

**NOTE**

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from Mr Giuliano Amato

to The Convention

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Subject : **Mandate of the working group on Legal Personality**

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Please find attached a note on the above subject, which is intended to facilitate the discussions of the working group on Legal Personality.

**GROUP III : "Legal personality"**

**Chairman : Giuliano Amato**

*"What would be the consequences of explicit recognition of the EU's legal personality?  
And of a merger of the Union's legal personality with that of the European Community?  
Could these contribute to the simplification of the Treaties?"*

**I. INTRODUCTION**

1. The report of the present working group, focusing on the above questions, will be relevant for Convention discussion of certain wider points mentioned in the Laeken Declaration, namely the following four questions:
  - "Should the distinction between the Union and the Communities be reviewed?
  - What of the division into three pillars?
  - How should the coherence of European foreign policy be enhanced?
  - Should the external representation of the Union in international fora be extended further?"
2. The purpose of this paper is to provide an outline containing background on this subject and the main issues for the working group. At the first meeting of the group (scheduled for 18 June 2002), a more substantial document will be available developing in detail the questions now raised in this document.

**II. BACKGROUND**

3. Each of the European Communities is expressly declared, by its respective founding Treaty, to have legal personality<sup>1</sup>. Article 101, first paragraph Euratom reads as follows:

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<sup>1</sup> Cf. Art.205 (1) EC; Art.6 first para. ECSC; Art.184 Euratom.

*"The Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organisation or a national of a third State."*

4. According to Article 281 EC *"The Community shall have legal personality"*. The Court of Justice has interpreted this provision as entailing acknowledgement of the external capacity of the EC in all policy areas falling within its competence<sup>1</sup>. It is beyond doubt that the Communities possess legal personality and the recognition of their capacity to pursue their objectives has been confirmed by a long period of time.
5. As for the Union, the TEU contains no provision stating that the Union shall have legal personality. As a matter of fact, the Union was created (so to say "invented") by the Maastricht Treaty as an encompassing framework aimed at including on the one side the pre-existing Communities and on the other hand two newly born CFSP and JHA. The TEU set a number of objectives for the Union, such as: *"to assert its identity in the international scene(...); to strengthen the protection of the rights and interests of the nationals of its Member States (...); to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured (...)"* (Article 2 TEU). In order to attain its objectives, the Union shall provide itself with the means necessary (Article 6, para.4 TEU) and *"be served by a single institutional framework"* (Article 3 TEU).
6. After the Treaty of Maastricht, two proposals were made during the IGC 1996 for the insertion in the Treaty of a provision stating explicitly that the Union shall have legal personality. According to one proposal, the legal personality of the Union should be juxtaposed with the existing personalities of the Communities<sup>2</sup>. According to the other proposal, a single legal

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<sup>1</sup> Case 22/70, *Commission v. Council*, (AETR) [1971] ECR 263, para.14.

<sup>2</sup> See *"Endowing the Union with legal personality"*, text submitted by the Irish Presidency to the European Council in Dublin in December 1996 (doc. CONF 2500/96).

personality of the Union as a whole should be created, into which those of the Communities would be assimilated<sup>1</sup>. While none of these proposals was eventually adopted, the Treaty of Amsterdam introduced a new provision, Article 24 TEU<sup>2</sup>.

7. The doctrine has given different interpretations to this provision. According to some authors, this provision confers implicitly to the Union the legal personality by acknowledging the capacity of the Union as such to enter into international agreements relating to Title V or Title VI<sup>3</sup>. Others claim that this provision merely establishes a simplified procedure, enabling the institutional machinery of the Treaty to be used for the purpose of negotiations and concluding, on behalf of the Member States, international agreements to which they, and not the Union, will be parties<sup>4</sup>.
8. As for the interpretation of Article 24 TEU in the light of subsequent practice, it is worth noting that so far two international agreements have been concluded by the Union (based both on Article 24 TEU) with the Federal Republic of Yugoslavia (FRY) concerning the activities of the Union monitoring mission in the FRY<sup>5</sup>. In the Council Decisions concerning the conclusion of these agreements, it is stated that *"The President of the Council is hereby authorised to designate the person empowered to sign the Agreement **in order to bind the European Union**".*

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<sup>1</sup> See proposal put forward by the Netherlands Presidency (doc. CONF 2500/96 ADD1 CAB, 20 March 1997, p.47.

<sup>2</sup> Article 24 TEU reads as follows: *"When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this Title, the Council, acting unanimously, may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall apply provisionally to them. The provisions of this Article shall also apply to matters falling under Title VI".*

This provision has been modified in the Treaty of Nice.

<sup>3</sup> One argument in favour of this interpretation is the fact that the power to authorise the opening of negotiations and to conclude any agreement, is expressed to belong to the Council, and not to the representatives of the governments of the Member States meeting within the Council.

<sup>4</sup> The reference, in the second sentence to the possibility of national ratification procedures, and to the possibility of provisional application in respect of the other members of the Council, is argued in favour of this construction.

<sup>5</sup> Council Decision of 9 April 2001 (2001/352/CFSP) (OJ L 125/1) and Council Decision of 30 August 2001 (2001/682/CFSP) (OJ L 241/1).

### **III. QUESTIONS TO BE CONSIDERED**

9. The working group may wish to consider in connection with (a) making Union legal personality explicit and (b) proceeding to the merger of Union and Community legal personalities, the three following questions:
- i. What would be the nature of the effects, if any, on current delimitation of competences, and procedures?
  - ii. Would the Union be enabled to act more effectively in the international plane?
  - iii. What would be the effects, if any, on the Union's status in international organisations?
10. The working group also needs to consider the implications of explicit legal personality and merger for the issue of simplification of the treaties. The working group may wish to explore the extent to which merger would assist simplification, facilitating either a reduction in the number of instruments and procedures and/or the fusion of the Treaties.
11. At its first meeting on 18 June 2002 (15.00-18.30), the Members will receive a more developed version of this note expanding the technical issues involved in detail. At the two forthcoming meetings (25 June and 10 July), it is envisaged to hear legal experts on the questions involved.
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