

Eurogroup report on a possible inter-governmental agreement for the budgetary instrument for convergence and competitiveness

On 13 December 2019, the Euro Summit invited the Eurogroup to provide its contribution on the appropriate solutions for the financing of the budgetary instrument for convergence and competitiveness (BICC), on the basis of the October 2019 term sheet, with a view to meeting our ambitions for convergence and competitiveness.

The Eurogroup agreed today on the following report covering the need, the content, the modalities and considerations on the size of a possible inter-governmental agreement on the basis of which external assigned revenues could top up the budget envelope of the BICC.

Introduction

1. On 21 June 2019, the Euro Summit took note of the broad agreement reached by the Euro Group on the budgetary instrument for convergence and competitiveness (BICC) for the euro area, and ERM II Member States on a voluntary basis, and concluded that : *“With a view to ensuring autonomy of decision of the euro area Member States, we ask the Euro Group and the Commission to further work on all pending issues; we ask the Euro Group to report back swiftly on the appropriate solutions for financing. These elements should be agreed as a matter of priority so as to be able to set the size of the BICC in the context of the next MFF.”*
2. In October 2019, the Euro Group agreed on a second term sheet on the BICC, complementing the one agreed on 14 June 2019. In the October term sheet, the Euro Group gave a mandate to the EWG to work on a report on an inter-governmental agreement (IGA): *“[...] The EWG should submit a report covering the need, the content, modalities and the size of an IGA in due time to allow for a final decision in the context of the MFF.”*
3. On 13 December 2019, the Euro Summit welcomed the progress made in the Euro Group in inclusive format on the deepening of the Economic and Monetary Union. As regards the BICC, *“in order to be able to finalise it in the context of the next MFF [Multiannual Financial Framework]”, Leaders invited the Euro Group “to provide its contribution swiftly on the appropriate solutions for its financing, on the basis of the October 2019 term sheet, with a view to meeting our ambitions for convergence and competitiveness”.*
4. The BICC is foreseen to be part of the EU budget. In line with the October 2019 term sheet, the size of the BICC will be determined in the context of the MFF.

5. In addition, there have been discussions in past Euro Group meetings on a possible framework to top up the budget envelope of the BICC by additional voluntary contributions, which would not count against the MFF ceilings. There are different views on the need for additional contributions in the context of the BICC. Should there be a political decision to do so, an IGA, a treaty of international public law, or other forms of coordination, of political nature that are not reflected in international law obligations, could be used. There are also different views on the desired engagement in a possible IGA. Considerations on the need for an IGA depend on the decision regarding the need for additional contributions to the BICC.

6. As confirmed by the Council Legal Service^[1], no Member State is legally obliged to enter into an IGA. Joining an IGA is a sovereign decision of each Member State.

Considerations on the need for an IGA

7. Relying exclusively on the EU budget for the financing of the instrument provides a straightforward framework for its functioning and for operational predictability. Furthermore, this approach is in full respect of the principle of universality, whereby assigning revenues to specific actions or programmes represents the exception.

8. It would be possible to top up the budget envelope for the BICC by additional contributions to be earmarked to the instrument in line with the Financial Regulation and on the basis of the enabling clause incorporated in the Regulation setting up the BICC^[2]. This would allow to scale up the instrument's financial capacity providing a higher amount of financial support, potentially increasing its impact.

9. There is no legal requirement to resort to an IGA for the purpose of contributing additional resources to the instrument. Member States may voluntarily choose to coordinate and pool their contributions on the basis of an IGA, whereby they would jointly commit to transfer additional funds to the BICC.

10. An IGA would establish a well-defined and permanent legal framework and, above all, provide legal certainty as regards the additional contributions, rendering them legally enforceable. An IGA would be key to the coordination and increased predictability as regards the overall amount of resources available for the instrument. It would provide euro area Member States with financial autonomy within the BICC, without affecting the financial liability of non-participating Member States^[3]. An IGA and any substantive changes would be subject to ratification, approval or acceptance by its signatories^[4].

11. Other forms of coordination, not based on international law obligations, could also be available for pooling additional contributions. They could take the form of joint political engagements, to be followed by binding individual contributions of Member States.

12. The participation of a subset of euro area Member States to an IGA, or in

other forms of coordination, while possible, may have consequences on the general functioning of the BICC and on the overall coherence of the EMU that need to be carefully assessed. A limited participation would introduce a new dimension to the instrument, alongside the euro area (19, proposal on the governance of the BICC) and the EU (27, proposal setting up the BICC) dimensions.

Content and modalities of a possible IGA

13. The Court of Justice has established, in particular in its landmark Judgement Pringle, that Member States may conclude IGAs among themselves provided that the commitments undertaken are consistent with European Union law, including the competences of the EU and of its institutions.

14. An IGA could contain the following essential elements:

- a) the geographical scope and possibly the temporal scope;
- b) the amount to be transferred and the contributions (including the contribution key);
- c) provisions setting out the link with EU Law;
- d) provisions on the entry into force and on accession.

This report will thereafter focus on the contributions and on the link with EU Law.

Contributions

15. An IGA would first and foremost serve as the vehicle for agreeing on the transfer of additional contributions to be assigned to the BICC.

16. The IGA should specify that additional contributions to the BICC are made on the basis of irrevocable and unconditional commitments. The commitments are to be formalised through separate bilateral contribution agreements between the Commission and the respective Contracting Parties. Such agreements would also contain a payment schedule.

17. The IGA would set out a total amount that the Contracting Parties commit to transfer to the BICC over a specific period as well as the contribution key. If agreed, the IGA could also include the possibility to increase the amount subject to mutual agreement among Contracting Parties; in the absence of that mutual agreement, the size and contribution key would remain unchanged.

18. Alternatively, the IGA could set a maximum amount for a specific period and could determine the frequency with which the contributions would be defined with more precision, including the process for doing so, possibly by assigning a role to the Euro Summit and the Euro Group.

19. As regards the timeframe, alignment with the MFF horizon provides for predictability and coherence, while a shorter period provides more flexibility, including to respond to evolving priorities.

Link with EU Law

20. The contributions transferred on the basis of an IGA would be managed by the Commission, in full respect of the rules of budgetary implementation applicable under the Financial Regulation and in accordance with the Regulation setting up the BICC and with the Regulation on the governance of the BICC.

21. In accordance with the Regulation on the governance of the BICC, the Euro Summit and the Euro Group may have a general discussion on the strategic priorities relevant for the budgetary instrument for convergence and competitiveness for the euro area, before the Commission presents its recommendation on the economic policy of the euro area. The IGA could contain a reference to this matter, if necessary. Contracting Parties to an IGA could coordinate and focus on a subset of these priorities, in the context of the additional contributions provided to the BICC.

22. The IGA could refer to the manner in which the participating ERM II Member States would be associated to the discussions of the Euro Summit and the Euro Group regarding the BICC.

23. Allocation would follow the provisions of the Regulation setting up the BICC. In case a subset of euro area Member States were to participate in an IGA, the same allocation key can be used, applied proportionally among Contracting Parties. If the Contracting Parties wish to introduce a degree of flexibility as regards the use and allocation of the additional contributions, this would have to be foreseen in the Regulation setting up the BICC. All in all, the allocation should respect the cohesion legal basis and the particular objectives of the Regulation setting up the BICC.

24. The IGA should include provisions on consistency with EU law, including clauses of interpretation in accordance with the law of the Union and clauses referring to the principle of sincere cooperation of Member States with the Union. Moreover, the IGA would include clauses recognizing the role of the Commission in ensuring consistency with EU law. Finally, the IGA should also contain provisions on compliance and on the resolution of disputes, by granting the EU Court of Justice jurisdiction pursuant to Article 273 TFEU (as is the case in existing IGAs).

25. The IGA could contain provisions dealing with the consequences of substantial modifications of the Regulation setting up the BICC or the Regulation on the governance of the BICC on the obligations stemming from the IGA.

Considerations on the size

26. The primary source of financing of the EU budget are own resources transferred to the EU budget under the Own Resources Decision based on Article 311 TFEU. Additional resources must not lead to a parallel system of own resources to the detriment of the principle of financial autonomy of the Union. From a legal perspective, external assigned revenues are additional in nature.

27. The overall size of the BICC, to be decided within the context of the

MFF, should contribute to the achievement of the objectives of the instrument.

Next steps

28. The Euro Group stands ready to undertake further technical work on the content of a possible IGA.

[1]

<https://www.consilium.europa.eu/media/41173/summing-up-letter-eg-9-october-2019.pdf>

[2] The Regulation setting up the BICC and the Regulation on the governance of the BICC are being currently discussed in the legislative process.

[3] By contrast, the envelope under the MFF is to be decided by all the 27 Member States under the applicable Union procedures.

[4] It is for each party to determine, in accordance with its internal legal order, what are the requirements for adhering to the IGA.

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