

Constitutional Flexibility and State Continuity: Why France Doesn't Shut Down

Alexandre Guigue

Professor of Public law, University of Savoie Mont Blanc

Abstract:

Unlike the United States, France has never experienced a government shutdown, even when its Parliament has proved unable to pass a budget on time. This article explains why, arguing that budgetary continuity in France rests on a constitutional and legal framework deliberately designed to keep the State funded in all circumstances. After outlining the budgetary principles inherited from the nineteenth century, the article examines how the 1958 Constitution equipped the government with powerful tools to secure the timely adoption of Finance Acts, and how the Constitutional Council later reinforced these safeguards to rule out shutdowns at all costs. It then turns to the political crisis triggered by the 2024 snap elections, which tested the resilience of this framework to its limits, and identifies the questions that remain unresolved regarding the emergency financial measures available to the executive when no budget can be passed.

Keywords:

Budgetary continuity, Finance acts, Government shutdown

Although the current French budgetary system is organised by the Constitution and the 2011 Institutional Act related to Finance Acts, its roots date back to the French Revolution. In 1789, the National Assembly established that the King and his ministers should present the National Assembly with a clear and transparent budget on an annual basis. But numerous political and military crises delayed the establishment of a sustainable system until the downfall of Napoleon. Under the Consulate and the Empire, Napoleon funded his military campaigns through an exceptional fund sustained by the proceeds of plunder and the spoils of war. When the Monarchy was restored in 1814, Louis XVIII's new minister of Finance, the Baron Louis, laid the groundwork of a new and sound budgetary system inspired by the British one. He announced that Parliament should first determine the levels of national spending requirements before finding the ways and means to cover them. Between 1814 and 1848, strong budgetary principles were established: the principles of annuality, unity, universality, appropriation and of a balanced budget. These respectively mean that the budget should last for one year (annuality), that the government's annual spending and revenue plans should be presented in one document to Parliament (unity) with no shortcuts between revenue and expenditure and no legal connection between any particular source of income and the funding of any particular service (universality), that Parliament appropriates funds to individual services (appropriation) and, finally, that the budget should be balanced.

Although there are now many exceptions to these budgetary principles, they remain the pillars of the French budgetary system. Since the early 19th century, the respective roles of government and Parliament during financial procedures have become a determining feature of political systems. During the Third and Fourth Republics, the French Parliament went beyond its tradition role and effectively controlled the government's finances by exceeding its constitutional powers and exploiting the continuous lack of a political majority. These excessive powers were primarily exercised by the Financial Committee of the National Assembly and had adverse effects on the budgetary procedure. While the French principle of annuality required the adoption of the budget before the beginning of the fiscal year, budgets were never passed on time under the Fourth Republic. Members of parliament were so divided that they were unable to agree on the content of the budget before December, the 31st. They took the habit of stopping Parliament's clocks at midnight, virtually extending the year for as long as was necessary. This rather astonishing parliamentary practice allowed them to debate the budget deep into the new fiscal year. In the 1950s, it was not unusual for a financial law to be adopted in July or in August. Such a situation, however, never caused a shutdown because, at the start of every month, Parliament would grant the government a 12th of the previous budget until the new one was passed. To make things worse, the provisions pertaining to public expenditure became so detailed and precise that Parliament had to vote thousands of times to authorise each spending item. This dysfunctional system was seen as unacceptable by many and called for a reform. In 1956, the government passed a decree which overhauled the budgetary process and reduced the powers of Parliament. But this came too late as the Algerian war precipitated the collapse of the Fourth Republic two years later.

When de Gaulle was appointed Prime Minister by the French president, it was agreed that he would propose a new constitution. With Parliament's permission to amend the 1946 Constitution, de Gaulle organised the drafting of a new text which would remedy the shortcomings of the previous one. The 1958 Constitution contains many provisions aimed at facilitating the adoption of the annual budget. A few weeks after it came into force, it was completed by a detailed ordinance on Finances Acts. The new constitution-

al rules gave the government extensive powers to control the budgetary process and ensure the adoption of the annual Finance Bill before the new fiscal year (I). Political actors, scholars as well as members of the Constitutional Council considered that the new legal framework provided the needed solutions to the chronic problems that occurred during the previous Republics. However, after the Constitutional Council declared unconstitutional the Finance Act for 1980, the unanticipated possibility of a shutdown forced it to strengthen the constitutional safety net with a view to avoiding shutdowns at all costs (II). Such a crisis did not happen again for decades and scholars continued to believe that France was immune to a complete budgetary standstill. The political shake-up that followed Emmanuel Macron's decision to call anticipated elections in the summer of 2024 challenged this shared perception and put the constitution to a serious test (III). Despite the growing number of precedents, many questions are left unanswered regarding emergency fiscal measures available to the executive (IV).

I. A constitutional and legal framework designed to guarantee budgetary continuity

The budgetary procedure is organised by Article 47 of the constitution, completed first by Article 38 of the 1959 Ordinance on Financial Acts¹ and later by Article 40 of the 2001 Institutional Act related to Finance Acts that replaced it.²

1. A strict parliamentary timetable

The first novelty in the 1958 Constitution is the imposition of a 70 days' time period to Parliament to decide on the annual finance bill:³

*'Art. 47(3) Should Parliament fail to reach a decision within seventy days, the provisions of the Bill may be brought into force by Ordinance.'*⁴

Allowing the government to proceed with the budget without Parliament's approval, should it miss the deadline, was never meant to become a 'normal' or an 'alternative' way

1 This institutional act was adopted by the government under the now repealed Article 92 of the Constitution.

2 This very important institutional act is known in France under its acronym LOLF (*Loi Organique Relative aux Lois de Finances*) and ranks nearly as high as the constitution itself in the French legal system. When the Constitutional Council reviews the constitutionality of a bill, it can declare a bill unconstitutional if it does not conform to the 2001 Institutional Act.

3 In 1996, the financing of the Social Security system was detached from the annual Finance Bill and placed in a separate Social Security Financing Bill. Article 47-1 was inserted by an amendment of 22 February 1996. It replicated the procedure laid down in Article 47, granting Parliament a 50-day period in which to vote on the annual Social Security Financing Bill.

4 Unless otherwise stated, the English versions of the French constitutional provisions are taken from the English version published on the Constitutional Council's website: <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958> (accessed 27 April 2026).

to pass the budget. It was merely meant to ensure that members of parliament wouldn't behave in the way they used to under the two previous republics. It was also intended to ensure that the government would not have to wait months before obtaining approval to pursue new public policies or implement tax changes. Operating with the previous year's spending levels and with unchanged tax levels was seen as deeply problematic as it prevented the country from moving forward and adapting to new economic and political circumstances.

Within the overall 70-day period, several other rules further organised parliamentary debates. To ensure that the annual Finance Bill is adopted before the end of the calendar year, Article 39 of the 2001 Institutional Act gives the Prime Minister until the first Tuesday of October to introduce it in the National Assembly. On this timetable, the bill is usually passed by 11 December,⁵ leaving approximately two weeks for the Constitutional Council to review the constitutionality of the bill (in the event of a referral) and for the President to sign it into law.⁶

Since the constitution provides no further detail, the precise rules of the procedure are set out in the 2001 Institutional Act. Its Article 40 governs the 'ping-pong' process between the two Houses of Parliament by giving the National Assembly 40 days to decide on the bill, which is then sent to the Senate, which must do the same within 20 days. If the National Assembly fails to reach a decision in its allotted time, the government may send the bill to the Senate, which then has 15 days to reach a decision. In principle, if both Houses use all the time granted to them, 10 days remain before the end of the 70-day period for both Houses to reach a compromise on a final version of the bill.⁷ If this proves impossible, the government can give the final say to the National Assembly.⁸ It can be argued that the 1958 legal framework was designed to pressure Parliament into passing the much-needed finance bills to keep the government open in the new year. The constitution caters not only for situations where members of parliament delay the budgetary process, but also for the situation where the government is unable to introduce the Finance Bill in time:

'Should the Finance Bill setting out revenue and expenditure for a financial year not be tabled in time for promulgation before the beginning of that year, the Government shall as a matter of urgency ask Parliament for authorisation to collect taxes and shall make available by decree the funds needed to meet commitments already voted for. (Art. 47(4)).'

5 11 December is the average end of the period, which varies with the date on which the first Tuesday of October falls. The 70-day period runs continuously, irrespective of weekends or of periods when Parliament is dealing with other matters.

6 The verb 'promulgate' is used here to describe the French procedure by which the President signs into law a bill adopted by Parliament.

7 Under the Fifth Republic, the 'ping-pong' process is shortened in cases of urgency or for finance bills. Both Houses only debate the bill once, instead of twice (Art. 45 C). A conference committee is tasked with finding a compromise between the two Houses.

8 This is a standard procedure for all bills (Art. 45 C). It means that the Senate can be bypassed altogether, leaving it in a similar position to that of the UK House of Lords due to the principle of financial privilege.

This provision shows how eager the drafters were to secure the adoption of a budget before the start of the relevant fiscal year. However, there is a loophole in the constitutional safety net. The government may only ask for an emergency authorisation if the Finance Bill *is not tabled in time for promulgation before the beginning of that year* (our emphasis). As previously explained, there are more than 70 calendar days between the first Tuesday of October and 31 December. This means that the government could table the bill later than the first Tuesday of October and still allow it to be signed into law before the end of the year while guaranteeing Parliament 70 days to debate the budget. Therefore, the procedure would not be flawed if the government missed the deadline by just a few days. The matter was decided by the Constitutional Council in a decision handed down on 29 December 1982 concerning the constitutionality of the Finance Act for 1983. Mandatory schedules to the Finance Bill were tabled 4 days too late. Several Members of Parliament challenged the constitutionality of the bill before the Constitutional Council, arguing that the delay made it unconstitutional. In its 1982 decision, the Constitutional Council stated that by requiring that the schedules be tabled on the first Tuesday of October at the latest, Article 38 of the 1959 Ordinance sought to ensure that Members of Parliament have the information they need to decide on the bill before the end of the year (§2). It then decided that the four-day delay did not deprive them of the information they needed during their allotted time to examine the bill (§3). It follows that a longer delay might have forced the Constitutional Council to declare it unconstitutional. For many years after this decision, delays did not become an issue and the Prime Minister usually tabled the bill before the end of September, thus giving Parliament even more time than necessary to consider it.

When the Institutional Act on Finance Acts was adopted in 2001, the Constitutional Council reviewed it and clarified the reasoning it would follow in cases where the deadline was not met:

‘Whereas, if a document, or part of a document (which ought to be tabled before the first Tuesday of October) is handed to the Members of Parliaments beyond the deadline, the provisions of Article 39 of the 2001 Institutional Act should not be interpreted as preventing the debate on the bill; the conformity to the constitution would be decided by taking into consideration the imperative of national continuity as well as the obligation of sincerity that ought to characterise the entire debate on the financial bill.’⁹

2. *The legal tools available to the government to ensure the adoption of Finance Bills*

The network of rules that were put in place to constrain Parliament’s powers during legislative and budgetary procedures is seen as an effort to ‘rationalise’ the parliamentary system. In 1958, they were a response to the unbalanced situation seen during the Third and Fourth Republics.

The first rule relates to the selection of amendments. Article 40 of the Constitution states that:

⁹ Cons. Const., 2001-448 DC, 25 July 2001, §75.

'Private Members' Bills and amendments introduced by Members of Parliament shall not be admissible where their enactment would result in either a diminution of public revenue or the creation or increase of any public expenditure.'

Similar rules limiting the scope of amendments exist in other countries. In the UK, for instance, the Crown's financial initiative limits the scope of MPs' amendments. In France, the president of each assembly has the final say, after the matter is examined by the Finance Committee, but the government may also raise the issue. It may further request that amendments be grouped, shaping the order in which articles and amendments are debated. More drastically, it can disrupt the ordinary voting process, forcing a House to vote only once on a group of provisions, or even on the entire bill, and thereby ending the parliamentary debate (art. 44(3) C). Such a manoeuvre is reserved for moments when a majority on a particular provision is hard to command. However, calling a single vote on the entire annual Finance Bill could have adverse political effects as it effectively deprives members of parliament of their right to examine it in detail.

By far the strongest and most effective power is provided by Article 49(3). It allows the Prime Minister to put an end to an ongoing debate before the National Assembly and puts its fate, as well as that of the bill, in the hands of the Assembly's members. If they fail to vote for a motion of no confidence against the government,¹⁰ the bill is considered adopted. This provision is perhaps the best illustration of the coordinated effort of the 1958 Constitution's drafters to organise in law the relations between the government and Parliament. It is often compared to the German system of the constructive vote of no confidence, where Members of the Bundestag are asked not only whether they are ready to defy the government but also, at the same time, to agree on a new chancellor.

While the 49(3) procedure was used very often by Michel Rocard between 1988 and 1993, it remained a rather exceptional device for the Prime Minister to force a bill through Parliament. This changed markedly after the 2022 legislative elections. The results did not provide Emmanuel Macron with a clear majority, jeopardising the government's ability to secure Parliament's support for the budget. During her tenure, Élisabeth Borne used Article 49(3) 23 times, mostly to pass finance bills. The situation became even more complicated after the 2024 legislative elections, which left the National Assembly divided into three blocs. Article 49(3) became the only solution to keep the government open.

3. *The use of the emergency procedure in 1962*

The autumn of 1962 was eventful in France in several respects. When he established the Fifth Republic, de Gaulle had set aside his plan to have the French president elected directly by the voters and, instead, favoured an indirect system. After Algeria obtained its independence from France with the signature of the Évian Accords on 18 March 1962, decolonisation issues waned. De Gaulle then saw an opportunity when a terrorist attack aimed at him failed at Petit Clamart on 22 August 1962. But his decision to modify the presidential election system by referendum under Article 11 rather than Article 89 of the Constitution provoked the indignation of the parliament. With little legal means avail-

¹⁰ Once the Prime Minister triggers the procedure, Members of the National Assembly have 24 hours to submit a motion of no confidence, which is then put to a vote within the following 48 hours.

able, a majority of the Members of the National Assembly passed a motion of no confidence, forcing the Prime Minister to resign. The turmoil spilled over into the budgetary process: after de Gaulle's supporters won new legislative elections, too little time remained to pass the annual Finance Bill before the end of the fiscal year. Prime Minister Pompidou secured a favourable vote on the first part of the annual Finance Bill on 22 December 1962, allowing de Gaulle to sign a partial Finance Act into law that kept the government open into the new year. The debate on the second part of the Finance Bill ran from 8 January 1963 until its adoption on 26 January 1963. Despite the exceptional political tension between September 1962 and the year's end, the procedure adhered closely to the 1959 Ordinance governing parliamentary procedure. Notably, it allowed the government to secure passage of the first part of the annual Finance Bill as late as 10 days before the end of Parliament's session. The framers of the 1958 system were eager to ensure that Parliament would authorise spending and tax collection before the end of the year. They sought to prevent the exceptional and near-catastrophic expedient that prevailed under the Fourth Republic in which Parliament could delay its authorisation for months while the government was merely authorised to operate on a monthly basis, using one twelfth of the previous budget. The 1962 precedent vindicated the codification approach taken in 1958. The Constitution, as well as the 1959 Ordinance, provided solutions in difficult times, even if it meant limiting the powers of Parliament and giving the government a free hand. In effect, the Fifth Republic sought to achieve through its written constitution the results that the United Kingdom obtained through constitutional conventions. On the budgetary front, the arrangement worked well until 1979, when an unforeseen event exposed the limits of the procedure then in place.

II. Constitutional flexibility to prevent shutdowns

1. *The traumatising experience of 1979*

1979 was a pivotal year. Until then, members of parliament had no choice but to adapt to the new system in which they were left with a reduced role during budgetary debates. Several political figures spoke up against the disparity between the Executive and the Legislature. The situation was made more problematic because Parliament never shifted its attention to the scrutiny of government and persisted in trying to influence the budgetary process. In the UK, for instance, Parliament had long developed auditing mechanisms. The weakness of the French Parliament was offset in the 1970s by the considerable expansion of the Constitutional Council's powers. It began by broadening the very notion of the constitution. In what is considered its most important decision in 1971, the Constitutional Council significantly extended its power to strike down legislation. Then, a constitutional amendment was adopted in 1974 that extended the power to refer bills to the Council to 60 Members of the National Assembly or 60 Senators, allowing opposition members of parliament to challenge most government bills, including, of course, finance bills. At first, the Constitutional Council was able to develop and enrich its budgetary case law, occasionally declaring sections of finance bills unconstitutional.

In 1979, a constitutional objection from the opposition sharply raised the stakes. The opposition argued that a fundamental constitutional rule had been breached during the debate on the annual Finance Bill for 1980. Article 40 of the 1959 Ordinance stated that 'the second part of the annual finance bill could not be debated in a House of Parliament

before the adoption of the first part'. In November 1979, the Prime Minister used Article 49(3) to force the adoption of the bill, but did not separate the two parts of the bill in the process. In its decision dated 24 December 1979,¹¹ the Constitutional Council found that the procedure followed was unconstitutional, potentially leaving the country without a budget just a few days before the end of the fiscal year.

To avert a shutdown, the government introduced an emergency Finance Bill to allow it to collect public revenue and to spend the minimum needed to maintain public services. Emergency bills were provided for by Article 44 of the 1959 Ordinance, but such a bill could only be introduced up to 48 hours before the end of the parliamentary session. After 24 December, it was too late to do so, and the existing legal framework offered no other way to avoid a shutdown. The government pushed forward, counting on the Constitutional Council's leniency. Opposition members of parliament referred the emergency Finance Bill to the Council, challenging its constitutionality on the ground that the drafters of the Constitution and of the 1959 Ordinance had not foreseen such a situation. The government's reasoning had a certain logic, but given the strict stance the Constitutional Council had taken on the budgetary procedure a week earlier, the risk of a shutdown had never been greater. The risks proved too high for the Council to maintain its rigid approach to procedural rules. In its decision dated 30 December 1979, it did not find the emergency Finance Bill to be unconstitutional. The reason given was exceedingly brief and paved the way for the government and Parliament to go beyond the wording of the constitution and the 1959 Ordinance to avoid shutdowns in the future:

'In the present situation and in the absence of constitutional and institutional provisions directly applicable, Parliament and the government have the obvious duty, in the scope of their respective powers, to take all necessary financial measures to ensure the continuity of the Nation; by doing so, they ought to take inspiration in the legal rules available, notably those that apply to the situation where the finance bill is introduced after the deadline (...).'¹²

After the decision, it did not take long for Parliament to pass the Finance Bill in the new year (18 January 1980). The 1979 precedent became a traumatic memory, and the Constitutional Council has never since declared a Finance Bill entirely unconstitutional. The two decisions handed down in 1979 were seen as evidence that a shutdown could never take place in France. In 1983, the Constitutional Council reaffirmed 'the need to ensure the adoption, in due time, and more particularly before the beginning of a fiscal year, of the necessary financial measures for the continuity of national life'.¹³ It used the same phrase in later decisions in 1986,¹⁴ 1990¹⁵ and 1992.¹⁶ This view encouraged lawmakers to anticipate every situation that might arise and to provide all the legal remedies these might require. The Council's stance nevertheless poses a fundamental question regard-

11 Cons. Const., 79-110 DC, 24 Dec. 1979, §8.

12 Cons. Const., 79-111 DC, 30 Dec. 1979, §2.

13 Cons. Const., 83-161 DC, 19 July 1983, §3.

14 Cons. Const., 86-209 DC, 3 July 1986, §4.

15 Cons. Const., 90-285 DC 28 Dec. 1990, §12.

16 Cons. Const., 92-309 DC, 9 June 1992, §6.

ing the core principles of the French budgetary system: how can the system strike the right balance between the principle of consent to taxation and the principle of continuity of the State? In 2001, the 1959 Ordinance was repealed and replaced by a new institutional act. Because Article 61 of the Constitution makes it compulsory for the Constitutional Council to review the constitutionality of institutional acts, it seized the opportunity to clarify its position regarding the risk of a shutdown in France.

2. *The reinforcement of the 1979 precedent by the 2001 Institutional Act*

The 2001 Institutional Act related to Finance Bills sought to address the defects of the 1959 Ordinance. Unsurprisingly, the loophole which led to the 1979 crisis was corrected and a dedicated provision was passed to allow the government and Parliament to proceed with an emergency bill in case the Constitutional Council prevented the entry into force of the annual Finance Bill:

If the annual finance bill is prevented from coming into force as a result of Article 62(1) of the Constitution (if declared unconstitutional by the Constitutional Council), the government shall immediately introduce a special bill in the National Assembly authorising the collection of existing taxes until the adoption of the annual Finance Bill.¹⁷

Like any new institutional act, the 2001 Act was reviewed by the Constitutional Council before it came into force, which gave it the opportunity to reiterate its interpretation of the constitutional provisions related to the budgetary procedure:

Considering that, under the terms of the first paragraph of Article 47 of the Constitution: "Parliament shall pass Finance Bills following the provisions of an Institutional Act"; that the other paragraphs of the same article establish time limits for the consideration of Finance Bills with a view to ensuring that the necessary financial measures for the continuity of national life are adopted in due time, and more particularly before the beginning of a fiscal year.¹⁸

The interpretation firmly established by the Constitutional Council reflected the broad consensus that every effort should be made to avert a shutdown. But it did not explain the constitutional grounds of the principle of continuity. Unlike the principle of consent to taxation which is clearly established by Article 14 of the Declaration on the Rights of Man and of the Citizen, the continuity principle had a rather unclear constitutional foundation.¹⁹ It is tempting to consider that such grounds could be found in Article 5, which

17 Article 45(3) of the 2001 Institutional Act on Finance Acts.

18 Cons. Const., 2001-448 DC, 25 June 2001, §5.

19 See Oliva, E., Décision n° 2001-448 DC du 25 juillet 2001, *Loi organique relative aux lois de finances*, Jurisprudence du Conseil constitutionnel 1er octobre-31 décembre 2001, *Revue française de droit constitutionnel*, n° 49, 2002/1, p. 154.

gives the President the responsibility to ‘ensure the continuity of the State’.²⁰ It may serve this purpose when one considers the continuity of public services. But it poses a fundamental problem in the event of a persistent clash between the principle of consent to taxation and the continuity of the state principle. The constitution confers very little fiscal powers to the Head of State outside the extreme remedies of Article 11 (referendum) and Article 16 (exceptional powers).²¹ Why would the constitution organise at great length and with an abundance of detail the different procedural possibilities to adopt the national budget if the President ultimately has retained the power to adopt the budget on the basis of Article 5? The Constitutional Council left this question unanswered despite sharing the view that shutdowns should be avoided.

Nevertheless, when the drafters of the 2001 Institutional Act extended the possibility to pass an emergency finance bill if the annual Finance Bill is declared unconstitutional by the Constitutional Council, they probably thought that they had closed the last loophole in the French fiscal framework. The 1979 situation was seen as exceptional and rather unlikely to happen again in the future. A good illustration of the French aversion for potential shutdowns is the fate of the principle of ‘sincerity’ which the Constitutional Council created as a new constitutional principle in the early 1990s. By doing so, it gave members of parliament hope that they might be able to convince the Constitutional Council to declare some finance bills unconstitutional on the grounds that the economic forecasts were not realistic or that the extent of public expenditure and borrowing were underestimated by the government. Despite identifying some ‘insincere’ provisions at times,²² the Constitutional Council never went as far as to declare a finance bill unconstitutional on these grounds.

After 2001, academics and political actors mostly dismissed the possibility of a shutdown in France and considered that the legal framework pretty much catered for every contingency. They underestimated a persistent loophole, one that existed long before the establishment of the Fifth Republic.

3. *The persistence of a theoretical loophole*

Parliamentary systems developed around a single principle: Parliament is the ultimate source of legislation. Therefore, Parliament has the power to adopt bills as well as the budget. It was always understood that the power to approve the budget came with the power to reject it. It follows that, if Parliament rejects the budget proposed by the government outright, a political crisis ensues that only new elections can resolve. This back-and-forth between government and Parliament is well understood by constitutionalists as well as political actors. In France, the difficulties that may occur during the budgetary process led to the establishment of a tight legal framework. However, unless the law grants the executive branch of government the power to adopt the budget on its own, Parliament’s consent remains necessary. Without its approval, the collection of public revenue and public spending become impossible. The English Civil War, the American War of Independence and the French Revolution all contributed to establishing the prin-

20 André, J.-M., *La notion de continuité en droit public*, thèse, 1997, Lyon 3 (dir. Saïdj).

21 Guigue, A., ‘Le recours au principe de continuité de la vie nationale par le Conseil constitutionnel lors du contrôle des projets de loi de finances’, *GFP*, n°5, 2023, pp. 20-26.

22 Cons. Const., 97-395 DC, 30 Dec. 1997, §4 and 5.

ciple of parliamentary consent to taxation and made it a cornerstone of liberal democracies. But what happens if a Parliament is so divided that it is incapable of giving the government the budgetary authorisation it needs to keep the government open?

In the early stages of the Fifth Republic, this hypothesis was largely dismissed because the 1958 Constitution and the voting system were supposed to guarantee stable majority governments. Moreover, the framers of the 1958 Constitution drew conclusions from the previous Republics and introduced many mechanisms aimed at ensuring political stability. If a government struggles to secure a majority vote on a controversial bill or on the budget, Article 49(3), amongst other provisions, offers a solution to keep the government afloat. Majority governments were seen as the norm. This even led constitutionalists to conclude that the Fifth Republic had a presidential character, since the legislative elections were usually won by the political parties that supported the President. Rocard's tenure as Prime Minister between 1988 and 1993 showed that the constitutional mechanisms could help a fragile government pass bills through Parliament. The election of Emmanuel Macron for a second term in 2022 and the result of the ensuing legislative elections forced governments to use these mechanisms extensively. Support for the President declined significantly, forcing prime ministers to follow some of their predecessors and force public policies through Parliament. So far, the constitution and associated laws had survived the political test, but Macron's popularity declined further. His decision to call snap elections in 2024 was the tipping point. On the night of a disappointing result for his political party in the European elections, he abruptly announced the dissolution of the National Assembly, taking even his supporters by surprise. Not only was the new election a bad result for the President, but it also led to a historic fragmentation of the National Assembly. The parties supporting the President only secured a total of 166 seats. A coalition of parties on the left obtained 193 seats while the far-right movements had their long-sought breakthrough with 126 seats. With no political movement remotely close to the 289-seat threshold needed to control the National Assembly, the Fifth Republic suddenly came to resemble the Fourth Republic, with its political instability. With three years still to run before the next national election, it became clear that the legal framework would be tested further, perhaps to breaking point.

III. The return to Fourth Republic politics: testing the constitution to its breaking point (2024-2026)

1. *Stretching the deadline to table the annual Finance Bill*

The political shake-up of 2024 was unprecedented since 1958. As well as making the adoption of a budget improbable, it posed the question of how much leeway the President had to appoint a new Prime Minister. The constitution provided no clear answer, and Macron turned the legal uncertainty to his advantage. He postponed the appointment until after the Paris Olympics, and then decided to appoint a conservative Prime Minister, Michel Barnier, whose parliamentary support was extremely weak. Owing to his late appointment, the new Prime Minister could not table the annual Finance Bill for 2025 before the deadline set by Article 40 of the 2001 Institutional Act (first Tuesday of October) since he needed to revise the bill prepared under his predecessor, Gabriel Attal. The bill was introduced on 9 October 2024, nine days after the deadline. The delay

did not concern the government, because the Constitutional Council had long held that a delay would not necessarily affect the constitutionality of the bill.²³ In its decision on the 2001 Institutional Act, it confirmed that the constitutionality depended on a test:

‘The constitutionality of the finance bill will be assessed having regard both to the requirements of the continuity of national life and to the obligation of sincerity that applies throughout the entire parliamentary proceedings related to the finance bill.’²⁴

The Constitutional Council’s position amounts to loosening the deadline established by the 2001 Institutional Act. The point of reference is Article 47 of the constitution, which gives Parliament 70 calendar days to adopt the finance bill. If the Prime Minister fails to introduce the bill in time to ensure Parliament has 70 calendar days before the end of the calendar year, then the procedure is not affected. In the autumn of 2025, Sébastien Lecornu also tabled the annual Finance Bill for 2026 late (14 October 2025, seven days after the deadline). In both cases, the Constitutional Council found that the delay did not affect the constitutionality of the Finance Bills. Somewhat surprisingly, in its decision on the Finance Bill for 2025, the Constitutional Council did not merely find that the bill had passed the test, but it added a reference to the exceptional circumstances caused by the late appointment of the Prime Minister:

‘In view of the exceptional circumstances that led to the late formation of the Government, the actual date on which the draught finance bill was tabled, and the conditions under which it was examined, the requirements of clarity and sincerity of parliamentary debate were not substantially affected.’²⁵

Perhaps the Constitutional Council felt the need to add the argument of the Prime Minister’s late appointment to ensure that this significant delay survived the constitutionality test it had established. The reasoning is surprising because the Prime Minister’s late appointment was largely caused by the President himself. If Macron had waited several more weeks to decide, would that have justified forcing through the Finance Bill in a matter of days? The Constitutional Council maintained its reasoning the following year. A new exceptional circumstance was invoked to justify the delay:

‘In view of the exceptional circumstances that led to the Government’s resignation on 6 October and the formation of a new Government on 12 October, the actual date on which the finance bill was tabled, and the conditions under which it was examined, the requirements of clarity and sincerity of parliamentary debate were not substantially affected.’²⁶

23 Cons. Const., 82-154 DC, 29 Dec. 1982, §2.

24 Cons. Const., 2001-448 DC, 25 June 2001, §75.

25 Cons. Const., 2025-874 DC, 13 Feb. 2025, §7.

26 Cons. Const., 2026-901 DC, 19 Feb. 2026, §10.

There is no denying that the political circumstances were exceptional both in the autumn of 2024 and in the autumn of 2025. It is clear, however, that the Constitutional Council was reluctant to enforce the constitutional time limits. As evidenced by the 1979 precedent, declaring a Finance Bill unconstitutional on procedural grounds prevents the entire bill from being signed into law. It is far easier for the Constitutional Council to declare provisions unconstitutional when they can be severed from the bill without preventing the rest from coming into force. An unconstitutional procedure inevitably affects the entire bill adopted as a result.

The loose reference to exceptional circumstances to justify these breaches nonetheless raises the question of the normative force of the provisions governing the budgetary procedure.

2. *Disregarding the conditions for tabling an emergency Finance Bill*

Article 47(4) paves the way for the adoption of an emergency finance bill ‘should the Finance Bill setting out revenue and expenditure for a financial year not be tabled in time for promulgation before the beginning of that year’. This was always understood as providing a solution where the government was unable to table the bill in time for it to be properly considered by Parliament. While the constitution does not provide examples of situations that might justify the use of such a procedure, an obvious one would be if the President chose to call snap elections just before the Prime Minister could table the bill. By the time new representatives are elected and a new government is appointed, not enough time would be left for the bill to be properly examined. In this case, the Constitution only states that ‘the Government shall as a matter of urgency ask Parliament for authorisation to collect taxes and shall make available by decree the funds needed to meet commitments already voted for’. The 2001 Institutional Act goes further and offers the government two possibilities. The first allows the government to hold a vote on the first part of the bill before 11 December. This is what Pompidou did in 1962 (at the time pursuant to the 1959 Ordinance). The other possibility is clearly described by the Institutional Act:

‘If the procedure provided for in paragraph 1 has not been followed or has not been successfully completed, the Government shall, before 19 December of the year preceding the start of the fiscal year, submit to the National Assembly a special bill authorising it to continue the collection of existing taxes until the Finance Act for the year is passed.’

If anything, the precision of this provision is the epitome of the spirit of codification that characterises French legal drafting. But the framers of the 2001 Institutional Act probably did not anticipate the three-way division of the National Assembly that resulted from the 2024 snap election. In the autumn of that year, the budgetary procedure became a battleground. Michel Barnier had no choice but to try to force the adoption of the annual finance bills using Article 49(3). The legislative calendar led him to do so first on the annual Social Security Financing Bill. The Members of the National Assembly voted for a motion of no confidence, forcing the government’s resignation. Two days later, on 5 December, the President acknowledged that it would be impossible to complete the budgetary procedure before the end of the year and announced that the Prime Minister would

table an emergency Finance Bill before 19 December, the deadline set by Article 45 of the 2001 Institutional Act. Everything went according to plan as the Members of Parliament unanimously voted for an emergency bill to avoid a shutdown. There was, however, a small legal problem that was dismissed. According to Article 47(4), such an emergency Finance Bill could only be tabled 'should the Finance Bill setting out revenue and expenditure for a financial year not be tabled in time for promulgation before the beginning of that year'. While Michel Barnier was late in tabling the annual finance bill, he did, however, table it 'in time for promulgation' before the beginning of 2025, which meets the criterion set by case law. Legally, though, however problematic the situation in December 2024 might have been, the conditions established by the Institutional Act were not met. In his report on the emergency Finance Bill, Charles de Courson pointed out that the annual Finance Bill was tabled in time, which normally should have prevented the introduction of an emergency finance bill.²⁷ In order to follow closely the rules set by Article 47 of the Constitution, the Prime Minister should have pulled the annual Finance Bill that was being discussed, introduced a new one, stated that there was not enough time for its adoption before the end of the year, and then tabled an emergency Finance Bill.²⁸ This would have been tedious and purely formal, which explains why the provision was not strictly implemented. The Prime Minister tabled the emergency Finance Bill on 11 December, which met the 19 December deadline set by Article 45 of the 2001 Institutional Act.

The following year, the liberties taken with the legal framework were greater. The new Prime Minister, Sébastien Lecornu, had pledged not to use Article 49(3) and to work towards a compromise on the annual finance bills. His strategy was surprisingly successful on the Social Security Financing Bill for 2026, which was adopted on 16 December 2025. But it failed on the annual Finance Bill. On 19 December 2025, the joint committee failed to reach a compromise. With only 12 days left before the end of the year, the Prime Minister swiftly tabled another emergency Finance Bill to keep the government open. Just like the previous year, the government paid no attention to the fact that the initial annual Finance Bill had been tabled 'in time', which prevented the tabling of an emergency bill. But it also disregarded the 19 December deadline set by Article 45 of the 2001 Institutional Act for the introduction of any emergency Finance Bill in the National Assembly. It was tabled on 22 December, in breach of Article 45 of the 2001 Institutional Act. Just like a year before, not a single representative voted against the emergency bill and no one referred it to the Constitutional Council. As a consequence, the latter did not have the opportunity to determine whether the constitution was breached in the process and the shutdown was again avoided. Given the loose interpretation it gave to rules of procedure in past decisions (notably in 1979), it is very likely that it would not have declared the Bill unconstitutional on the ground that these legal requirements were not met. In any event, the way the process unfolded showed once more how deeply an emergency affects the way the constitution is interpreted. It also shows that very few, if any, legal and political actors are prepared to accept a shutdown.

27 C. de Courson, Commission des finances, report n° 719 on the emergency Finance Bill tabled pursuant to Article 45 of the 2001 Institutional Act, 12 Dec. 2024, p. 10.

28 It should be noted that only a new Prime Minister could have tabled a new annual Finance Bill, since a Prime Minister who has tendered his resignation, as was the case with Michel Barnier, has only limited powers to ensure the continuity of the State. This does not extend to tabling a fully-fledged annual Finance Bill, which would be too political a step.

IV. The remaining uncertainties regarding emergency financial measures

Before 2024, the French government had used emergency financial measures only twice. In 1962, it closely followed the wording of the 1959 Ordinance, but in 1979, it took the risk of passing an emergency finance bill through Parliament outside constitutional requirements. Until then, however, it had not tested the constitution beyond a certain point. The drafters of the 2001 Institutional Act nonetheless felt the need to complete the legal framework by adding the 1979 circumstances to those that justify the tabling of an emergency bill. The 2024 political shake-up brought about novel questions. The first concerned the scope of the emergency Finance Bills. The second related to the legal nature of the budgetary ordinances mentioned in Article 47 of the Constitution. The last, which remained largely theoretical, concerned the constitutionality of the use of exceptional presidential powers under Article 16 to avoid a shutdown.

1. The scope of emergency Finance Bills

In 1979, the emergency Finance Bill closely followed the rules set by the Constitution and the 1959 Ordinance, and contained a unique provision authorising the collection of public revenue until the adoption of the annual Finance Act:

‘Until the entry into force of the Finance Act for 1980, the collection of taxes, proceeds, and revenues allocated to the State, local authorities, public institutions, and various bodies authorised to collect them shall continue to be carried out during the year 1980 in accordance with the laws and regulations. The collection of existing quasi-fiscal levies is also authorised.’²⁹

The provision is closely aligned with the wording of Article 47(4), which refers to ‘the collection of existing taxes until the Finance Act for the year is passed’. In other words, the government did not take the opportunity to add any other provision or item to the bill.

In 2024, the government put the question to the *Conseil d’État*, which is required to advise the government on its bills. The first question was whether the reference to the collection of ‘existing taxes’ meant a suspension on income tax thresholds. Fiscal drag is a very sensitive subject in France because people do not accept that some households could be pushed into paying income tax through bracket creep and others into paying a higher level of tax as inflation lifts their nominal incomes.³⁰ In its legal advice dated 9 December 2024, the *Conseil d’État* confirmed the general sentiment that ‘existing taxes’ meant a suspension of the thresholds. But it interpreted Article 47(4) quite broadly, tak-

29 *Loi n° 79-1159 du 30 décembre 1979 autorisant le gouvernement à continuer à percevoir en 1980 les impôts et taxes existants.*

30 It is worth noting that UK Conservative and Labour governments have respectively imposed and extended such a freeze since 2022. Under legislation enacted between 2021 and 2023, the freeze in cash value applied for the period between April 2022 and April 2028. The Labour government then extended the freeze until April 2031. Masala, F., ‘Fiscal drag: An explainer’, House of Commons Library, London, Research briefing, CBP 9687, 7 April 2026, 39 p.

ing the view that the sole reference to the continued collection of existing taxes did not preclude the inclusion of additional measures in an emergency Finance Bill, such as borrowing and allocating grants to local authorities at the start of the fiscal year because they are both necessary for the continuity of the State.³¹ More surprisingly, the *Conseil d'État* suggested that the inclusion of a provision allowing Social Security bodies to collect their resources would be constitutional. The reason for this suggested inclusion is that Article 47-1 of the Constitution, which deals with the financing of Social Security, does not mention emergency Social Security financing bills. By nature, financing bills related to Social Security are different, because they establish spending targets rather than estimates. In theory, the absence of an annual Social Security financing Act is not catastrophic. But potential disruption encouraged the government to include a separate provision on the matter even if this falls outside the scope of finance bills. It is quite possible that the Constitutional Council would have declared it unconstitutional. But after the 2024 emergency Finance Bill was passed unanimously in the two Houses of Parliament, a referral to the Constitutional Council became unlikely. Once again, the circumstances led political actors to stretch the legal framework to ensure the continuity of public services and to avoid disruption, let alone a shutdown.³² One year later, Sébastien Lecornu also introduced a similar emergency Finance Bill to keep the government open in 2026. The only difference was that it did not include provisions related to Social Security. That is because, unlike Michel Barnier in 2025, Sébastien Lecornu managed in December 2025 to convince the National Assembly to pass the annual Social Security Financing Bill for 2026.

2. *The budgetary ordinances provided for by Article 47 of the Constitution*

Article 47(3) of the Constitution allows the government to put into force the content of the annual Finance Act 'should Parliament fail to reach a decision within seventy days'. This provision is such an effective deterrent that it has never had to be used. This is not only because Parliament never failed to reach a decision in its allotted time, but also because the government usually agrees to give it more time. The main problem with the budgetary ordinances is that they allow the government to stay open without any authorisation from Parliament. Even when Article 49(3) is used, Members of Parliament can still reject a bill by passing a motion of no confidence. In contrast, with Article 47(3), Parliament can be completely sidestepped, since its members have no say on the ordinances. That said, with no precedent available, many questions were left unanswered regarding the scope of the budgetary ordinances as well as how potential challenges would work in court. Scholars started to explore the matter when it became clear that no majority was prepared to agree on a budget in the autumn of 2025.

On the first question, most scholars drew a comparison with the ordinances provid-

31 Although French local authorities enjoy a degree of fiscal autonomy, tax collection remains centralised. The national tax administration is responsible for collecting all taxes, including local taxes, on behalf of these authorities. Each year, the Finance Act provides for transfers encompassing both state grants to local governments and advance payments based on estimates of their tax revenues.

32 Guigue, A., 'Budget 2025 : qu'est-ce que la loi spéciale annoncée par Emmanuel Macron ?', *Le Club des Juristes*, 9 Dec. 2024, <https://www.leclubdesjuristes.com/economie/budget-2025-quest-ce-que-la-loi-speciale-annoncee-par-emmanuel-macron-8311/>

ed for by Article 38 of the Constitution. Under this provision, Parliament has the power to enable the government to make laws in the form of ordinances. After their ratification by Parliament, the ordinances become legislation. While the enabling act and the ratification act can be referred to the Constitutional Council, it was long established in case law that these ordinances could only be challenged before the *Conseil d'État* prior to their ratification by Parliament. Because Article 47 of the Constitution does not mention the need for the ratification of budgetary ordinances, most scholars considered that budgetary ordinances could only be challenged before the *Conseil d'État*, just like unratified Article 38 ordinances. This view was shared by the government's General Secretariat in a note on the annual Finance Bill and the annual Social Security Financing Bill for 2025.³³

The other question concerned the content of a budgetary ordinance. In the same note, the government's General Secretariat concluded that the ordinance should contain only the initial version of the bill tabled by the government. This view was shared by some scholars who thought that this interpretation made the most sense because using a budgetary ordinance was a way to punish Parliament for failing to reach a decision.³⁴ Others believed that nothing in the Constitution prevented the government from including some amendments, notably those that both Houses would have had time to agree on.³⁵ The main argument for this solution is the analogy that can be made with other rules of procedure. When one House of Parliament fails to vote on a Finance Bill before the end of its allotted time, the government can take the bill away and submit it to the other House. In doing so, it can send the original version of the bill or choose to include some of the amendments that were adopted. In the absence of any detailed rule in the Constitution or the 2001 Institutional Act, we also prefer this interpretation.³⁶

After Barnier's government was forced to resign in early December 2024, the ordinance option was swiftly dismissed when Macron announced that the Prime Minister would table an emergency Finance Bill. Some were surprised that Macron dismissed this option, because Parliament was clearly going to miss its 70-day deadline. But the same question was asked again in 2025 in similar circumstances. When it became apparent that Parliament would not compromise on the annual Finance Bill for 2026 after the debate came to a dead end on 13 January 2026, Sébastien Lecornu asked his government to start working on a budgetary ordinance. The conditions were met, but the government was split between supporters of an emergency finance bill and supporters of a budgetary ordinance. The Prime Minister opted for an emergency bill, not for legal reasons but rather for political ones. After negotiating a compromise annual Finance Bill with the Socialist Party, he obtained guarantees that its members in the National Assembly would

33 Secrétariat Général du Gouvernement, Note sur le PLF et le PLFSS pour 2025. The document was published by the online media 'Contexte'.

34 Camby, J.-P., 'Budget 2026 : que penser du choix du 49.3 ?', *Le Club des Juristes*, 21 Jan. 2026, <https://www.leclubdesjuristes.com/economie/budget-2026-le-gouvernement-fait-le-choix-du-49.3-13827/>.

35 Quinart, E., 'Budget : que sont les ordonnances de l'article 47, alinéa 3 de la Constitution ?', *Blog JusPoliticum*, 5 Nov. 2025, <https://blog.juspoliticum.com/2025/11/05/budget-que-sont-les-ordonnances-de-l'article-47-alinea-3-de-la-constitution-par-emilien-quinart/>; Carpentier, M., 'Les ordonnances budgétaires et sociales', *AJDA*, n° 42, 2025, p. 2185; Sydoryk, S., 'Les ordonnances financières des articles 47 et 47-1 de la Constitution : réflexions sur le régime juridique d'un mécanisme inédit', *LPA*, 2025, n° 12.

36 Guigue, A., 'Loi de finances : le Parlement sous la menace d'un recours à l'ordonnance', *The Conversation*, 18 Nov. 2025, <https://theconversation.com/loi-de-finances-le-parlement-sous-la-menace-dun-recours-a-lordonnance-270085>

not vote for a motion of no confidence. Had he opted for a budgetary ordinance, it is very likely that his government would have been forced to resign. In the end, the emergency Finance Bill was also passed unanimously in December 2025 and was not referred to the Constitutional Council, thus leaving the above legal questions unanswered.

3. *Article 16 of the Constitution: a last resort to avoid a shutdown?*

The drafters of the 1958 Constitution ensured that the President could exercise exceptional powers if the country experienced another invasion like that of 1940. De Gaulle used these powers in 1961 after the attempted coup in Algiers by three French generals. Although these powers have never been used since, a constitutional amendment in 2008 modified Article 16 to give the Constitutional Council a say upon referral after 30 days and then automatically after 60 days.³⁷ The conditions to be met for the President to use these exceptional powers are complex. The drafters laid down two cumulative requirements. The first comprises four alternatives:

'Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat (...)

A looming shutdown, despite its consequences, does not meet the first three conditions, but it would jeopardise the international commitments of the State, especially those required by European treaties like the Stability and Growth Pact or the Treaty on Stability, Coordination and Governance of 2012. That is because a shutdown would prevent the government from meeting its fiscal targets (a deficit below 3% of GDP, public debt below 60% of GDP and a structural deficit below 0.5% of GDP). Plainly, the drafters did not have fiscal targets in mind when they crafted Article 16.³⁸ Nevertheless, the case could be made that a shutdown would prevent a Member State from fulfilling its treaty obligations.

The second condition is more straightforward: 'The proper functioning of the constitutional public authorities is interrupted.' There is no doubt that the impossibility of collecting public revenue and spending public money would paralyse public bodies. Consequently, it is not entirely impossible for a President to argue that the exceptional powers are needed to reopen government, especially if all other legal means have failed. Undoubtedly, such a decision would be extremely unpopular and go against the principle of consent to taxation. But the Constitutional Council may only intervene after 30 days, whereas reopening the government would take only a moment. If the President used Article 16, he would adopt the budget and then immediately put an end to the exceptional powers. Several scholars argued that the wording of Article 16 permitted such an interpretation, while cautioning against such a move for many reasons.³⁹ The discussion rap-

37 The justification for such a precaution lies in the extensive use of these powers by de Gaulle in 1961. The attempted coup was over after four days and the situation was under control after a few weeks, but de Gaulle kept using the exceptional powers for six months during which he set up military tribunals.

38 These were first introduced in the 1990s, before the creation of the euro.

39 Guigue, A., 'Budget 2025 : le risque d'un blocage institutionnel', *Le Monde*, 27 July 2024, p. 8. <https://www.lemonde.fr/>

idly sparked controversy over constitutional interpretation, highlighting the lack of legal solutions in extreme circumstances.⁴⁰ It also exposed the tension between the principle of consent to taxation and the principle of State continuity, which both lie at the heart of the budgetary process.

Conclusion

Extreme political circumstances may render it difficult to maintain an appropriate balance between the principle of consent to taxation and the principle of continuity of the State. In the United States, this balance is managed through the acceptance of government shutdowns, including partial shutdowns, while preserving mechanisms designed to ensure the continuity of essential public services. In France, by contrast, the possibility of a shutdown has never truly been contemplated under the Fifth Republic. In 1979, the Constitutional Council adopted a broad interpretation of the legal framework in place in order to allow the adoption of an emergency finance bill. However, the political fragmentation following the 2024 legislative elections has placed these mechanisms under considerable strain. The adoption of the budget proved particularly difficult and revealed the limits of the spirit of codification that guided the drafters of the 1958 Constitution and the 2001 Institutional Act, who sought to anticipate every possible contingency.⁴¹ So far, the avoidance of shutdowns in France has relied not solely on legal mechanisms, but also on the determination of political actors to prevent them at all costs.

politique/article/2024/07/27/en-cas-de-blocage-budgetaire-durable-il-faudrait-un-retour-aux-urnes_6259112_823448.html; Guigue, A., 'La perspective d'un blocage budgétaire en France', Blog *JusPoliticum*, 8 July 2024, <https://blog.juspoliticum.com/2024/07/08/la-perspective-dun-blocage-budgetaire-en-france-par-alexandre-guigue/>; Baudu, A. et al., 'Un chemin de croix budgétaire, quatre scénarios et une apocalypse', *AJDA*, n° 41, 2 Dec. 2024, p. 2193; Camby, J.-P., Schoettl, J.-É., 'Que devient le budget de la Nation en cas d'Assemblée ingouvernable?', *Revue politique et parlementaire*, 1 July 2024, <https://www.revuepolitique.fr/que-devient-le-budget-de-la-nation-en-cas-dassemblee-ingouvernable/>
40 Beaud, O., *Le Monde*, 6 Dec. 2024, and the response by Camby, J.-P., Schoettl, J.-É., *Le Monde*, 12 Dec. 2024.
41 On 18 Dec. 2025, French Senator Elisabeth Doineau introduced a proposal to amend the Constitution 'to clarify the procedure for examining finance bills.' The proposal aims to address the limitations highlighted by political fragmentation.