

Working Group IV

Working document 36

## **Working group IV – "Role of National Parliaments"**

**Subject:**      **The comments by Mr Kimmo Kiljunen to the draft final report of  
Working Group IV on National Parliaments (WD 032 - WG IV)**

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

---

**Comments to the Draft Final Report by Dr. Kimmo Kiljunen**

**Member of the Convention representing Parliament of Finland**

The draft report as a whole corresponds very well to the discussions conducted within the Working Group. The Chair and the Secretariat have done a highly commendable job in drafting the Report.

The main thrust of the report is highly satisfactory, but some minor clarifications would improve it even further.

**II. General observations**

**Paragraph 5:**

General recognition of the role of national parliaments in the new Treaty would be very welcome. Provision in the Treaty itself would of course be better than a preamble text, because of the nature of Treaty provisions as legally binding. I think the report should only mention a reference in the Treaty, and references to the preamble text should be deleted.

**Paragraph 7:**

The openness of Council is a crucial factor for a meaningful role of national parliaments. The wording of this paragraph, especially its first sentence, must be strengthened in order to highlight this fact. I think the paragraph should mention expressly "*Council should legislate with open doors.*"

**Paragraph 8:**

In the first indent of the paragraph both wordings in brackets should be removed. Concerning the first bracket on the mentioning of "*in its preamble*", please see comments above on paragraph 5.

The wording "*responsibility to act*" stirred a lot of discussion within the Working Group on 10 October. I repeat the suggestion I made then that the end of the first sentence after words "of the European Union" should be deleted.

The wording in the brackets in the second indent should be deleted altogether. It weakens unnecessarily the main recommendation of the WG that Council should legislate with open doors. Similar wording to that in the brackets could be included in paragraph 7, which is a more suitable place for a more technical detail such as this.

I support the addition to the second indent that Council should act in public "*in all possible cases*", i.e. also in most cases when Council is not exercising its legislative function.

### **III National scrutiny systems**

#### **Paragraph 10**

This paragraph is the main one with regard to national scrutiny. Therefore its wording should be as complete and balanced as possible.

First indent reference to "timeliness and quality of information" should be specified. The scope of the information is an essential factor and should be mentioned. I have referred in my earlier papers to "widest possible scope" as one of the main principles of the Finnish scrutiny system. This means that national parliaments should be provided with comprehensive information covering all Union activities (i.e. all subject covered by the three current "pillars", including the CFSP). Wording of the first indent could be as follows:

- *the timeliness, scope and quality of information, covering all activities of the Union.*

The other major thing missing from the list is the possibility of national parliaments to formulate their own position on the basis of the information provided, in the most cases, by the Government. I proposed in my earlier Working Document (WD 30) that "the Treaty could oblige Ministers participating in the Council to ensure that appropriate national parliamentary scrutiny has been carried out".

I understand that some may consider this kind of a provision in the Treaty to interfere with national constitutions, although this is naturally not the case. Of course it is up to the national constitutional and parliamentary provisions to determine how the national scrutiny is organized. It is, however, essential that the scrutiny enables national parliaments to formulate their position vis-à-vis a proposal for Union action. This should be recognised in the list with reference such as

*"possibility of national parliament to formulate its position to a proposal for a Union measure or action".*

It then depends on the national system whether this position is called "mandate" and whether and how it is binding (politically/legally).

We should be ambitious with regard to scrutiny of Council and mention also the scrutiny of the European Council. We all know how important the role of the European Council is in the development and work of the European Union. If we omit it altogether from the scrutiny we leave out an essential part of the Union and Council structure. Reference to scrutiny of European Council should therefore be included on the list. This could be added in the second indent with the following wording:

*- regular contacts and hearings with Ministers before and after Council meetings, as well as appropriate scrutiny of the European Council meetings.*

**Paragraph 17:**

I agree, as a result of the debate within the WG, with the provisional conclusion reached that the strength of the "six-week deadline" should not be weakened by adding a new four-week deadline on provisional/preliminary agreements.

**Paragraph 19:**

I do not think that the Working Group should set out too rigid rules on how national parliaments handle the annual legislative programme of the Commission. In order to increase the possibilities for national parliaments to follow the planning and strategy of the Commission the annual policy strategy of Commission should also be sent to the national parliaments. Proposal for wording:

*"the Working Group also thought it would be useful if the Commission communicated its annual legislative programme and annual policy strategy to national parliaments."*

## **Paragraph 20 (recommendations)**

A new heading should be included as a separate recommendation to include the main meaning of paragraph 10.

*- For the effectiveness of national scrutiny it is important that national parliaments have the possibility to formulate their own position on widest possible scope of proposals for EU action.*

The other amendments, detailed above concerning paragraphs 17 and 19 would be done to paragraph 20.

Last indent of paragraph 20 concerning the parliamentary reserves could be clarified further. It could read, instead of the present text, as follows:

*"A reserve put forward by a Member States in the Council that has its origin on the position or lack of position of the national parliament concerned, should prevent the said Member State from taking part in an agreement on the proposal within the Council."*

This would naturally not prevent a decision in the Council for decisions requiring qualified majority, if qualified majority is reached without the votes of the Member State concerned.

## **IV. Subsidiarity**

### **Paragraph 22:**

The Working Group discussed at some length the wording of the second sentence. This is a crucial point for national parliaments, since it is in most cases the power of national parliaments at stake when the principle of subsidiarity is concerned.

Therefore, the wording of this paragraph must not be ambiguous. I therefore propose the second sentence to read:

*The primarily legislative tasks of the national parliaments gave the a central, if not sole responsibility when considering whether legislation is best adopted at national or European level.*

**Paragraph 24:**

Wording in the first sentence should be amended - for sake of clarity - to read:

*"rejected the idea of creating new permanent or ad hoc bodies or institutions for this purpose"*

**Paragraph 25 and paragraph 26 (recommendations)**

First indent of the further "refinements" to the report of WG I should be deleted (requirement of the Commission to withdraw a draft legislative proposal for a short period). We do not want the subsidiarity mechanism to hinder or delay the legislative process - as paragraph 26 quite justly states!

As I have stated in the plenary and within the Working Group I do not consider amendments to *ex post* judicial control to be necessary. I therefore question also the need of the second indent of paragraph 25 on the subject.

**V. Multilateral networks or mechanisms involving national parliaments at the European level**

**Paragraph 28:**

In order to make the role of Convention absolutely clear we should add to the text *"the method of convening a Convention as a preparatory body for future Treaty changes should be formalised in a Constitutional Treaty."*

**Paragraph 31:**

We should delete the wording in brackets, because I do consider the presence of MEPs in COSAC to be valuable. Especially the proposed more effective sectoral cooperation would be much weakened if the Members of European Parliament would not participate in it.

The last sentence of the paragraph on general debate on subsidiarity within the COSAC is important and I hope we can agree on amending this view to present the unanimous view of the WG. The wording could be specified by stating that the debate on subsidiarity would be based on Commission's annual legislative programme.

### **Paragraph 32:**

We should delete the wording in brackets. We weaken the encouragement for the institutions to react by including such technical details.

### **Paragraph 33:**

I would like to remind the Working Group that the Union actually does have a kind of "Congress" already in place, although this form of cooperation has hardly been used.

Declaration No 14 of the Maastricht Treaty establishes the Conference of Parliaments (or "Assises") with very similar tasks as are proposed for the Congress in paragraphs 34 and 35 (*"Conference of Parliaments will be consulted on the main features of the Union ... President of the European Council and the President of the Commission will report to each session of the Conference on the state of the Union"*). I think the existence of this Declaration and of the "Assises" should be recognized in the Report of the Working Group.

I thus remain to be convinced about the added value of the Congress. I think the reformed COSAC could very well do the tasks proposed to the Congress.

In any case the Congress - if considered by the Convention to be indispensable - should not have any legislative functions nor any competences with regard to the delimitation of competences between the Union and the Member States (i.e. so called Kompetenzkompetenz), for example by having a role in the ratification of future Treaty changes.

### **Paragraph 37 (recommendations)**

- Add to the first indent "as a preparatory body for Treaty changes"
- The last sentence of second indent (in brackets) should be deleted (see above comments on paragraph 31).
- If the notion of the Congress is mentioned in the recommendations, the text should be formulated in a neutral fashion.