	Joint text adopted	Joint text adopted	EP can confirm its amendments, CM has no veto power: budget adopted
EP does not decide	Joint text adopted	Joint text adopted	New draft
EP rejects the joint text	New draft	New draft	New draft

Assuming complete and perfect information and rational behaviour of both actors, the budgetary process incorporates the incentive for them to adopt the joint text. We observe first that for the

Parliament confirming its own amendments is better than asking for a new draft budget: thus, the strategy “*adopt*” is dominant with respect to “*not decide*”. It is not possible *a priori* to decide whether having the joint text approved is better for the Parliament than having a new draft. However, rejection of the budget has always been a rare event even in the turbulent 1980s¹⁵. Besides, the possibility that the Parliament confirms its amendments in case it approves the joint text, while the Council rejects it, gives the strategy “*EP adopts*” a dominance over rejection.

The Council is indifferent between the strategies “*to adopt*” and “*not to decide*”, while it certainly fears to reject the joint text, in case the Parliament approves it and confirms its amendments. Thus, the strategy “*to reject*” is dominated by the strategies “*to adopt*” and “*not to decide*”. Now the matrix for dominant strategies looks as in Table 2.

Table 2. Dominant strategies for Council of Ministers (CM) and European Parliament (EP) after the Conciliation Committee

	CM adopts the joint text	CM does not decide
EP adopts the joint text	Joint text adopted	Joint text adopted

Thus, in the final stage, the Parliament and the Council will endorse the text decided by the Conciliation Committee, as the IGC Presidency wished. Assuming that the players act strategically and using backward induction, the Conciliation agreement is also the actual game equilibrium of the budgetary codecision (Napel and Widgrén, 2006).

¹⁵ The rejection of the 1980 budget was due to lack of agreement on the agricultural expenditures and to the cut in non compulsory expenditures made by the Council. The 1985 budget was rejected because of the devices employed by the Council to hide the insufficient budgetary resources. The 1982 rectification budget was rejected because the Parliament did not approved the solution adopted by the Council to the UK rebate problem.

5. Conclusion

Decision-making procedures for the EU finances reflect the division of power inside the EU and show the dominance of a veto players system: the balance of power in the financial decisions is currently clearly in favour of the Council of Ministers and of the European Council, both governed by intergovernmental procedures, as the main ceilings on revenues and expenditures are decided through negotiation among the member States, excluding an effective agenda-setter role for the Commission and an effective veto power for the European Parliament. In particular, the introduction of the Financial Perspectives, which have eased the budgetary process and solved many inter-institutional controversies, have also concentrated the budgetary conflicts in the year when the financial programming is decided, have introduced rigidity in the expenditures for a rather long period of time and have modified the decision-makers with respect to the Treaty's prescriptions. This same perspective has been confirmed by the new Constitution. A conservative solution and the confirmation of the unanimity requirement in the Council, has prevailed for the adoption of the Financial Perspectives, while only a *passerelle* towards qualified majority has been provided for: the Parliament's consent does not imply a real departure from inter-governmentalism, while the disappearance of the Interinstitutional Agreement deprives all EU institutions of a device whose voluntary nature has proved successful in sustaining repeated cooperation.

The full prerogatives of the member States have been confirmed also in the Own Resources decision, where the current system of veto players has been thoroughly restated: the Commission has not been upgraded to an agenda-setter role, the Parliament has not even been required to give its consent and no *passerelle* for the introduction of qualified majority voting in the Council has been provided for.

The annual budgetary process has been marked instead by the upgrading of the Parliament as a joint decision-maker. The role of the Parliament has been confirmed by the Constitution's new budgetary procedure which introduced a slightly different version of Amsterdam legislative

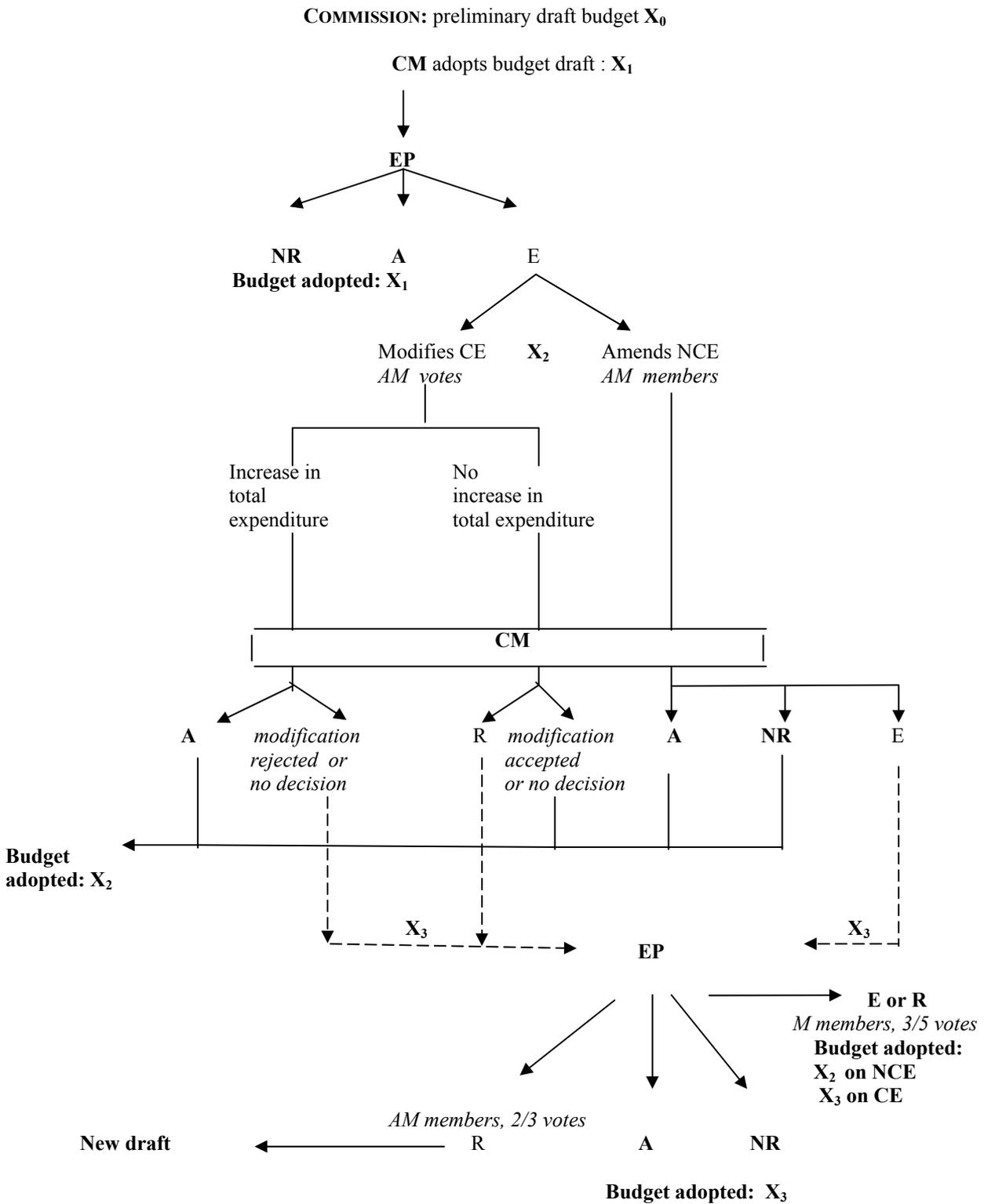
Codecision. As in legislative Codecision, the Conciliation Committee is the final stage and if it does not reach an agreement, the budget draft is rejected and the Commission prepares a new draft. However, an explicit set of incentives has been provided to support the adoption of the Committee's joint text: 1) if one or both institutions fail to decide, the joint text is approved; 2) the Parliament may confirm its amendments if it approves the joint text while the Council rejects it and no symmetric punishment holds for the Parliament, not even in the form of granting a veto power to the Council. These provisions should guarantee that the budget is adopted, if not in earlier stages, at least in the version negotiated in the Conciliation Committee.

The paper does not investigate the potential outcomes of the bargaining within the Conciliation Committee, which depend on the hypothesis about the real distribution of power between the Parliament and the Council. Assuming symmetric bicameral bargaining, "we cannot be precise about where, on the Council-Parliament contract curve, [the budget] will be passed, because there are no institutional constraints on bargaining in the Conciliation Committee. Using any of the standard models (Nash, Rubinstein or Baron and Ferejohn) one might expect outcomes to split the difference (Tsebelis and Garrett, 2001, p. 372)". Napel and Widgrén (2006), however, argue that the formal symmetry between the Parliament and the Council in the Conciliation Committee is not sufficient to make them equally powerful co-legislators and that asymmetries in their respective voting rules make the Council a more critical player.

The Constitutional revision of the budget process and of the decision-making process for the Financial Perspectives reveal a tendency in the EU towards rationalization and "consolidation of the rules which have been necessitated by practical constraints outside the Treaty machinery" (European Convention, 2003b, p.12). This implies the institutionalization of the negotiation *fora* (interinstitutional agreements, trialogues, conciliation meetings,...) which have up to now proved so useful in sustaining repeated interactions: however, it is questionable whether bargaining devices and formally detailed procedures are equally effective in channelling inter-institutional conflict into cooperation.

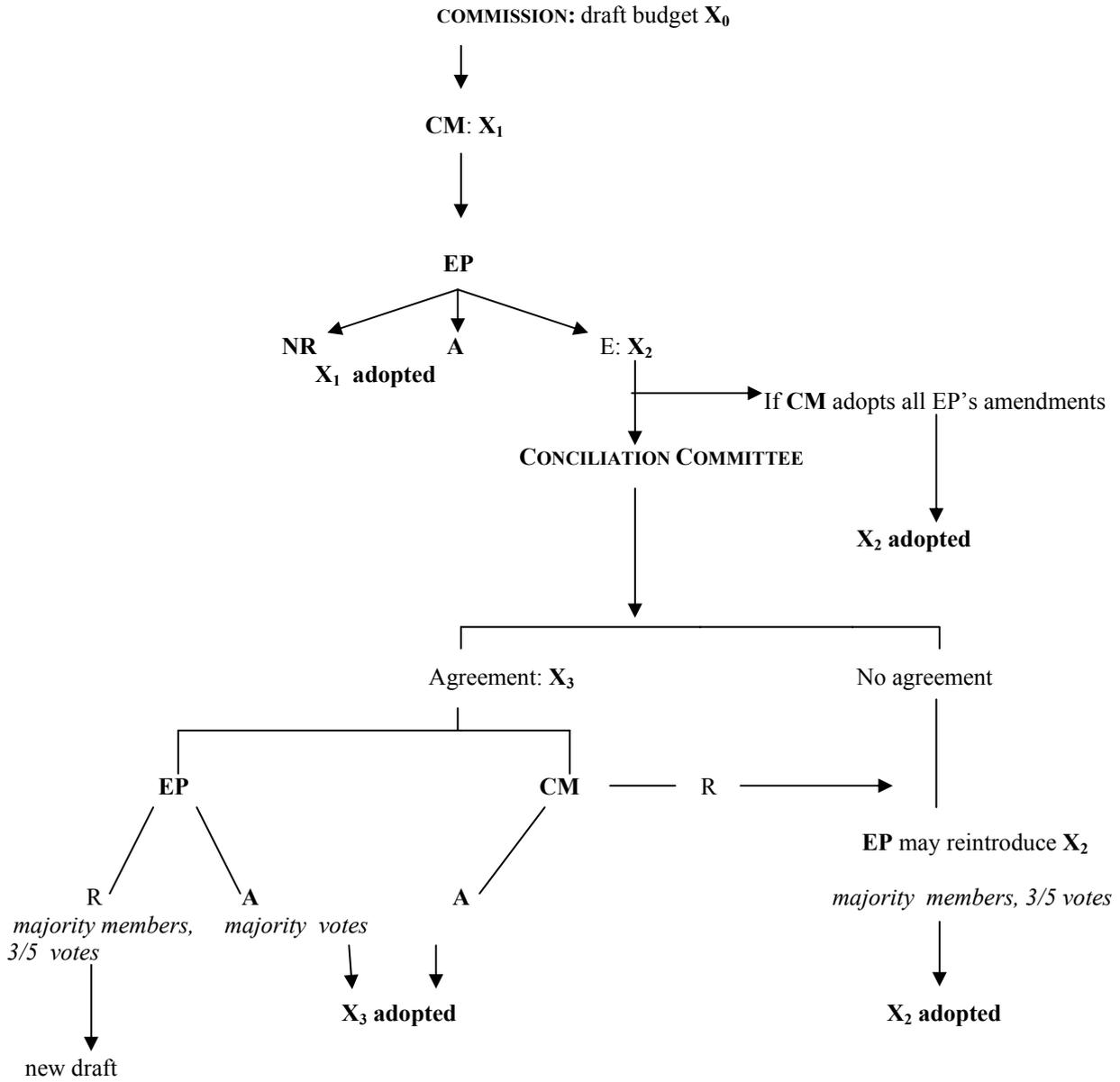
Appendix

Figure 1. The current budgetary procedure



Legenda. A: approve; AM: absolute majority; CM: Council of Ministers; E: amend; EP: European Parliament; NR: not react; R: reject; X_i : version i of the budget draft. Note: CM votes by qualified majority unless specified.

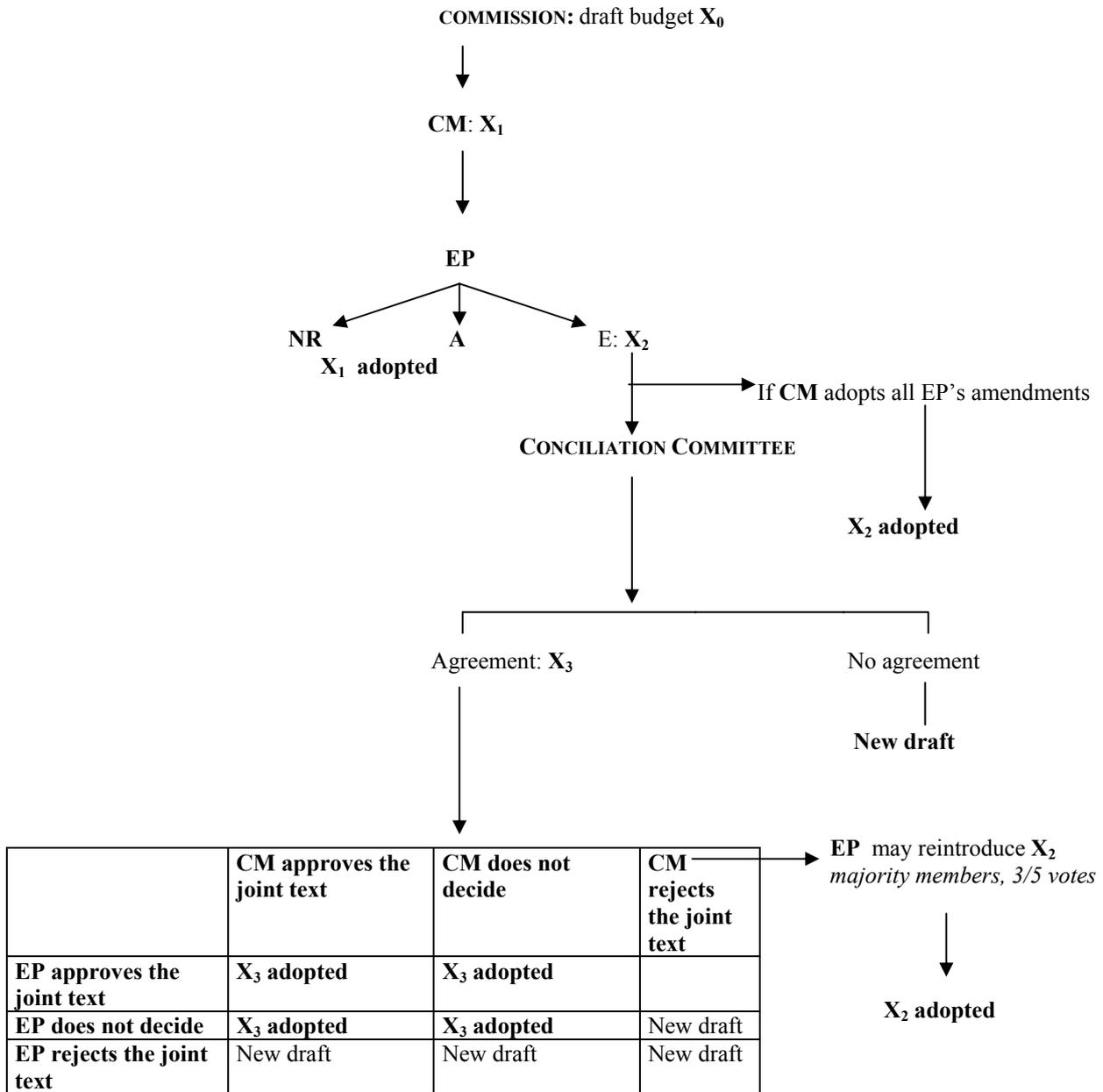
Figure 2. The budgetary procedure in the Convention's draft



Legenda. A: approve; AM: absolute majority; CM: Council of Ministers; E: amend; EP: European Parliament; NR: not react; R: reject; X_i : version i of the budget draft.

Note: CM votes by qualified majority unless specified.

Figure 3. The Budgetary procedure in the Constitution



Legenda. A: approve; AM: absolute majority; CM: Council of Ministers; E: amend; EP: European Parliament; NR: not react; R: reject; X_i : version i of the budget draft.

Note: CM votes by qualified majority unless specified.

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