

Working Group III

Working document 6

Working group III « Legal personality »

Subject: A single legal personality and simplification of the Treaties

One of the three issues within the Working Group's remit concerns the link between explicit recognition of the Union's legal personality and simplification of the Treaties. It has already been addressed, particularly in the statement by Professor J.V. Louis¹. He suggests that, as an extension of a merger of the legal personalities of the Union and the Community (and even the EAEC), the Treaties should be merged. He envisages recasting the constitutional provisions of those Treaties in a new constitutional treaty.

The question arises of what implications a single legal personality for the EU, subsuming the EC's legal personality, would have for the present duality of the main Treaties concerned, the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC).

Although the legal personalities could conceivably be merged without merging those Treaties², the rationale for a TEU separate from the TEC would seem to be removed. Once the Community no longer had any separate legal personality, the distinction between the Union and the Community would cease to apply. The merger of those two Treaties (and even the Euratom Treaty) would be a logical consequence of the merger of the Union and the Community and would help simplify the Treaties. It has already been pointed out during proceedings that conferring a single legal personality on the Union would not in itself affect the nature of the pillar structure. The same holds true for a merger of the Treaties.

An initial discussion should therefore consider the link between any merger of those Treaties and the form of the Convention's final outcome. Preliminary exchanges of views within the Convention have shown that the outcome might involve drawing up a basic or fundamental treaty³.

On the face of it, the options open are as follows:

¹ See also the statement by Mr P.J. Kuijper.

² A new clause would merely stipulate that the Union supersedes and acts as successor to the European Community, while leaving the TEC unchanged.

³ See also in particular the contributions submitted by Mr H. Haenel (CONV 12/02), Mr A. Duff (CONV 22/02 and CONV 57/02), Mr E. Teufel (CONV 23/02), Mr K. Hänsch and Ms P. Beres (CONV 63/03) and certain members of the Convention (CONV 189/02).

Option 1: merging the TEU and the TEC

A merger of the TEU and the TEC would mean that the new, consolidated instrument replaced the two founding Treaties and the successive Treaties revising them, which would drastically simplify the Treaties. A merger could take one of two forms:

- (a) a new, single treaty incorporating the provisions of both Treaties, without any distinction between basic and other provisions. Following work on codification of the Treaties by a group of experts for the IGC leading up to the Treaty of Amsterdam, the Council Secretariat produced a model unified Treaty⁴. It contains around 360 clauses (and nearly 120 clauses for the Protocol consolidating the EAEC Treaty). The single Treaty has undergone limited restructuring, aligned on the structure of the present Treaties;
- (b) a new, single instrument, falling into two parts. The basic part would comprise constitutional provisions newly enacted or taken from the present Treaties. The second part would merge and consolidate all other current provisions of the TEU and the TEC (at any rate those not included in or covered by the basic part). That second part could comprise statutes (for the institutions) or special protocols (for policy areas: internal market, EMU, JHA, CFSP, common policies, etc.)⁵.

If the Convention considered that it was not sufficiently well equipped or did not have the time to see such an exercise through to completion, the question would arise of the point at which the Convention should stop and of the timetable and forum for continuation of the exercise. The question would also arise of the status of the new basic treaty until such time as the present Treaties had been amended to bring them into line with it and/or the "second part" had been consolidated.

⁴ Consolidated version of the Treaties (Vol. I and II): SN 1845/00 and SN 1846/00. It should be noted, however, that the operation was carried out in such a way as to leave the legal situation unchanged and maintain the Union-Community duality and the present pillar structure.

⁵ This is the approach followed in the study by the European University Institute in Florence on reorganisation of the Treaties and revision of amendment procedures. See the references in CONV 8/02, Annex I, p. 3 (on the Internet: <http://www.iue.it/RSC/Treaties.html>) and the Commission communication of 12 July 2000 entitled "*A basic Treaty for the European Union*" (COM(2000) 434 final). Compare the model presented by the Bertelsmann Group for Policy Research at the Centre for Applied Policy Research, "*A Basic Treaty for the European Union*" (<http://www.cap.uni-muenchen.de>).

Option 2: not merging the TEU and the TEC

If the Convention decides not to merge the Treaties (in particular for reasons of re-ratification in their entirety), there are various avenues open:

- (a) the Convention could merely make a number of amendments to the present Treaties, in the same way as the Treaty of Amsterdam or the Treaty of Nice;
- (b) the Convention could draw up a new basic treaty from scratch, to be added to the present Treaties. In that event, either the present Treaties and the Community *acquis* would apply only in so far as they were compatible with the new treaty and/or with allowance made for implicit amendments, or those Treaties would be expressly adjusted (as part of the Convention or in a new forum, with a timetable to be set).

These two avenues would thus both retain the present TEC and TEU. A third possibility would be to replace the present TEU by a new basic treaty, without merging that new treaty with the TEC. The TEC would thus remain in force, stripped of the provisions covered by the new basic treaty and/or amended in accordance with the basic treaty (as part of the Convention or in a new forum, with a timetable to be set).

* *

*

Whichever approach is opted for, consideration will need to be given to the implications of a single Union legal personality for some provisions of the present Treaties, in particular those relating to certain aspects of presentation of the Union's pillar structure. A number of provisions have already been mentioned in the course of proceedings, e.g. Articles 1, 28, 41 and 47 of the TEU. Some adjustments to the TEC could likewise be considered, particularly in Articles 1 and 281.
