

Working Group III

Working document 7

**Working group III « Legal personality »**

**Subject: Observations made by Mr Kenneth KVIST to the Preliminary draft report submitted by the Chairman at the meeting of 18 July 2002 (SN 03130/02)**

Kenneth Kvist, Sweden:

**Some comments on the draft report. (SN 03130)**

**Legal personality**

**I:1** I am prepared to give explicit legal personality to the Union and that this replaces the legal personality of the Communities under one condition. This must not affect the intergovernmental character of the second and third "pillars" and must not shift the political balance from the Member States to the institutions of the Union. If this condition is fulfilled I accept the text : "The union shall have legal personality."

II:A:3

In this paragraph it is stated, that from "the strictly legal viewpoint", explicit conferral of legal personality on the Union "per se" doesn't entail any amendment, either to the allocation of competencies between the Union and the Member states, or between the Union and the community, or to the pillar structure etc.

To some extent this though seems to underestimate the problem. The shift from two (or three) different personalities to one **single** personality must in reality give rise to some changes.

In the following paragraphs under B "Some desirable amendments" some proposals are put forward, which really seem to make substantial changes in these aspects.

Therefore I propose that the effects on the political balance between the Member States and the institutions shall be explicitly analysed in the report.

II:B:i:4-5

If the Union is given explicit legal personality I can accept the proposal to have a sole provision regarding procedure for negotiation and concluding international agreements between the Union

and third States or international organisations **as long as it doesn't affect** the different procedures for negotiating and concluding agreements under articles 300 TEC and Titles V and/or VI TEU.

I can also accept the proposal under B:i:5, which means that where the subject of an agreement come preponderantly under the Title V or VI TEU the presidency of the council, assisted where necessary by the commission, should conduct the negotiations. When it concerns mixed agreements preponderantly within the sphere of Community law my principal position is that also these negotiations should be conducted by the presidency. If the balance between institutions shall be changed minimally, I can though limit myself to propose that the Commission in these negotiations **should work in close co-operation with the Presidency and the Member States.**

I am not prepared to make it possible for the Council to decide to charge the Commission with conducting negotiations on behalf of the council (or the Member States) when it concerns agreements under Title V or VI TEU.

II:B:ii:6

The report should outline the effects of the proposal to delete the phrase “no agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure” (Article 24 TEU). It should also set out the effects of replacing the word “Community” with “the Union” in paragraph 7 of article 300 TEC in accordance with the proposal in the draft report. Does this mean that when an agreement falls exclusively under Title V or the Title VI only EU would become party to such agreements? Or does it mean that both the Member States and the EU become parties to such agreements? What competencies would be given to the Union? What if some parts of the agreement needs to be implemented in national legislation?

For the time being I am not prepared to accept the proposals at this point.

There is a substantial risk that the National Parliaments would be excluded from taking part in the procedure for concluding agreements that fall under Title V and the Title VI TEU.

E.g. according to the Swedish constitution the government has the power to conclude international agreements for Sweden. In certain cases, however, - especially when Swedish law is affected - the government has to have the assent from the Parliament. Perhaps exist similar rules in some other Member States.

There is a conflict between such rules and the proposal in the draft report.

If, the proposal in the draft report is accepted, a state with rules similar to those of Sweden, which considers, that the National parliament must consent to an agreement, would have to block a decision by the Council to conclude this agreement, until there is a Parliament assent (which could take some time especially if national legislation is needed). If it concerns an agreements that could be concluded with qualified majority voting (after Nice) a state in this case would have to fall back on the Article 23.2 TEU which states: “If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken:”

II:B :iii:7-9

I can't accept the text under this section.

The Court of Justice does not at present have jurisdiction concerning Title V TEU and has limited jurisdiction concerning Title VI TEU. The role of the ECJ within these titles depends on the future character of the work within those “pillars”. Since I would like to keep the intergovernmental character in the second and third pillar I am not prepared to widen the scope of the Courts competencies in these areas, even if the proposal touches upon something so sympathetic as the fundamental rights.

II:B:iv:10

The role of the European Parliament is dependent on the future character of the work within the Titles V and VI TEU. As mentioned above I want to keep the intergovernmental character of the work in these pillars. The role of the EP should correspond to this.

The proposals of the draft diminishes the role of the National parliament and increases

the role of the EP and thus strengthens the supra-national character of the Union.  
This is not acceptable. Therefore there is no reason to obtain the opinion of the EP.

II:B:v .11-19

The proposal that the Union should be represented by a single delegation when the Union is admitted to an international organisation or conference has of course advantages when it comes to efficiency. I would however also like the report to elaborate on the effects of the proposal when it concerns the Member States possibilities to leave their own comments in negotiations in an area within Member States competencies.

I think that today in such a case each Member State has the possibility to announce their own opinion in the negotiations. With a single delegation in those circumstances this possibility for the Member States would be lost. Despite the duty to co-operate there could occur situations in which a member state need to have its own opinion

It is of course desirable that the Union can obtain unanimity and speak with a single voice. However there could be –as mentioned – situations in which there must still be a possibility for the Member States to express their own opinion if the area concerned falls within the Member States competence.

Regarding the question of the representation of the Union by external offices I would like the draft report to reflect the actual situation when it concerns the right to send diplomatic representatives on behalf of the Communities/union. It is my opinion that nothing in the Treaties explicitly or implicitly confers a power to send diplomatic representatives on behalf of the Communities.

I am not prepared to give the Union competence to send diplomatic representatives on behalf of the Union.

These are my comments. I hope for a fruitful discussion next Wednesday.

Stockholm, 4 September 2002

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