

Working Group III

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**Working group III « Legal personality »**

**Subject: Document by Ms Teija TIILIKAINEN**  
**"Proposals on issues to be taken into account in the Working**  
**Group's report to the Convention concerning simplification of the**  
**Treaties (WG III – WD 6)"**

**Proposal on issues to be taken into account in the Working Group's report to the Convention concerning simplification of the Treaties (WG III - WD 6)**

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1. The Point of Departure

The point of departure for drafting the second part of the Working Group's report to the Convention should be the fact that a clear majority of the members of the Working Group have expressed their preference for a new single Basic Treaty falling into two parts along the lines of Option 1(b) in document SN 3131/02. The same preference was also expressed by the two distinguished experts, Professor Müller-Graff and Professor De Witte, in the Working Group's hearing on September 11. Thus, this approach should be taken as the basis for the further work of the Working Group.

The merger of the existing Treaties would be a logical consequence of granting a single legal personality to the Union replacing the legal personality of the Community. The merger would also greatly facilitate the simplification of the Treaties, a development that is one of the main tasks of the Convention in particular in the eyes of the Union citizens.

Logically, the exercise could be divided in two parts; first, the merger of the existing Treaties and, secondly, the division in two parts of the Treaty thus achieved. The broad objective should be to draft a Basic Treaty that consists of two parts: a constitutional part and a second part. Having this approach in mind, the Working Group should consider at least the following questions that relate to the structure, substance and revision of the Basic Treaty.

2. Questions relating to the drafting of a Basic Treaty

a. The structure of the Basic Treaty?

Even if the point of departure should be a single Basic Treaty falling into two parts, there are still different options that should be considered especially as regards the structure of the second part (Protocols, a uniform instrument etc.?).

b. Identification of constitutional provisions?

One of the most important tasks of the Working Group is to establish *criteria* for the identification of Treaty provisions that are essentially constitutional in nature. Only those provisions should be included in the constitutional part of the Basic Treaty. The constitutional part should be as short as possible but, simultaneously, comprehensive as regards the basic principles of constitutional structure of the system. For the identification of constitutional provisions one would need to have a clear idea of what in fact is "constitutional" for the Union as a constitutional system. In this exercise one should pay attention to the specific features of the Union system (cf. the presentation by

Prof. Müller-Graff on September 11). Such questions as whether the legal bases for Union legislation should be included in the constitutional part deserve particular attention.

c. The legal/political relationship between the different parts of the Treaty?

The Working Group should consider the different options for arranging the legal and political hierarchy between the constitutional and the second part of the Basic Treaty. A special emphasis should be given to the consideration whether a clear hierarchy should be established between these parts, reflecting as far as possible the eventual hierarchy of norms in the whole legal system of the Union (the latter being partly an issue for the Working Group on the simplification of instruments and procedures).

d. Revision procedures?

The procedures for revising the Treaties deserve a special role in the Working Group's future report. The point of departure could be that it is essential to differentiate the revision procedures of the constitutional and the second part. This is all the more important after the enlargement of the Union. The Working Group should evaluate at least the following options: Does Article 48 TEU set an appropriate basis for the revision of the constitutional part also in the future? Would it be possible to create a new simplified revision procedure for the second part? What would be the legal and political implications of a simplified procedure (esp. abolition of national ratifications and possible acceptance by some kind of a Super QMV)? In particular, one should not forget that this is a question, which will greatly affect the position and powers of the Parliaments of the Member States. Thus, the Working Group might also wish to consider different options to compensate in some way the loss of influence for the Member State Parliaments.

e. Codification of general principles of Community law?

The Working Group should also consider whether some of basic constitutional principles created by the Court of Justice in its case-law should be included in the Basic Treaty (e.g. direct applicability and primacy of Community/Union law). One should, however, take into account the fact that such principles are based on jurisprudence, which is often very complex and, hence, these principles are not always easy to codify in simple abstract form.

3. A basic principle for drafting the Basic Treaty

As a basic principle for the exercise the Working Group should propose that the three essential questions - the structure, substance and revision procedures of the parts of the Basic Treaty - are treated as a unity in which no question can alone be determined before the whole issue is decided. This is due to the close interlinkedness of the issues.