

NOTE

from:	Secretariat
to:	Working Group on Legal Personality
Subject:	Summary of the meeting on 10 July 2002

1. At its meeting on 10 July 2002, the Working Group gave a hearing to four experts ¹:
 - Mr Jean-Victor Louis, Professor at the Free University of Brussels;
 - Mr Antonio Tizzano, Advocate-General at the Court of Justice of the European Communities;
 - Mr Alan Dashwood, Professor at Cambridge University;
 - Mr Carlos Westendorp y Cabeza, Chairman of the European Parliament Committee on Industry, External Trade, Research and Energy.

HEARING OF PROFESSOR J.-V. LOUIS

2. Professor Louis pointed out that explicit recognition of the Union's legal personality did not have any automatic legal effect either on powers under the Treaties or on the pillar structure. In his view, only a single legal personality replacing the legal personalities of the Communities would met the need for simplification and transparency, which should be the constant aim of reform. Both the Union and third countries, as our partners, would stand to gain from such simplification.

¹ For their full written presentations, please see the actual texts, distributed by the Secretariat in their original languages.

3. Since the pillar structure had been regarded as a provisional one by the draftsmen of the Maastricht Treaty, he advocated making the Community method generally applicable in the current reform, as it was more democratic, more transparent and more effective.
4. He argued that conferring a single legal personality on the Union in place of that of the Community would be the most appropriate course of action. Steps should also be taken to improve the Union's negotiating capability, the efficiency of its conclusion procedures and the effectiveness of its representation on the international scene.
5. He highlighted the need in this area to opt for the Community method and avoid the possibility of making agreements subject to constitutional procedures (under Article 24 of the TEU). He pointed in particular to the drawbacks of widespread use of mixed agreements.
6. He also pointed to the democracy gap inherent in the agreement conclusion procedure laid down in Article 24 of the TEU, inasmuch as it did not involve any parliament (unless any Member State took the step of making its consent subject to completion of constitutional procedures). The Convention should bridge that gap and require consultation of the European Parliament.
7. The Union should speak with one voice on the international scene and therefore be represented by a single delegation, even where powers had not been fully transferred to the Community internally. For instance, the Union should participate in international organisations as regards economic and monetary union with a single representation, involving the Council, the Commission and the ECB, rather than a mixed representation, with Member States acting on the Union's behalf.

8. On simplification of the Treaties, lastly, he outlined two possible courses: if the legal personalities of the Communities and of the Union were merged, either the Treaties and organisations could remain separate and the pillar structure be maintained (with minor adjustments) or a single organisation could be established. He expressed a preference for the latter course, involving a merger of Treaties and organisations. In that event the founding primary-law texts would have to be recast in a basic treaty, simplifying procedures and instruments and placing them on a Community footing.

HEARING OF ADVOCATE-GENERAL TIZZANO

9. Mr Tizzano gave a reminder of the circumstances under which the Maastricht Treaty was negotiated and of the arguments militating for or against a Union legal personality. He considered it actually possible at present to argue that the Union had a single legal personality. He also thought it inconceivable to argue for a "fourth personality", allowing the Union to have a personality of its own while the Communities continued to have theirs as well. Such a conception would give rise to serious difficulties, particularly for the Union's external representation and the conclusion of international agreements.
10. He made the point that such a single Union legal personality entailed recognition of just one entity under international law: the Union. Within that single entity, however, the Treaties would give each pillar its own rules, according to its specific nature. Hence, international agreements would in each case be concluded under the specific conditions for the pillar within which the act adopted came.

HEARING OF PROFESSOR DASHWOOD

11. Professor Dashwood considered the practical implications of conferring legal personality on the Union, particularly for "classic" mixed agreements (concerning both the Communities and the Member States), "cross-pillar" mixed agreements (concerning the EC and the EU) and a combination of both (concerning the EU, the EC and the Member States).

12. For "classic" mixed agreements, the situation would remain unchanged, as they did not concern the Union. In the other two cases, however, there might be two entities under international law: the Union and the Community, plus where appropriate the Member States. Conferral of legal personality on the Union would thus in itself considerably simplify matters, in so far as the Union's legal personality replaced the Community's.
13. He then considered the implications of explicit conferral of legal personality on the Union for procedures for the negotiation and conclusion of mixed agreements (concerning the EC and the Member States or the EU, the EC and the Member States). The right of initiative for the negotiation and conclusion procedure could be exercised by the Commission for second and third-pillar agreements as well, under Articles 22 and 34(2) respectively of the TEU. For the conduct of negotiations, he suggested that Article 24 of the TEU be amended so as to explicitly enable the Council to authorise the Commission to negotiate the second and third-pillar parts of mixed agreements, on its behalf. For such mixed agreements, voting procedures within the Council would differ according to whether they involved the first pillar (e.g. a qualified majority if Article 133 or 181 of the EC Treaty was applicable) or the second or third pillar (a qualified majority or unanimity, as determined in the cases laid down in Article 24 of the TEU).
14. He suggested amending Article 24 of the TEU so as to require consultation of the European Parliament for second and third-pillar international agreements.
15. Judicial review in respect of such mixed agreements, lastly, would differ according to whether the part concerned came under Community law (full judicial review), the second pillar (no review) or the third pillar (limited review under the conditions laid down in Article 35 of the TEU).

HEARING OF Mr WESTENDORP Y CABEZA

16. Mr Westendorp y Cabeza, who chaired a study group paving the way for the 1996 IGC, gave a reminder of the details of those negotiations. He referred in particular to the Irish and Netherlands initiatives at the IGC. In his view, there was already back in 1996 a sizeable majority in favour of explicitly recognising the Union's own legal personality. Also in his view, under present circumstances, such recognition of the Union's legal personality should come in place of existing legal personalities.
17. He argued that, both under Articles 24 and 38 of the TEU and under Article 133 of the EC Treaty, consultation of the European Parliament should be compulsory. The present omission left a democracy gap, in the procedure for concluding such international agreements, which the Convention should bridge.

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18. Following an exchange of views with the invited experts, the Working Group decided to discuss the matter at its next meeting, on 18 July 2002, on the basis of a first preliminary draft report, to be submitted by the Chairman. The procedure for its approval would be established at that meeting.

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