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OPINION OF THE LEGAL SERVICE¹

From: Legal Service

To: Budget Committee

Subject: The legal nature and effects of the 1970 Gentlemen's Agreement with the Parliament in budgetary matters

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I. INTRODUCTION

1. At its meeting of 16 November 2022, and in the framework of the follow up discussion on the conciliation committee agreement in view of the adoption of the EU budget for 2023, Coreper requested the opinion of the Council Legal Service in relation to the nature, legal effects and the continued application of the so-called "Gentlemen's Agreement" between the Council and the Parliament on the estimates of expenditure of those institutions.
2. The present opinion addresses those questions. It builds upon and further develops the various oral interventions recently provided by the Council Legal Service at meetings of Coreper and of the Budgetary Committee.

¹ This document contains legal advice 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 not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

II. BACKGROUND

3. The Gentlemen's Agreement is based on a unilateral Council Resolution of 22 April 1970 according to which:

“The Council undertakes to make no amendments to the estimate of expenditure of the European Parliament. This undertaking shall only be binding in so far as this estimate of expenditures does not conflict with Community provisions, in particular with regard to the Staff regulations, and to the seat of the institutions.”

4. The Council Resolution was adopted at the occasion of the conclusion of the 1970 Budgetary Treaty, whereby the Treaties were amended with a view to vesting the European Parliament with powers as budgetary authority on the same footing as the Council². The 1970 Budgetary Treaty introduced a transitional regime applicable until the 1975 financial year according to which the Council retained the ultimate power to reject the Parliament's amendments to the draft EU budget. In this context, the Council unilaterally undertook not to make amendments to the Parliament's administrative expenditure.³
5. At the expiry of the transitional regime, the Council continued to respect its commitment not to amend the Parliament's estimate of expenditure and the Parliament - by then co-exercising full powers for the approval of the EU budget - de facto agreed to reciprocate in relation to the Council section of the budget, so to avoid acrimonious debates between the two institutions on their respective administrative expenditure. This arrangement between the two arms of the Budgetary authority is referred to as the “Gentlemen's Agreement” and has been confirmed since then by consistent practice by the two institutions and referred to in formal acts drawn up by them, as explained below.

² Treaty amending certain budgetary provisions, *OJ L 2, 2.1.1971, p. 1–12*.

³ The Council Resolution had the following title: *“Resolution relating to the section of the budget concerning the European Parliament for the period referred to in Article 78a of the EESC Treaty, Article 203a of the EEC Treaty and Article 177a of the EAEC Treaty”*. The three articles laid down a transitional regime for the approval of the budget *“for financial years preceding the financial year 1975”* in which, while enhanced, the Parliament's role was still limited to providing an opinion on the draft budget.

III. LEGAL ANALYSIS

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