

Working Group III

Working document 21

Working group III « Legal personality »

**Subject: The Comments of Mr Kenneth KVIST
to the draft report (WG III – WD 10)**

I have the following additional comments to the new version of the draft report.

Legal personality

II B i 7-8

The new draft makes a proposal under B:i:7 regarding a special procedure for mixed agreements. The draft concentrate on who is to be given the mandate to negotiate. The reason behind the proposal is that it enables the Union to speak with one voice. However in the text in italics after B:i:8 it is mentioned that also the conclusion procedure applicable in the case of a mixed agreement would be the one arising - preponderantly - from the area of law concerned. The report should elaborate on what the effects of a special procedure for mixed agreements would be for the Council. The Council should still need unanimously to approve both the draft negotiating mandate and the agreement reached by the negotiators.

II B ii 9

I favour the retention of Article 24 in its present form. The proposal in the revised draft, although better than the one in the first draft, only takes care of the situation where a Member State does not want to join. More has to be said about the situation where a Member State wants to join but has to await the approval of the national parliament before the Member State can vote yes in the Council. After Nice certain agreements under Title V and VI will be approved by the Council by qualified majority voting. The possibility to abstain from voting, with the effect of not being bound by the agreement, seems not to be open in that situation. It should be explained if it is possible for a Member State, having difficulties of a procedural kind as mentioned above, to use the "emergency break" in Article 23 (2) in such a situation.

II B iii 15 and II B iii (b) 21

In this sections of the paper the Working Group proposes that the responsibilities of the High Representative and of the Commissioner for External Relations should be merged and given to one person. I would like to keep both the office of the High representative and the office of the Commissioner. If a merger should take place, I would like the draft to propose that the merged High Representative's should have responsibility under the Council and elaborate how dependence of the Council could be preserved.

II B iii (b) 21

In the text in this section the question is posed whether diplomatic representations of the Union should be established in certain third countries, replacing the diplomatic representations of the Member States. I don't agree with that idea. I think citizens, when having a problem abroad, normally want to meet representatives from their own country or responsible to their own State.

If the Union had legal personality it is proposed that the Commission's delegations, which are recognised as having diplomatic status by the host State, could become delegations of the Union. These offices would fall under a single person responsible for external relations. I would like to keep the situation where the Union is represented by the diplomatic representation of the Member State holding the Presidency of the Council. (Alternatively I could accept Union offices in certain third countries but they should not exclude diplomatic representations of the Member States.)

Simplification of the Treaties

According to the mandate the group should consider the implications of explicit legal personality and merger for the issue of simplification of the Treaties. I would like the simplification to concentrate on the following elements.

- Drawing up of a basic Treaty with the most important provisions that should appear in it. Making this basic Treaty part of a broader reorganisation and simplification of the main Treaties currently in force, i.e. the merger and restructuring of the existing TEU and TEC. Such a merger would take place in principle on the basis of established law without modifying the *acquis* and respecting the current legal situation, in particular the distinction between the Union and the Community, and the pillar structure established by the Maastricht Treaty. The provisions currently appearing within the pillars would become specific procedures within a single Treaty.
- Texts not included in the basic Treaty could be a second part of a single Treaty in which the first part would be the main part. If the distribution of competencies and the institutional balance could be clarified in the basic Treaty I could be prepared to discuss a reform of the procedure for changing the rest of the Treaty (the second part). However, decisions about giving more competence to the EU must be ratified by the Member States. Also decisions that change the institutional balance between the EU institutions must be ratified by the Member States.
- The new Treaty should require ratification by the Member States.
