

Working Group VII

Working document 36

Working group VII – "External Action"

Subject: **The comments by Mr Gerhard Tusek to the preliminary draft final report of Working Group VII on External Action (WD 021 - WG VII)**

Members of Working Group VII will find hereafter comments by Mr Gerhard Tusek, Austrian government representative, alternate member of the Convention.

Comments on the preliminary draft final report (WD 21) of the Working group VII – “External Action”

Paper by Gerhard Tusek

I.) General remarks

The „double-hat“ model: an important step towards more coherence and efficiency

Our main objective must be to increase the coherence and the efficiency of the Union’s external action. For this purpose we should consider institutional changes in order to reduce the number of voices speaking on behalf the Union. But in addition to providing the Union with a more coherent external representation we have to ensure that our decision making procedures are efficient and that our common positions have substance. A single voice will be of no avail if we do not have any message to convey.

As for the roles of the HR for CFSP and the Commissioner for external relations we consider that the full merger of these two functions into the Commission should be our long term objective (Option 2). That would be the best way to ensure the consistency of the Union’s external activities as a whole in the context of its external relations, security, economic and development policies. But we know that this option is not acceptable to all Member States at the present time and can only be realised step-by-step in a long term perspective.

In the foreseeable future, Member States will insist on a close institutional linkage between the Council and the HR. The functions of the HR and the RELEX Commissioner will only be exercised by one person if we are ready to accept special and somewhat complicated institutional arrangements. The so-called “double-hat” model (Option 3) might be a less than perfect compromise but would provide for more consistency in the Union’s external action and would be an important step towards a powerful EU Foreign Policy. When examining the “double-hat” model we should consider the following proposals:

- the functions of the HR and RELEX Commissioner should be brought together in a gradual approach. As a first step a number of practical measures should be envisaged to increase their cooperation and coordination: participation by the HR in all meetings of the Commission

concerning external action, joint work and joint initiatives by the HR and the RELEX Commissioner

- the “double-hat” should chair the meetings of the GAERC when external relations items are dealt with
- he should have the right of initiative in CFSP issues and the Council shall decide on his proposals by qualified majority voting except for matters having military or defence implications; in the field of Community competences the “double-hat”, as a member of the Commission, would be bound by its decisions and would present the Commission proposals in the Council; the “double-hat” model would in principle not affect the separate decision-making procedures for CFSP and Community matters.
- the “double-hat” shall represent the Union in its external relations both in CFSP and Community matters and would have to play a role in the opening and conduct of negotiations of international agreements.
- the post of the “double-hat” should be separated from that of the Secretary-General of the Council so as to allow him to focus exclusively on external relations matters. He should be supported by a limited number of Deputies.
- it would be important to bring the various services dealing with the Union’s external relations closer together; We should examine which substructures of the Commission and the Council Secretariat could be merged altogether and be placed under the authority of the “double-hat”. For instance, the delegations of the EC should be merged with the Council’s liaison offices in New York and Geneva. The delegations of the European Commission in 123 countries should be reinforced by experienced personnel from the Council Secretariat and the Member States and be transformed into delegations of the European Union. Our objective must be to build up a fully fledged “Foreign Service” of the EU.
- the appointment procedure must ensure that the “double-hat” enjoys the confidence of the EC President, the Council and the EP.

- Appropriate budgetary provision beyond the present allocation will be required if the Union is to develop its external activities. The hearings of the SG of the Council, Solana, and of his deputy, de Boissieu, at our previous meetings revealed that the CFSP budget line is severely underfunded.

II.) Specific drafting proposals

- Annex “Principles and Objectives of EU External Action”

The reference to the objective “to safeguard the interests, independence and integrity of the Union” in section 2.(a) should be given greater prominence and should be moved upwards to section 1.

- paragraph 13

It would be appropriate to replace the words “to defend them”, at the very end of the paragraph, by the words “to pursue them actively”.

- paragraph 14

With regard to the question of implicit external competences of the Community I support the idea of transforming into new Treaty language the jurisprudence of the Court of Justice. In this context, however, it seems that the wording of the last part of the first sentence of paragraph 14 does not take into account the relevant jurisprudence in its entirety. Apart from cases where the conclusion of international agreements is necessary for the implementation of internal policies and the realization of Community goals, the Community has - pursuant to established case-law of the Court of Justice - also an implicit external competence by way of reflex of its internal competences in areas where it has exercised this competence by adopting secondary legislation. Paragraph 14 should read:”and that the Court of Justice had recognised implicit external Community competences when the conclusion of international agreements were necessary for the implementation of internal policies or by way of reflex of its internal competences in areas where it has exercised this competence by adopting secondary legislation”

- paragraph 18

The reference to the crisis management capacity should be more precise by adding the words “civilian and military crisis management capacity”. Furthermore I propose the following amendment: “different possibilities for action in international organisations and multilateral fora as well as in support of them”

- paragraph 36 and 37

QMV in CFSP matters is indeed a complex issue. But for the sake of clarity we should not fail to mention that almost all members of the Group spoke out in favour of a partial extension of QMV in CFSP. So we should delete the text in brackets in paragraph 37.

- paragraph 41

At the end of the paragraph the report should read: “...policy making at the EU level should commit the Member States in what they did at the national level”.

- paragraph 43

We have to reflect upon a mechanism which allows to release swiftly the financial resources needed for the implementation of crisis management operations. Therefore we should delete the first brackets in this paragraph.

- paragraph 44

The text on the negotiating procedure for agreements which cover several fields at the same times (“cross-pillar-mixity”) should follow more precisely the relevant recommendations of the Working Group III: “Legal Personality”. In particular it should be mentioned that the Council’s decision on the negotiating procedure would maintain the present institutional balance. Furthermore it is important in this context that the cohesion of the Union’s position would be strengthened if it were represented by a single voice in negotiations and that a multiple Union delegation would only be justified in exceptional cases.

Therefore I propose the following amendments: “Where the scope of an agreement would fall

within both the community domain and under Titles V and/or VI TUE (“cross-pillar mixity”),~~the Group noted that one could resort either to the conclusion of two different agreements or tot the conclusion of a single agreement. In this last case, the Council, when authorising the opening of negotiations, would indicate whether negotiations would be conducted by the Presidency of the Council (or the HR) and the Commission together or by the Commission alone under the supervision of a committee~~ the negotiating procedure would be determined by the Council depending on the subject-matter of the agreement, while maintaining the present institutional balance. If the main subject of the agreement comes under a specific subject-matter, a single legal basis (and therefore a single procedure) would apply; the cohesion of the Union’s position would be strengthened if it were represented by a single voice in negotiations. In certain exceptional cases of mixed agreements there could be justification for a multiple Union delegation (Council Presidency or High Representative, Commission), while maintaining the institutional balance provided for in the Treaties; if the Council (and the Member States, in the case of traditional mixed agreements) wished to charge the Commission with negotiating the entire agreement, it would be free to do so; this already occurs to a large extent in practice and enables the Union to speak with a single voice”.

- paragraph 47

I propose the addition of the following text: ”Several members of the Group expressed the need for a more effective European representation in the IFI’s, possible single representation of the Eurozone in IFI’s was mentioned in this respect. Members considered that this task should be entrusted, in principle, to the Presidency. The Group agreed that it would be desirable that international organisations (or their bodies) admitted full membership of the EU, thus recognising its contribution to global governance. Several members considered a single representation of the Union in the UN Security Council a long term objective.”

- paragraph 49

The present wording presents an incomplete and somewhat distorted picture of our discussion on the proposal of a permanent President of the European Council. Therefore we should add the following sentence: “The majority of the Group felt that a permanent President of the European Council would not contribute to a more coherent and efficient external representation of the EU”.