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des	Sekretariats
an den	Konvent
<u>Betr.:</u>	Beitrag von Frau Tiilikainen, Mitglied des Konvents und Herrn Antti Peltomäki, stellvertretendes Mitglied des Konvents "Die Zukunft der EU und die Arbeit des Konvents"

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Der Generalsekretär des Konvents hat den in der Anlage wiedergegebenen Beitrag des Mitglieds des Konvents Frau Teija Tiilikainen und des stellvertretenden Mitglieds des Konvents Herrn Antti Peltomäki erhalten.

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The Finnish Government gave its report to Parliament January 17<sup>th</sup> 2003 on Finland's position regarding the future of the EU and issues that have emerged in the work of the Convention. This contribution is an extract of the report and concerns some current institutional questions under debate.

Pursuant to Article 4 paragraph 1 of the Note on Working Methods of the Convention, we wish to address this extract as a written contribution to the Convention.

Helsinki, January 29<sup>th</sup> 2003

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# THE FUTURE OF THE EU AND THE WORK OF THE CONVENTION

*Extract from the Finnish Government's report to Parliament on Finland's position regarding the future of the EU and issues that have emerged in the work of the Convention*

## 1. INSTITUTIONAL ISSUES

### 1.1. Finland's preliminary position

In the debate on the system of institutions in the Union, three basic alignments for the development of the European Union can be broadly defined: federalist, community and intergovernmental. In many cases, development proposals contain elements of all these.

The federalist alignment is characterized by strengthening the European Parliament to make it the primary source of legislative and budgetary power, converting the Council into a second chamber of Parliament and transferring its executive duties to the Commission, and converting the Commission into a Government appointed by and politically accountable to the European Parliament.

Constitutional power, i.e. the authority to decide on the amendment of the Founding Treaties, would be transferred from the Member States to the European Parliament, at least in part. To date, such far-reaching proposals have not been made in the Convention, but certain leanings in this direction have been observed.

The community alignment highlights the dual nature of the Union as a union of Member States on the one hand and of nations on the other, with the Council and the European Parliament as equal wielders of legislative and budgetary power. Law-drafting and, in the first instance, its execution would be the responsibility of an independent and collegial Commission accountable to the Council and Parliament, which appoint it jointly. Constitutional power would remain with the Member States. The community method is characterized by the Commission having exclusive right of initiative in legislation, by decision-making by qualified majority in the Council and co-decision procedure with the European Parliament, and by the judicial supervision of the Court of Justice of the European Communities. The community alignment can be considered the mainstream alignment of the Convention; however, it exists in a number of variations.

The intergovernmental alignment highlights the function of the Union primarily as an association of Member States, with the Council as the central wielder of legislative, budgetary, and to a great extent executive power. Constitutional power would remain with the Member States. In the Convention, this alignment has involved highlighting the leading role of the European Council in determining political focus and establishing programmes, supporting the appointment of a

permanent President for the European Council and appointing a High Representative to lead the External Relations Council and to manage the external representation of the Union. No-one has proposed to change the formal status of the Commission and the European Parliament, but there have been suggestions for founding a Congress of the Peoples of Europe consisting of the European Parliament and representatives of national Parliaments, and for this Congress to appoint the President of the Commission. This alignment, in its several variations, has found favour mainly among the large Member States.

*Finland's position:*

*Finland considers the Union to be a unique cooperative structure that should be developed according to its own special characteristics. Finland's goal is to develop the European Union in its dual role as a union for Member States and citizens. The effectiveness, democracy and political accountability of the enlarging Union must be strengthened within the existing system of institutions, respecting the equality of the Member States and their citizens.*

*The status, duties and relationships of the Union institutions should be clarified, though without upsetting the institutional balance. In strengthening the functioning of the Union's decision-making processes, the ability for equal participation by Member States with lesser populations must be safeguarded through developing the present Community method.*

*For the purposes of citizens' participation, it is important to enhance the potential for influence of national Parliaments elected through direct elections, to enhance the status of the European Parliament in the EU decision-making process, and to respect the Member States' right to organize their regional and local government themselves. It is particularly important to improve the transparency of the Union's institutions and their commitment to good administration. An eventual Constitutional Treaty should also contain a legal basis for good administration.*

*Finland is not in favour of founding new institutions, because that would contribute to increased structural complication and blur responsibility relationships without bringing any obvious added value.*

## **The Council**

The Council of the European Union, consisting of ministerial representatives of the Member States, has duties related both to legislation and to policy planning, guidance and execution. For this purpose, common structures, decision-making processes and tools have been created. The Council

is single and indivisible; all its members and formations are equal. These formations each have their own area of responsibility, but they all have both legislative and executive functions.

It has been considered as part of the reform process in the Convention whether the Council should be provided with a clearer internal hierarchy so that the General Affairs Council preparing for the European Council and responsible for horizontal issues would be given a stronger role over the sectoral Councils. On the other hand, it has also been suggested that the Council should be divided into legislative and executive formations, the latter being responsible for preparing and implementing proposals while legislation would be the task of one or more Council formations. In the long run, this might lead to the Council becoming a sort of second chamber of the European Parliament. Another alternative, proposed by the Benelux countries, would be to concentrate executive power in one Council formation (the General Affairs Council) and leave the legislative work to the specialist formations.

This debate is also linked to the question of transparency. Following the decisions of the European Council in Seville, the general public already has the opportunity of following the Commission proposals and the Council debates thereon with regard to the major Commission legislative proposals falling under the co-decision procedure, and the results of votes and statements in the Council minutes towards the end of the procedure. However, the Convention has discussed rendering the work of the Council fully transparent insofar as it involves legislative work. Attention has also been paid to procedural transparency, good administration and customer service in the institutions, and the publicity of documents.

The Council takes a decision either unanimously, by qualified majority or by simple majority. The new vote-weighting system incorporated in the Treaty of Nice requires that for a qualified-majority decision to be carried, it must be supported by half of the Member States, 71% to 73% of the votes given and 62% of the population. The Nice vote-weighting system has been considered rather complicated and difficult, and many parties including the Commission and the Benelux countries have advocated returning to a 'simple dual majority' procedure; in this, a qualified-majority decision would be carried if supported by a majority of Member States and a majority of the Union's population. Another alternative brought up in the debate is the 'senator model', where each Member State would have a single vote, the population base only being taken into account in the number of seats allocated in the European Parliament.

In most sectors, the trend has been from unanimous decision-making to qualified majority, and in view of the enlargement of the EU it is considered that qualified-majority decision-making must be further applied in order to ensure decision-making capability. It has been suggested in the Convention that qualified-majority decision-making should be defined as the default procedure for all legislative matters, though allowing for exceptions. On the other hand, the need to address the matter on a sector-specific basis, issue by issue, has also been emphasized. In its statement regarding the future, the Commission considered that the requirement for unanimous decisions should be wholly abandoned, and in matters not requiring a simple dual majority, a sort of

reinforced qualified majority should be introduced, requiring three-quarters of the Member States and two-thirds of the population to carry a decision.

The matter of the co-decision procedure should be considered separately: whether to introduce it in all matters where the Council applies a qualified majority, or whether to assess this matter separately for each issue too. Special fields raised in this context include approval of financial perspectives, agriculture and certain appointments.

It has also been suggested in the Convention that a separate enforcement proceedings be created to enable the Council and the European Parliament to authorize the Commission to issue certain technical enforcement provisions. This would complement or possibly even replace the present comitology procedure.

In the present system, each member of the Council holds the Presidency of the Council for a six-month period. The Presidency has, over the years, grown into a highly challenging task in terms of both content and resources. On the one hand, the present rotating Presidency has been considered detrimental to the continuity and coherence of the Union's functioning, with special problems related to the enhancement of the external actions and visibility of the Union. On the other hand, the rotating Presidency is considered an important manifestation of the equality of the Member States and a significant means for bringing the Union closer to its citizens. There is, however, a consensus regarding the need to improve and develop the Presidency in order to organize the work of the Council better and to strengthen the external role of the Union.

Some Member States consider that the present system could be maintained on the whole, as far as collaboration between consecutive holders of the Presidency is consolidated in order to maximize continuity. Other Member States are in favour of continuing the present rotation in the European Council, in horizontal matters in the GAERC (General Affairs and External Relations Council) and in Coreper, but moving to longer-term presidencies in other Council formations. This alternative could, in principle, be combined with other ways of resolving the Presidency matter. For example, Sweden and the UK have proposed a team Presidency, where three to five Member States would hold the Presidency jointly for a period of 18 to 36 months. These teams would be based on equal rotation. The Commission and Germany have proposed that each Council appoint a President from among its members for a period of one to two years. Denmark is in favour of revising the Presidency system on the basis of the rotation principle but without excluding further-reaching changes such as the appointment of a permanent President for the European Council. Such an eventual permanent President would be elected from the small, the medium-sized and the large Member States in turn.

Certain motions made in the Convention favour giving Presidency duties to representatives of the institutions. The Benelux countries propose that the Presidency of the General Affairs Council be given to the Commission and the Presidency of the External Relations Council to a merged High Representative and Commissioner for External Relations. The latter alternative has been supported

by several other Member States. The statements made by the Benelux countries have also involved giving the Presidency of the European Council to the President of the Commission and, in particular, giving the Presidency of executive Council formations to Commission members. Germany, for instance, considers that the Presidency of the General Affairs Council could be given to the Secretary General of the Council, a political mandate, and that the Presidency of Coreper could be given to the Deputy Secretary General.

However, perhaps the most debated proposal is the idea of a permanent chairman of the European Council, or President of the EU, originally introduced by France and the UK and subsequently supported at least by Germany, Spain and Sweden. This President could be someone selected by the European Council from among its current or former members for a term for instance of five years as with Commission members or 2.5 years as with the Speaker of the European Parliament. The President would chair the European Council and have responsibility for strategic management of the Union. He could also chair the General Affairs Council and the Presidency team, which would become a sort of Union management group. The President would be assisted by a Cabinet, and his subordinates could include other high-level political representatives, for instance an EU Foreign Minister replacing the current High Representative.

The Presidency issue has also prompted debate on the external representation of the Union and the coordination of external relations. Several parties have proposed not only that the Presidency of the Council be reformed but that the status of the High Representative for Common Foreign and Security Policy be strengthened. Merging the duties of the High Representative and the Commissioner for External Relations and placing the post in the Commission, for instance as Vice President in charge of External Relations, has gained a great deal of support in the external action working group of the Convention. However, the most widely supported alternative is the idea of 'double hatting', where the posts would be kept separate but the same person appointed to both. This person would then have a seat on both the Commission and the Council. The status of the High Representative can be strengthened by giving him limited right of initiative, independent budgetary power or presidency duties, whatever his institutional position.

*Finland's position:*

*Finland considers that when the Council acts on a qualified majority, decisions should be taken by a simple dual majority. We also take a positive view on broadening the scope of application of the qualified majority, also in Common Foreign and Security Policy. However, decisions concerning this broadening of scope should be taken on a case-by-case basis.*

*Transparency and good administration should be guiding principles in reforming the work of the Council. Finland is in favour of transparency in the Council's legislative work.*

*In reforming the Council Presidency, the equality of the Member States must be ensured. Appointing a permanent President to the European Council might endanger this. Finland considers that the present rotating six-month Presidency should be retained at least for the European Council, the General Affairs and External Relations Council and Coreper.*

*As for other Council formations, various alternatives could be considered, for instance a team presidency where Presidents of the Council and its subsidiary committees and working groups could be appointed for a period of 18 to 36 months from among the Member States that hold the rotating Presidency during that period; however, the special nature of certain special committees should be taken into account.*

*Finland considers that the Council Presidency should continue to be a task for the Member States. The proposal of dividing the Council formations into legislative and executive bodies should be considered separately.*

*The 'double hatting' principle of combining the duties of the High Representative and the Commissioner for External Relations is acceptable to Finland as a transitional measure and as part of a balanced overall institutional concept. However, whoever holds this post should not be appointed President of the External Relations Council and his/her right of initiative should be defined so that it does not encroach upon the right of initiative of the Commission. In the long term, the objective should be to merge the posts of the High Representative and the Commissioner for External Relations and to place the new post in the Commission.*

## **The Commission**

The Commission safeguards the common interests of the Union, and one of its main tasks is to manage the implementation and observance of the *acquis communautaire* and the functioning and development of the internal market. Its main characteristics are independence, collegiality and exclusive right of initiative in matters within the competence of the Community. It is accountable to both the bodies which appoint it, the Council and the European Parliament.

Under the Treaty of Nice, the President of the Commission will be elected by qualified majority in the future, and his appointment must be approved by the European Parliament. It has been suggested in connection with the debate on the future of the Union that the Commission should be



made more politically representative, with particular reference to the appointing of the President of the Commission. Several parties, including the Benelux countries and the Commission itself, have considered that the President of the Commission should in the future be elected by the European Parliament with regard to the Parliament election results and that the appointment should be approved by the European Council by qualified majority. This procedure could strengthen the status of the President relative to the rest of the Commission.

However, the political dimension is also seen to pose potential problems. It is considered that it would weaken the motivation for exclusive right of initiative and the potential for initiative on the part of the political opposition. Concern has also been voiced for the Commission's capability of functioning as a neutral regulatory authority or being responsible for monitoring the implementation of regulations.

Having the President of the Commission elected either by an electoral college consisting of members of the European Parliament and national Parliaments or directly by national Parliaments has also been put forward.

The Treaty of Nice contains provisions for the constitution of the Commission after the enlargement of the Union. If the Union has fewer than 27 Member States, the Commission will continue to have one member from each Member State. As the number of Member States rises to 27 or more, the Commission will go over to equitable rotation, no longer having a member from each Member State at all times. The Convention has discussed these provisions too. Some Member States and the Commission consider that the Commission should continue to have one member from each Member State in any case. This, however, places considerable demands on the organization and coordination of work within the Commission. The projected large size of the Commission is considered to lead to a reorganization of the mandates of the Commissioners and the creation of some sort of internal hierarchy in the Commission.

*Finland's position:*

*Finland considers that the work of the Commission should continue to be based on collegiality and the equality of its members. The Commission must continue to have exclusive right of initiative in legislative matters in the present Pillar I, and its right of initiative in Pillars II and III should be further developed. The Commission's role should be made more strategic and long-term, and its legislative programme should play an important role in drawing up the Council's multi-annual operating programme.*

*Finland considers the provisions concerning the composition and appointment of the Commission contained in the Treaty of Nice to be justified. However, an alternative whereby the President of the Commission would be elected by the European Parliament by a majority to be specified later, and the appointment approved by the European*

*Council by a majority to be specified later, could also be considered. In this case, the members of the Commission would be appointed by the European Council by qualified majority and subject to approval by the European Parliament. However, any change in the selection process must not lead to essential changes in the fundamental nature of the Commission nor jeopardize its operative potential.*

*The Commission must enjoy the confidence not only of the European Parliament but the European Council too. In order to promote political accountability, the question of whether the Commission and the European Council should be given the right to decide on the holding of European Parliament elections should be considered. Attention should in this case be given to the compatibility of terms of office.*

## **The European Parliament**

The European Parliament is a representative body elected directly by the citizens of the Union. Since it forms part of the institution system, its strengthening and enhancement has also been discussed in the Convention.

One of the major issues is strengthening the Parliament's legislative position. One of the proposals involves extending the co-decision procedure to cover all legislation. Alternatively, it could be extended to cover only that legislation which is approved by the Council by qualified majority, or only certain sectors on a case-by-case basis.

The status of Parliament in ratifying international treaties has also been discussed, as well as the expanding of the present consultation procedure or moving to an assent procedure.

The provisions of the Treaty of Nice and the proposals discussed by the Convention for increasing the appointment powers of Parliament with regard to the President and members of the Commissions have been addressed above. There has also been discussion about increasing the budgetary powers of the Parliament for instance by removing the distinction between compulsory and non-compulsory expenditure and by simplifying the budgetary procedures or subjecting it to the co-decision procedure. Increasing Parliament's decision-making powers with regard to budget income in connection with the own resources system has also been put forward.

In the discussion on the European Parliament and on the strengthening of the status of national Parliaments, France has proposed the founding of a Congress of the Peoples of Europe, a parliamentary body consisting of members of national parliaments and the European Parliament. This Congress would meet annually to discuss central issues of EU policy and the Commission legislative programme. It could also have other duties such as deciding on certain major appointments (President of the EU, President of the Commission, and so on).

*Finland's position:*

*Finland supports the strengthening of the position of the European Parliament in legislative matters alongside the Council. Finland takes a positive view of the broadening of the scope of the co-decision procedure. However, this broadening should be considered on a case-by-case basis.*

*Finland takes a positive view of the simplification and clarification of the EU budgetary procedure. We agree in principle with removing the distinction between compulsory and non-compulsory expenditure provided that the Council is given the power to decide on the legally binding multi-annual title-specific financial perspectives. The right of the Member States to decide on the Union funding system, including the own resources system, must be retained to maintain the institutional balance.*

*The role of the European Parliament in treaty negotiations must be considered as part of a wider context and with regard to the institutional balance. Finland is prepared to consider the broadening of the scope of the consultation and assent procedures with regard to the Union's international treaties.*

*Finland supports the harmonization of the election procedure of the European Parliament in accordance with the new Council Decision and is in favour of measures intended to clarify the status and funding of political parties on the European level. However, we are not in favour of the idea of introducing European candidacy lists.*

*Finland is not in favour of founding new institutions such as the Congress of the Peoples of Europe. Cooperation between national Parliaments and their relationships with the European Parliament should be improved on a practical basis. In this, Finland supports the reforms being planned within COSAC.*

## **The Court of Justice of the European Communities**

The position of the Court of Justice and the Court of First Instance of the European Communities has not been a central issue in the Convention, but the background document on institutions drawn up by the Convention secretariat discusses certain points related to the Court.

The Treaty of Nice enacted certain changes to the structure and composition of the Court of Justice and the Court of First Instance of the European Communities in order to enhance the work of the Court, to speed up the trials conducted there and to safeguard the Court's smooth running in an enlarged Union.

Pressures towards improving the work of the Court are primarily directed towards expanding the jurisdiction of the Court and taking points of access by individuals to the Court better into account within the Union. The Convention working group discussing the legal personality of the Union proposed that the jurisdiction of the Court be expanded within the sphere of the present Pillars II and III. The working group on Justice and Home affairs proposed that the general system regarding the jurisdiction of the Court should be expanded to apply to the area of freedom, security and justice and the operation of Union institutions in this area. The working group on fundamental rights, on the other hand, considered that the Convention should discuss possibilities for improving the access by individuals to the Court.

In simplifying the treaties and specifying the division of competences, the question has been raised of whether the new Treaty should contain provisions on Community law evolved through the jurisprudence of the Court of Justice of the European Communities. This would enable an open assessment of whether that jurisprudence matches the objectives of the Founding Treaties in the view of the Member States.

*Finland's position:*

*Finland approves of expanding the jurisdiction of the Court of Justice in the sphere of Justice and Home affairs. Only the matters under Article 35 paragraph 5 of the present Treaty on the European Union involving coercive measures should be excluded from the jurisdiction of the Court.*

*Finland is prepared to consider expanding the jurisdiction of the Court of Justice in the sphere of Common Foreign and Security Policy to a limited extent. Of particular importance in this respect is extending the advance control referred to in Article 300 paragraph 6 of the EC Treaty to the issue of international treaties within the sphere of the Common Foreign and Security Policy.*

*Finland favours and is willing to explore ways to improve the potential for individuals to bring their cases concerning the actions of EU institutions and the application of Union law before the Courts.*

## **The European Ombudsman**

The preliminary draft Constitutional Treaty drafted by the Presidium of the Convention contains no mention of the Ombudsman as a Union institution. However, the role of the Ombudsman is of such importance particularly to the citizens of the Union that acknowledging his status as part of the Union's institution system has been mooted in the Convention. Ombudsman Söderman himself submitted a proposal (CONV 466/02) where he suggests that the Ombudsman should be mentioned in the part of the Constitution dealing with the institutional framework, alongside the Economic and

Social Committee and the Committee of the Regions. He further suggests that the part of the Constitution concerned with citizens' rights should include the right to complain to the European Ombudsman and that the parliamentary nature of the Ombudsman be emphasized in the provisions on the European Parliament.

*Finland's position:*

*The status of the European Ombudsman as a Union institution should be incorporated in the title concerning the Union's institutions in the Basic Treaty. Finland considers that the provisions of the Basic Treaty concerning the Ombudsman should be strengthened on the basis of the proposal submitted by Ombudsman Söderman.*

### **Regional and local government**

As part of the institutional reform and the discussion on the division of competences, the Convention has also discussed the status of regional and local government in the future Union. There is no separate working group for this issue; it will be debated at a plenary session of the Convention on 6-7 February 2003. The Finnish Government has stated its views on regional and local points in the report on the monitoring of the subsidiarity principle (E 117/2002vp) and in the report on the division of competences between the Union and Member States (E 66/2002vp).

The special position of the Åland Islands, based on Finland's Constitution and international treaties, must be taken into account in any matters related to the future of the EU that have a bearing on the status of the Åland Islands. The Finnish Government has requested Niilo Jääskinen (Justice, the Supreme Administrative Court) to draft a report concerning the Åland Islands and the division of competences in the EU, and this matter will be addressed once the report is completed.

*Finland's position:*

*Finland considers that the Basic Treaty of the Union must respect the Member States' right to organize regional and local government in accordance with their respective constitutions. The participation of regional and local government and of various special regions within the Member States in the preparation and decision-making of EU matters must be safeguarded primarily through measures on the national level. The use of regional and local government expertise in the preparation of Union legislation should, however, be enhanced.*

## 2. THE CONSTITUTIONAL TREATY

### *2.1 Assessment of the alternatives for the structure, amendment procedures and entry into force of the Constitutional Treaty of the European Union*

The issues which are crucial for the success of the European Union's reform project include the structure, entry into force and amendment procedures of the new Constitutional Treaty.

The issue of the structure of the new Constitutional Treaty is linked not only with efforts to simplify the structure of the existing treaties, but also with making a distinction between Constitutional and other provisions. The issue of the entry into force of the new Treaty involves both the procedures required for the entry into force and the relationship between the new Treaty and the existing treaties. The issue of how amendments to the new Treaty and their entry into force in potential future situations will be arranged is a conceptually distinct issue from this.

All these issues have a dual nature in that they are on the one hand legal issues and on the other hand they are political issues linked with the general integration process. Their solutions will be significant for all other provisions in the new Treaty. They have not, however, come to the fore in the work of the Convention as yet.

In the following, we treat the structure, entry into force and amendment procedures of the new Constitutional Treaty primarily in the light of the preliminary draft Constitutional Treaty drawn up by the Praesidium. Since the proposal of the Praesidium leaves most of these issues open, however, it is important to also take a look at certain other models which have been put forward.

#### **The structure and form of the treaty**

In the preliminary draft Treaty put forward by the Praesidium, as indeed in the other models, the basic idea is still that the Union will formally remain an international organization based on intergovernmental treaties enshrined in international law. Thus the draft *Treaty Establishing a Constitution for Europe* proposed by the Praesidium would take the form of an international law treaty between the Member States. This despite the fact that the new Treaty is intended to codify special features of Union law which could justifiably be defined as constitutional in content.

The Praesidium proposes that the existing treaties should be replaced by one uniform Constitutional Treaty. In the preliminary draft Treaty, the provisions have been divided into three Parts:

- 1) "Constitutional structure", to contain provisions that are constitutional in nature;
- 2) "Union policies and their implementation", to contain more detailed provisions on legal bases, institutional and procedural provisions and budgetary provisions; and

- 3) “General and final provisions”, to contain provisions on issues such as entry into force and amendment procedures.

In addition to these, the Treaty would comprise protocols which would be annexed to the Constitutional Treaty as an integral part of the Treaty.

Alternatives have also been put forward to the model of one single unified Constitutional Treaty, although the differences focus mainly on the issues of entry into force and amendment procedures.

Although the Praesidium’s proposal does not contain any express provisions on the interrelationship between the different parts of the Treaty, it is possible that the provisions on constitutional structure in Part One are, in fact, intended to be on a higher hierarchical level than the provisions of Part Two, which concern union policies and internal action. Other models have been put forward where this type of hierarchy has been implemented through a specific ‘primacy clause’, intended to ensure that the constitutional section takes primacy over other parts of the Treaty (see e.g. the “Cambridge Text”, CONV 345/1/02).

The Praesidium’s proposal for the structure of the new Treaty is rather radical, as it would in practice, mean a complete re-organization of the Union’s treaty system. The proposed structure is, however, in line with the aim of simplifying the existing treaties and making them more accessible, especially for the general public. It would also clarify the fundamental nature of the Union if constitutional provisions can be separated from other provisions in the Treaty. It is important, however, to assess the treaty system as a whole, and the preliminary draft does not yet clearly demonstrate the internal hierarchy of the Constitutional Treaty or the possibility of separate amendment procedures for different parts of the Treaty.

The Praesidium’s proposal is based on an assumption that the new Constitutional Treaty would repeal completely all the existing treaties currently in force, and that the new Treaty would subsequently replace these treaties as the only Constitutional Treaty of the Union. This same arrangement was also proposed by President Prodi in his contribution to a preliminary draft.

One alternative to repealing the present treaties in full would be the model which has become established in connection with earlier revisions of treaties, i.e. the treaties in question are revised and supplemented with new treaties while the older treaties remain in force where not amended. The advantage of this model is that Member States would not be required to ratify unchanged provisions all over again. This might well help make the ratification procedure in the Member States simpler.

In the event that the existing treaties were to be revised to the extent now proposed, it would be justifiable to consider at least some of the provisions whose wording remains completely unchanged to be indirectly subjected to change. Leaving such provisions apparently outside the new Treaty and its ratification procedure would give rise to legal problems as well as problems linked with the

legitimacy of the ratification process itself. The Praesidium's model allows these problems to be avoided, because the subject of ratification would be a complete new Constitutional Treaty. In the event that the Praesidium's model is applied, however, every care should be taken to ensure that the accomplished *aquis communautaire* is not endangered.

*Finland's position:*

*Finland considers it important that the aim of the reform process is to create a clear, simple and binding basic document, in which the motivation for objectives, actions and competences are defined. In terms of structure, the preliminary draft put forward by the Praesidium can be viewed as a good starting point for revision of the treaty system, but the proposal must be assessed in its entirety once the content of revisions has been defined in more detail.*

*Finland considers it important that a clear distinction is made between provisions of a constitutional nature and other provisions included in the new Treaty, and that the hierarchical relation between these provisions is defined by a 'primacy clause' to be included in the constitutional part. These constitutional provisions include at least the key provisions on the Union's values and objectives, fundamental rights, provisions on the fundamental principles of the distribution of competences between the Union and its Member States, and the key provisions on relationships between Union institutions.*

*At the stage when the nature and extent of the amendments to the Treaty become clear, it has to be separately considered whether a completely new Basic Treaty repealing all the existing treaties is the most practical way of implementing the revisions.*

### **Adoption, ratification and entry into force of the new treaty**

Article 48 of the Treaty on European Union provides that the treaties may be amended only if the amending treaty is ratified by all Member States in accordance with their respective constitutional requirements. In order to enter into force, amendments must in practice be approved by the national Parliaments of all Member States (and, in the case of certain Member States, also by a referendum). It follows that if even one Member State fails to ratify an amendment, it cannot enter into force in other Member States either.

In view of the growing number of Member States, the far-reaching nature of the proposed amendments, and past experiences of previous referenda on amendment of treaties in individual Member States, it is certainly possible that one or more Member States might not ratify the new Treaty drafted in the Convention and the next Intergovernmental Conference according to the provisions of Article 48 of the present Treaty on European Union. Against this background, a question has emerged at the Convention concerning whether the new Treaty could enter into force even if one or more Member States fail to ratify it, despite the unambiguous phrasing of Article 48



of the Treaty on European Union. The foremost justification which has been put forward for making an exception from the requirement that amendments be ratified by all Member States is that a small minority of Member States should not be able to block reforms which are needed by the Union as a whole.

The Praesidium's proposal does not express an opinion on how the new Treaty Establishing a Constitution for Europe would be ratified and how it would enter into force. Since the section concerning the adoption, ratification and entry into force of the new Treaty does not contain a demand for compliance with the procedures of Article 48 of the present Treaty on European Union, the proposal must, however, be interpreted to mean that other methods of adoption and entry into force have not been excluded.

President Prodi's contribution to a preliminary draft treaty proposes a system which would make it possible to repeal the present treaties and adopt a new Treaty even if some Member States do not ratify the new Treaty, on condition that a vast majority of Member States did ratify it. According to the proposal, Member States who choose not to ratify the new Treaty will be regarded as choosing to leave the Union.

Prodi's proposal states that if the Member States in question are offered a special arrangement based on an international agreement to be made with the Union, the procedure would be in compliance with international law. This viewpoint is, however, questionable in the light of the Vienna Convention on the Law of Treaties and the general principles which govern international law. According to these, amendment of a multilateral treaty requires the assent of all the parties involved.

In political terms, too, the 'forced resignation' included in President Prodi's proposal would probably prove deeply problematic for many Member States, and might have unforeseen effects. The proposal would amount to a break with the fundamental principles underlying European integration. Furthermore, 'forced resignation' would have unfavourable effects on the general integration process, e.g. the creation of several parallel systems.

*Finland's position:*

*Finland is not in favour of proposals to the effect that a Member State might be forced to leave the Union or deemed to choose to leave unless it ratifies the new Constitutional Treaty.*

*Amendments to the existing treaties or repeal of these treaties and entry into force of the new Treaty can only take place on the basis of Article 48 of the Treaty on European Union, i.e. when all Member States have ratified them in accordance with their respective constitutional requirements. In the event that one or more Member States are unable to ratify the amendments to the existing treaties or a new Treaty, the entry into*

*force of said amendments or treaties should be implemented as far as possible through special arrangements to be included in the new Treaty.*

### **Amendment procedures of the new treaty in future**

The question of amendment procedures for future revision of the new Constitutional Treaty is closely linked with the question of how the parts of the new Treaty are to be interrelated. The draft by the Praesidium does not contain express views on amendment procedures, but it has been suggested in a number of contexts that it should be possible to amend at least those parts of the Treaty that are not constitutional in nature through a simpler procedure. This could, for instance, mean that such amendments could be approved by decision of representatives of Union institutions or Member States' Governments, rather than formal ratification. Or, as an alternative, amendments could be approved in Union institutions or among representatives of Member States' Governments by a reinforced qualified majority, and then ratified by each Member State. More far-reaching solutions have also been put forward, proposing that any of the provisions in the new Treaty could be changed without unanimous agreement from the Member States.

In connection with the alternatives where amending the Treaty does not require all Member States to agree unanimously, the question emerges of whether Member States who do not approve of the revisions should have the opportunity or obligation to resign from the Union.

It is also another, separate issue whether the new Treaty should comprise provisions on voluntary resignation based on a Member State's own decision, and on the institutional consequences of such a decision. The preliminary draft by the Praesidium contains a draft article to this effect.

#### *Finland's position:*

*In Finland's opinion, amendments to provisions which are constitutional in nature should continue to be based on a requirement that all Member States approve of the revisions and ratify them in accordance with their respective constitutional requirements.*

*Where other provisions in the Treaty are concerned, a simpler revision procedure might be considered. This could consist of, for instance, a unanimous decision by representatives of all Member States' Governments without a requirement for ratification, or a decision made by a reinforced qualified majority of representatives of Member States' Governments with subsequent ratification by all Member States. In the former case, it should however, be ensured that the influence of the national Parliament concerning these decisions is adequately safeguarded.*

*Finland is not in favour of including a provision in the new Treaty to the effect that a Member State might be forced to leave the Union if it refuses to approve of future amendments to the Treaty.*

*However, Finland is willing to consider the alternative of including a provision in the new treaty to the effect that a Member State can resign voluntarily from the Union.*

*The status of the Protocol on the Åland Islands in the new Treaty system must be secured both in terms of content and vis-à-vis revision procedures.*