

Working Group III

Working document 11

**Working group III « Legal personality »**

**Subject: The Comments of Dr Gunter PLEUGER to the Preliminary draft report submitted by the Chairman at the meeting of 18 July 2002 (SN 03130/02)**

Re: Doc. SN 3130/02 and SN 3131/02

1. The preliminary draft report by Working Group III (Doc. SN 3130/02) is an excellent basis for the future work of the Convention in this sphere. In particular, I fully agree with its central conclusion that the European Union should be given a single legal personality which encompasses the European Communities. In the interests of making the European construction clear and comprehensible, this is an important goal for the Convention's work and paves the way to overcoming the pillar structure which is so difficult to understand, although procedures in the individual political fields can continue to be different.
2. I would like to look more closely at two points in the report:
  - (a) The idea that international agreements with third states be negotiated as far as possible by one body (item 5 in the draft report) has my support. The role of the Commission in Community agreements, particularly in trade policy, should be strengthened. I therefore suggest that in future the Commission should negotiate agreements on the basis of consultations with the Council, thus rendering the issuing of a mandate to negotiate unnecessary. Rather, the Council and, if necessary, the European Parliament, would decide once negotiations had been concluded whether the outcome negotiated by the Commission should be accepted by the European Union. In this connection, it should be examined whether the fast-track procedure used in the US could be a model for the EU.
  - (b) With regard to the remarks on the active right of legation (item 19 of Doc. SN 3130/02), I would remind you of the proposal put forward at the last plenary meeting by Professor Peter Glotz, the German Government's representative in the Convention, that the offices of the External Relations Commissioner and the High Representative for the CFSP be exercised by one person ("double hat" approach), with the Commission delegations being transformed into EU delegations. These delegations would be under a single head of delegation who would report back to the "double hat" in its double function. The current staff of the delegations would be extended to include personnel from the foreign policy unit to be created.

In close cooperation with the existing member states' missions these EU delegations would greatly enhance the Union's representation in the host country. Further-reaching considerations would seem to be premature, for this Convention at least, and should therefore not be discussed in the Working Group's report.

3. Beyond the draft report, the results of our Working Group will be of fundamental importance in drawing up the framework for the results of the Convention's work, which the Praesidium has announced will be launched in October. The Secretariat's note to the Working Group (Doc. SN 3131/02) contains preliminary comments on this. I would like to take this opportunity to outline the first elements of a simplification and division of the treaties from our point of view:

The objective of the Convention's work should be to draw up a European constitution. This should, in order to make it comprehensible to citizens and maintain an enlarged Union's capability to reform, consist of two parts: a constitutional treaty in which the key elements of the Union's values, organization and procedure are laid down and a second legal instrument with the individual provisions for which a simplified amendment procedure should be envisaged. The model for this could be, at least in so far as the amendment would entail a transfer of competence to the Union, the ratifiable decisions (e.g. the decision on the system of the Communities' own resources) whose existence is already recognized under present Community law. This would be a political signal that it should be made easier to amend these detailed provisions without, however, calling into question the control of the member states over the further integration process which is a constitutional prerequisite for numerous member states. Assuming that this amendment procedure will be adopted, it would be logical to have the second legal instrument adopted as a ratifiable decision by the representatives of the member states assembled in the Council (organ decision or "constitutional law").

The two legal instruments which together would replace the TEU and TEC should be drawn up by the Convention, if necessary with alternative options on individual issues.

The central idea for distinguishing between the two parts should be to ensure transparency for the citizen: citizens must, similar to a national constitution, be able to gauge from the constitutional treaty what the Union is responsible for, what the various organs are responsible for and what are the essential features of the procedures. The details, on the other hand, should be laid down in the second legal instrument.

One example: for the codecision procedure only a provision of principle describing the basic allocation of roles would be included in the constitutional treaty, for example along the lines of: "In the codecision procedure, the Council and the European Parliament shall make decisions on an equal footing at the suggestion of the Commission." The details of this procedure (e.g. the number and form of the readings, deadlines, etc.), as they are contained at present in Article 251 of the TEC, would be laid down in the second treaty/legal instrument.

The Charter of fundamental rights of the European Union should be incorporated into the constitution unchanged as the Union's system of values with the exception of any essential technical adjustments. It should form a separate chapter at the beginning of the constitutional treaty.

The enclosed outline of a possible division of the material into the two legal instruments is solely intended to illustrate this idea and does not contain any final statement on individual issues.

## **Elements of a Union constitution, consisting of a constitutional treaty and a constitutional law**

### **1. Constitutional treaty**

#### **- Principles and objectives**

- Federation of nation-states and citizens' union, based on human dignity, fundamental rights, democracy and the rule of law,
- single legal personality,
- Union objectives and activities (fostering of the economic and social standards and cohesion, as well as a high level of employment, completion of the area without internal borders and of economic and monetary union, customs union, preservation of the *acquis communautaire* and its further development, a high degree of environmental protection, the Common Foreign and Security Policy, creation of an Area of Freedom, Security and Justice).

#### **- Fundamental rights and Union citizenship**

- Fundamental Rights Charter of Nice
- Union citizenship

#### **- The Union's tasks**

*(short list in which each of the Union's political fields is described in one article; the details will be regulated in the constitutional law. It should be examined whether the political fields can be classified in terms of the EU's categories of competence (exclusive, concurrent and framework competences.)*

E.g.: Art. X – Free movement of goods: The Union forms a customs union which encompasses the exchange of goods in its entirety. Customs tariffs, trade restrictions relating to quantity, as well as all measures of similar effect between the member states are prohibited.

#### **- Relationship between the Union and the member states**

- Respect for the national identities of the member states and loyalty to the Union,
- principle of the Union's restricted prerogative; matters for which the Union is not responsible remain within the competence of the member states,
- exclusive right of the member states to transfer more sovereignty rights to the Union, in keeping with their national legislation,
- principles of subsidiarity and proportionality,
- precedence of Community law,
- Art. 308.

#### **- The Union's organs and institutions**

- The European Council
- The Council of Ministers
- The European Parliament
- The European Commission
- The Court of Justice of the European Communities
- The European System of Central Banks

- The European Court of Auditors
- The Economic and Social Committee
- The Committee of the Regions
- The European Investment Bank
  
- **The Union's external representation**
  
- **Essential features of economic and monetary policy**
  
- **Legal instruments, procedures and judicial control**
  - Legal instruments: regulations (European laws), directives (European framework laws) and decisions,
  - basic features of the law-making procedures (general description of the procedures, e.g.: "In the codecision procedure, the Council and the European Parliament shall make decisions on an equal footing at the suggestion of the Commission."
  - procedure on amending the constitutional law,
  - basic features of the procedures for judicial control,
  - basic features of the procedures for subsidiarity control,
  
- **Provisions on enhanced cooperation**
  
- **Financial provisions**
  
- **Final provisions**  
 In particular, procedure on amending this constitutional treaty (Convention, Inter-governmental Conference, ratification by member states).

## **2. Constitutional law "Policies and procedures of the European Union"**

- **The Union's policies (inter alia, detailed objectives, implementing provisions, individual regulations)**
  - The Common Foreign and Security Policy  
 including individual provisions on the instruments and procedures which ensure that the CFSP's essentially intergovernmental character is maintained.
  
  - An Area of Freedom, Security and Justice
    - = Free movement of persons
    - = Police and judicial cooperation on criminal matters (with special procedural provisions)
  
  - Free movement of goods
  
  - Agriculture
  
  - Free movement of persons, services and capital
  
  - Transport
  
  - Common rules on competition, tax matters and the harmonization of legal provisions

- Economic and monetary policy
- Employment
- Common trade policy
- Customs cooperation
- Social policy, general education and vocational training
- Culture
- Health care
- Consumer protection
- Transeuropean networks
- Industry
- Economic and social cohesion
- Research and technological development
- Environment
- Development cooperation
- **Supplementary provisions on the Union's organs**
- **Supplementary provisions on the Union's procedures**
- I. **Details of the procedures, for example the number and form of readings, deadlines, etc., as contained at present in Art. 251 of the TEC.**
- **Supplementary provisions on enhanced cooperation**
- **Supplementary provisions on financial provisions**

=====