

CONV 403/02

CONTRIB 142

ÜBERMITTLUNGSVERMERK

des Sekretariats
für den Konvent

Betr.: **Beitrag des Mitglieds des Konvents Herrn Kimmo Kiljunen mit dem Titel:
"Bemerkungen zum Vorentwurf des Verfassungsvertrags"**

Der Generalsekretär des Konvents hat den in der Anlage wiedergegebenen Beitrag des Mitglieds des Konvents Herrn Kimmo Kiljunen erhalten.

Comments to the Draft Outline for Constitutional Treaty

The Praesidium has delivered what it was asked for – a draft outline for a single Constitutional Treaty. The main thrust of the proposal is to be welcomed. It is a major contribution to the work that is still before us in the Convention.

Crucial issue covered in the draft is the principle that national parliaments have the role to monitor subsidiarity effectively by the National parliaments. Another positive feature is recognition of the principle that the legislative debates also in the Council shall be public. These are major achievements resulting from the Working Groups reports.

Nevertheless, on institutional questions, the draft includes some proposals that have not been discussed in the Convention plenary or more importantly in its Working Groups.

The Convention as a whole, as a rule on the basis of preparatory work in a Working Group, has to be the place where decisions on major institutional questions are made. This is essential if the Convention is to maintain its excellent working spirit. Thus it is to be taken for granted that all questions not resulting from the reports from Working Groups remain open. In order for the Convention to succeed, the establishment of one or several Working Groups on institutional questions is essential.

Certain more detailed comments on the outline:

1. In the Article where the values of the Union are listed, three further essential values should be listed: *solidarity, equality and sustainable development*.
2. Changes to the name of the European Union are not warranted. Debate on changing the name does not contribute to the substance; rather it confuses it needlessly.
3. Article 1 states that certain common competences are administered on a federal basis. When we are developing a *sui generis* supranational organisation, it is not very helpful to make reference to specific systems of existing state governance.
4. Defence questions are in the draft separated from provisions governing Common Foreign and Security Policy, contrary to the present Treaty basis. When crisis management is put under CFSP, it also raises the question: what is then left in the Defence part? When we have two working groups dealing with these issues this approach taken by the Praesidium is clearly premature (see my contribution CONV 382/02 on the need to maintain the cohesion between the CFSP and the ESDP).

5. Contrary to the unanimous report of the Working Group on Charter/ECHR, the draft outline does not include a legal basis for the accession of the Union to the ECHR. Such a provision should be included, also in light of the discussion of the Working Group report within the Convention plenary, which shows that the Convention supports the accession almost unanimously.
 6. Another specific question B that the Convention as a whole has not tackled yet B is the proposal for Presidency of the European Council. If it means the designation of a President for the Union this innovation is unnecessary.
 7. One important institution is missing from the draft outline, namely European Ombudsman. Separate provision on the nomination of European Ombudsman by the European Parliament could be included in Article 5 of the draft. The provision could also confirm in the Treaty the right of every citizen of the Union to refer to the Ombudsman cases of maladministration in the activities of the Union institutions or bodies (possibly with the exception of the Court of Justice and the Court of First Instance).
 8. Article 35 of the draft refers to a protocol containing provisions for elections to the European Parliament by a uniform procedure in all Member States. This provision should be specified and it should read that elections should be held by universal direct suffrage based on a system of proportional representation. This provision should not aim to establish a strict party list system to countries where lists are not used, but allow for preference voting for individuals.
 9. Changes to the Treaties as they stand require ratification by all Member States. When we are now preparing a whole new Treaty, that replaces all the existing ones, what happens if a country does not accept it? Legally the present Treaty obligations stay in force (requirement of ratification by all Member States), but politically the situation would be different. This question needs to be discussed thoroughly within the Convention.
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