

Working Group IV

Working document 20

Working group IV – "Role of National Parliaments"

Subject: - Paper by Mr Kimmo Kiljunen, member of the Convention
 "Principles of the European Affairs scrutiny system of the Finnish Parliament"

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

PRINCIPLES OF THE EUROPEAN AFFAIRS SCRUTINY SYSTEM OF THE FINNISH PARLIAMENT

Working document presented by Mr Kimmo Kiljunen, MP, to the Convention Working group (WG IV) on National Parliaments

The contribution presented by the Finnish MP's to the Convention (CONV 82/02, CONTRIB 38) included certain principles to be followed when considering the future role of national parliaments within the structure of the European Union. Following principles were included:

1. The role of national parliaments in EU affairs needs to be clarified and strengthened.
2. Enhanced participation of national parliaments in the decision-making of the Council can be achieved without creating new, formal decision-making institutions or structures at the European level.
3. Any new provisions concerning national parliaments included in the Treaties have to be worded in a way that respects national constitutional requirements and the diverse parliamentary practices of the Member States.
4. A prerequisite for effective and functioning scrutiny systems involving the national parliaments is that the actions on the Union level, especially within the Council, are conducted with greater discipline, predictability, responsibility as well as greater transparency and openness than hitherto.

In short, the Convention should aim at results, which would enable the national parliaments to fulfil their scrutiny role. It should not, however, regulate the role of national parliaments or their relationship to national governments in any greater detail.

1. The basic features of the system are enshrined in the Constitution of Finland

The role of the Finnish Parliament in EU affairs is enshrined in the Finnish Constitution. Section 93, paragraph 2 of the Constitution states: “*The Parliament participates in the national preparations of decisions to be made in the European Union, as provided in this Constitution.*” This provision can be seen to constitute an important exception to the strict division between the legislative and executive branches of government. It is aimed at compensating the significant loss of legislative powers of the Parliament as a result of the accession of Finland to the European Union.

The Government has a duty under Section 96 of the Constitution to communicate without delay to the Parliament "those proposals for acts, agreements and other measures which are to be decided in the European union and which otherwise, according to the Constitution, would fall within the competence of the Parliament". In its communication to the Parliament, the Government must analyse the Commission proposal and indicate the position of the Government on the matter.

The matters that "would fall within the competence of the Parliament" if Finland were not a member of the European Union are so-called "U matters". U-matters cover all activities of the EU, i.e. Community pillar, Second pillar (where appropriate) and Third pillar.

The Parliament has a right - and in fact an obligation - to formulate its position on all 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.

It is in the interest of both the Parliament and the Government to formulate their positions in such a way, which enables meaningful negotiations within the Council. Practice so far indicates, that the strong role of the Finnish Parliament has not weakened the possibilities of the Finnish Government to negotiate within the Council; indeed, the result has been the contrary.

Under section 97 of the Constitution the Government also has an obligation to provide Parliament information on any other EU matter, when requested by Parliament or on the Government's own initiative (so-called "E matters"). They include consultative documents (Green or White papers),

Commission communications, proposals for technical and administrative legal acts, which do not, constitutionally, fall within Parliament's competences etc. E-matters can comprise also wider European issues, like the Future of Europe, the status of "Euro-12 group" or the use of open coordination.

The Parliament can give its opinion on E-matters as well, but usually refrains from issuing binding statements.

2. Basic principles for the parliamentary work on EU-matters

There are four basic principles for the handling of EU matters in the Parliament:

- 1) Widest possible scope:* The scope of the parliamentary scrutiny and the powers of the Parliament have to cover all matters handled and decided in the EU – it covers all three pillars and all the various decision-making procedures. The information given to the Parliament and the parliamentary involvement has to be regular and continuous.
- 2) Earliest possible involvement:* The Parliament has to form its position on a particular matter in the beginning of the procedure (i.e. right after the Commission has presented its proposal) and it has to follow the matter all the way through the decision-making procedure in the EU. It should be noted that the hearings of ministers prior to Council meetings towards the end of the procedure are complementary, i.e., they serve to ensure that ministers have carried out and remain committed to a position endorsed by the Parliament much earlier.
- 3) Widest possible participation:* All MPs participate in the handling of the EU matters through work and preparation in the specialised committees.
- 4) Widest possible transparency:* All parliamentary activity is public, including handling of the EU matters. Publicity is guaranteed thorough complete access to documents and public registers. Only exceptionally can a document be declared confidential, in which case this decision and its reasons are public.

3. Specialised committees - not only the EU Committee - are systematically involved with the EU matters.

The position of the Parliament is not formulated in the Plenary, but either by the Grand Committee or by the Foreign Affairs Committee, which both act on behalf of the Plenary in EU affairs. The Grand Committee (EU Affairs Committee) formulates the Parliament's position in all legislative and

budgetary matters and in international agreements (first and third pillars) decided in or by the EU. Like the Plenary in domestic legislation, the Grand Committee bases its position on an opinion of one or several specialised Committees.

The Foreign Affairs Committee handles all CFSP and ESDP matters and formulates the Parliament's position in those areas. Sometimes it also receives opinions from the specialised Committees.

All specialised committees follow EU affairs on their own field. They scrutinize the EU legislative proposals and listen to expert opinions of their own choice (experts, interest organisations, NGOs etc.). In U-matters the Committees have an obligation to give a written opinion to the Grand Committee (or FAC where appropriate). In E-matters, the specialised Committees have a right to do so.

In 2001 the specialised Committees (i.e. other than Grand Committee or Foreign Affairs Committee) gave 199 written opinions on different U- and E-matters.

4. The Parliament has unlimited access to information on EU affairs

The Section 97 of the Constitution imposes on the Government an obligation - "upon request and when otherwise necessary" to give the Parliament reports of matters pertaining to European Union. The information consists of the actual preparatory documents of the Union, such as Commission proposals or other initiatives, Government position papers etc. Important sources of information are also the regular hearings in Grand Committee of Ministers in preparation of Council meetings they attend to.

The Finnish Parliament has since 1995 its own representative, a civil servant working at the European institutions and located in the EP. This enables the Parliament to have an independent source of information on the activities of the institutions in the Union, especially the European Parliament.

5. Systematic scrutiny of all agenda items prior to all Council meetings and likewise systematic reporting to the Parliament of all decisions taken by the Council.

All legislative proposals and other matters of interest are followed through the whole decision-making process. The scrutiny starts at the beginning of the EU decision-making process, after the Commission proposal is adopted, when the Parliament formulates its position as described above.

If the proposal is significantly changed during the decision making process in the EU, the Government has to send an "updated communication" to the Parliament. For instance if amended proposals by the Commission, amendments of the EP or a Presidency compromise proposal significantly change the contents of the proposal, change the Finnish position or are in contradiction with the position adopted by the Parliament, an update is required. The Parliament can formulate a new position on the updated communication in the same way as in the beginning of the procedure.

The scrutiny covers also legislative proposals that are *de facto* decided at the council working-group level and only formally decided by the Council as so-called "A items".

Important features of the scrutiny method are the hearings of Ministers participating in the upcoming Council meetings. The full agenda of each Council meeting is discussed on basis of written memoranda provided by the Government on each agenda point. Whenever there is an U-matter on the agenda, the Grand Committee gives a special mandate for the minister to act. The mandate is based on the parliamentary position adopted earlier in the procedure. The mandate can be conditional upon some material or procedural requirements.

When presenting the agenda of the upcoming Council meeting, the Ministers also report to the Parliament the results of the previous Council meeting. The Parliament is also provided with a written report on the Council meetings. At the hearing Ministers can be asked any question concerning the upcoming Council meeting or in practice any other topical question on the Minister's field of responsibility within European Union.

Also the work of the European Council is scrutinised by the Parliament. As obligated under a constitutional provision (Section 97, para 2) the Prime Minister shall “provide the Parliament or a Committee” with information on matters to be dealt with in a European Council beforehand and without delay after a meeting of the European Council. In practice, the Prime Minister appears before the Grand Committee and the Foreign Affairs Committee before and after each European Council meeting. As meetings are held *in camera*, discussions can be very thorough and informative. The decisions of the Seville European Council to improve the preparation of the European Council meetings will most likely enhance further the usefulness of these hearings.

6. The principle of transparency is realised through extensive access to documents

Although the meetings of Grand Committee, Foreign Affairs Committee and the specialised Committees are held *in camera*, the basic principle of openness of Government activities applies also to the European Union affairs. The principles of the Finnish Act on the Openness of Government Activities apply to the documents on European Union matters provided by the Government to the Parliament.

The Government may request that the Parliament declare a document confidential. This request must be justified with specific reasons. If confidentiality is granted, the decision and its reasons are public. The confidentiality of a document ends, when the reasons for it are no more relevant.