

Working Group IV

Working document 16

Working group IV – "Role of National Parliaments"

Subject: - Paper by Mr Kimmo Kiljunen, member of the Convention
 "Securing the influence of National Parliaments - use of reserves in the Council"

Members of Working Group IV will find hereafter a paper by Mr Kimmo Kiljunen, representative of the Finnish Parliament, member of the Convention.

***Subject: Securing the influence of National Parliaments - use of reserves
in the Council***

Introduction

The role and influence of the scrutiny exercised by a National Parliament in a particular Member State is highly dependent on the behaviour of the respective Government in the Council. According to the Treaties, Government represents the Member State and has a right to engage the Member State in a legally binding way. There is no way for the National Parliament to prevent or call back a decision, even if it had been done without its consent or against its position.

When a legislative proposal is discussed in the Council (including Coreper and working groups), representatives of Member States use reserves in order to indicate that they are not willing and/or able to agree with the proposal on the table. A decision can not be reached until all reserves are lifted, or, in cases where qualified majority is used, a sufficient number of Member States have lifted all their reserves.

Even if all reserves are formally speaking equal, there are in practice several types of reserves. Some of them are more serious than others, indicating a genuine disagreement or lack of political consensus. Some of them are more formal or technical, and are expected to be lifted in due course.

Member States use general reserves or formal reserves concerning detailed points in order to indicate disagreement. They also use linguistic reserves if they want to verify the linguistic compliance of the text with the original. Different national procedures required to study the proposal may also give cause for a scrutiny or waiting reserve. Some countries use parliamentary scrutiny reserves in order to indicate that the procedure the National Parliament is still pending. (for different use of reserves, see for instance *Martin Westlake* (ed.): *The Council of the European Union*, 1995, page 118)

There is no common view on the nature on parliamentary reserves. In some cases they are considered binding on the governments, in some cases they leave more room of manoeuvre.

In some cases so called "parliamentary scrutiny reserve" or other kind of parliamentary reserve is interpreted as a formal or technical reserve, which does not prevent adopting a political agreement in the Council in a way that is *de facto* binding on the Member State concerned. The case is considered politically closed, and when Governments in question have fulfilled their national obligations and lifted the reserve, the act can be formally adopted as previously agreed.

Proposal

I propose that the use of reserves in general, and parliamentary reserves in particular, be discussed in the Working Group.

As the representatives of Finnish Parliament (see CONV 82/02) and many other members of the Convention in their own contributions have proposed, the role of National Parliaments should be strengthened. The Constitutional Treaty should enable the National Parliaments to scrutinise Commission's proposals for Community legislation and give guidance/instructions/mandate to their respective Governments to act in the Council. If this is done, the question how to secure the influence of a National Parliament is primordial. **Some sort of guideline for the use of reserves in the Council (Coreper and working groups included) might prove to be useful.**

This question is closely interlinked to the one on transparency of the legislative procedures and especially the decision making in the Council (Coreper and working groups included). I think that the procedures in the Council should be differentiated so that the legislative procedure and budgetary procedure (based on Commission legislative and budget proposals) is separated from the political cooperation and executive functions. The legislative procedure should in broad terms resemble parliamentary legislative procedures as far as the transparency is concerned.

Transparency of legislative procedure is important not only to the grand public, but also vis-à-vis the National Parliaments who must be able to follow the procedure they are part of.

Use of reserves and securing Parliament's influence in Finland

According to the section 96 of the Finnish Constitution, the Parliament has a right - and in fact an obligation - to formulate its position on all EU-legislation which fall within the competence of the

Parliament (so called U-matters). The **national position of Finland is thus formulated in interaction between the Government and the Parliament**, the Parliament having the final say. The mandate given by the Parliament is only politically binding, but in practice the Government is very strongly dependent on it.

The formulation of the Finnish Parliament happens in early stage of the legislative procedure (normally in 4-6 weeks after the Commission proposal is adopted). **The Parliament aims at concluding the scrutiny so that the national position is at hand when the substantial negotiations in the Council get underway.** However, there are **three instances, when the Parliament requires that the Government (i.e. Finland's representative in the Council, Coreper or working group) uses reserves.**

1. If the parliamentary procedure is **not yet concluded** (unless the delay is Parliament's "own fault" and an additional delay would be inappropriate).
2. If the Government's **position is only indicative**, and the parliamentary scrutiny is done on the basis of an indicative position. In these cases the Parliament reserves the possibility for a "second opinion".
3. If the Parliament's **position is contradictory** with the Government's position, and negotiations to formulate the national position are required.

In these cases the Parliament requires that the Government use "**appropriate reserves** in order to ensure that no on Finland binding decision is made until the Parliament has had a possibility to determinate its positions (again)". This means that the Government can choose the reserve according to the situation in the Council, as long as the reserve which is used is a real reserve, and keeps the point substantially open as far as Finland is concerned.

In its report on 22 March 2002 to the Parliament (E 21/2002), the Government has indicated that it **does not use so called "parliamentary scrutiny reserve"** in the Council, since it is often interpreted so, that the Government agrees with the proposal and it has no substantial objection against political agreement. The Finnish Parliament has agreed to this practice.

The name of the reserve is not important. Important is, that the influence of the Parliament is secured by keeping the question *de facto* open until the national position is fully formulated.

If and when the Finnish representative has used reserves on the basis of parliamentary instructions and mandate, and the negotiation in the Council requires that these reserves are lifted, the Government submits the question to the Parliament. The **decision to lift the reserve, if the matter falls within Parliament's competence, should be made in concert** between the Parliament and the Government.

It is important for the Parliament of Finland, and I believe also generally for National Parliaments, that the use of reserves is consistent. **It is equally important that the information given to the Parliament includes also an indication of the type and the "true nature" of reserves which are used by Member States. This is necessary to understand the procedure concerning a legislative proposal which is under scrutiny in a National Parliament.**

On the other hand it is important that the **National Parliaments develop their working methods** so that the national scrutiny does **not delay or block the legislative process** in the EU. The model used in Finland is proven to be well-functioning.
