

THE SECRETARIAT

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| from | Secretariat |
| to | The Convention |
| Subject : | Contribution by Mr. Hannes Farnleitner, Mr. Caspar Einem and Mr. Reinhard E. Bösch, members of the Convention : " A single legal personality - On the future of EURATOM " |

The Secretary-General of the Convention has received the contribution annexed hereto from Mr. Hannes Farnleitner, Mr. Caspar Einem and Mr. Reinhard E. Bösch, Members of the Convention.

CONV 358/02

A single legal personality On the future of EURATOM

**Contribution by Hannes Farnleitner, Caspar Einem and Reinhard Bösch
Members of the Convention**

A single legal personality

The European Council of Laeken, in its declaration on the future of the European Union, referred to the central political challenge facing the Convention by stating that the Union has to become “**more democratic, more transparent and more efficient**”, and that one important step towards that goal – especially with a view to increasing the level of transparency at the European level – is the **simplification and restructuring** of the complicated European treaty structure.

The Working Group on “legal personality”, established by the Convention, has intensively dealt with some of the major aspects of this mandate from Laeken, namely the consequences of according a legal personality to the European Union and the merging of this new legal personality with that of the European Community. A far-reaching consensus has since been achieved on these issues¹. During the plenary meeting of the Convention on 3 and 4 October 2002, it was largely decided by consensus that the recommendations of the Working Group should be taken as a starting point for further discussions.

The Working Group on “legal personality” clearly and convincingly elaborated the reasons in favour of creating a single legal personality for the European Union. From its findings, the Working Group has derived a clear recommendation for the Convention, suggesting that the **merger** of the treaties establishing the European Union and the European Community was a logical consequence of the merger of the legal personalities, which would significantly contribute to a **simplification of the treaty structures**.

¹ See the final report of the Working Group, CONV 305/02.

A large majority of members of the Working Group held the view that the above arguments also speak in favour of merging the new legal personality of the Union with that of **EURATOM** and of including the **EURATOM Treaty** in the **treaty simplification debate**². We share that view and we welcome the assertion by the Working Group, that the possible implications of merging the EURATOM Treaty need to be further investigated³. In this respect, it is our expectation that the **structural draft („Cadre“) for a European constitutional treaty that is to be submitted by the Presidium will also contain concrete proposals on the future legal nature and status of the EURATOM Treaty in the context of a new European constitutional and treaty architecture.**

The arguments which speak in favour of merging the Union and the Community likewise hold true for the legal personality of the **European Atomic Energy Community** and the underlying treaty. The European Atomic Energy Community, which was considered at the time of its foundation in 1958 to be an essential political building stone for the gradual integration of Europe, cannot be excluded from the debate on the future of the Union.

The EURATOM Treaty must not be excluded from the debate on the future of the Union

The Treaty establishing the European Atomic Energy Community was placed alongside the treaty on the foundation of the European Coal and Steel Community and was intended – from the perspective of that period – to place another highly important energy sector under the supervision of a supranational community⁴. The Contracting Parties then departed from the

² The opinion whereby the EURATOM Treaty should not continue to exist outside a European constitutional treaty is also shared by a number of legal experts. Professor Bruno DE WITTE was heard by the Convention Working Group on „Legal Personality“ on 11 September 2002. He, inter alia, stated the following: „Therefore, the time seems ripe for a merger of the EC and the EU Treaties. If an agreement on this operation were reached, it would make sense to try to extend it to the other sources of primary law, namely the EAEC Treaty ...“ (WG III – WD 27, p. 6). The expert Peter-Christian MÜLLER-GRAFF, who was also heard by the Working Group in “The future of the European Treaties: A systematic approach to a Basic Treaty” said the following: “Nevertheless a merger with the EC Treaty imposes itself due to the fact that more than half of its provisions have a formulation which is identical with parallel provisions in the EC Treaty, in particular the provisions on the institutions. It is difficult to justify why the EAC Treaty should survive as an independent treaty”.

³ See item 15 of the final report CONV 305/02.

⁴ Several environmental NGOs request that in analogy to the phasing out of the ECSC Treaty In July of this year the EURATOM Treaty should also cease to apply.

premise that nuclear energy would be **the** source of energy production in the future and that a joint administration of nuclear resources (in a similar manner as for coal and steel) would be required in order to maintain the political equilibrium between Germany and France.

Since its entering into force, the EURATOM Treaty – apart from some technical adjustments – has remained **unchanged**. This has led to a situation where progress in terms of political integration – especially in **institutional terms** – has not found expression in the European Atomic Energy Community.

That is why we consider it to be imperative for the Convention to address the question as to which role should be played by the European Atomic Energy Community and the underlying Treaty within the context of a future system of European integration and cooperation. The **role of EURATOM must have its place precisely in the comprehensive debate on the future of the Union which we are conducting at the present time**. These considerations are shared by the European Parliament and the European Commission⁵.

Strengthening of the democratic legitimacy of the European Atomic Energy Community

The European Council of Laeken has emphasised that it is of crucial importance to bring the European institutions closer to the citizens. The citizens of the Union must not get the impression that the European Union is pursuing its aims without regard to the needs the people. A **better democratic control at the European level is being generally desired and expected**.

The European institutions can be brought closer to its citizens by establishing a clear scheme of responsibility by increasing its efficiency and above all by more democracy

⁵ Special mention should be made of the resolution on the Commission's report to the European Parliament and the Council concerning the "activities of the Euratom Safeguards Office 1999-2000", which was adopted **unanimously** by the Parliament on 2 July 2002. In the resolution, the Parliament calls on the Convention to, „**change the EURATOM Treaty...**“ and to engage in „**deliberations on the rank of the EURATOM Treaty in the context of the upcoming reform of the Community institutions**“.

See also the European Commission's comments of 12 July 2000 on the Intergovernmental Conference 2000, COM(2000) 434 final version, page 5, item 2.

and transparency. It is precisely these latter qualities that are lacking quite substantially in the European Atomic Energy Community.

The position of the European Parliament has been gradually strengthened within the scope of application of the Treaty on European Union by the Single European Act, by the Treaty of Maastricht and by the Treaty of Amsterdam. The **codecision procedure**, which puts the European Parliament alongside the Council of the European Union as an equal legislator, has since become the standard procedure for adopting European laws. It is therefore an issue of fundamental nature that the European Parliament should also be granted such an **equal status** in the context of the European Atomic Energy Community.

Citizens feel that questions of European nuclear energy policy – e. g. as regards safety standards for nuclear power plants – should be discussed in a critical and open manner and that political decisions in this policy field should not be taken behind closed doors. The need for such an approach is further enhanced by the upcoming enlargement of the European Union.

Public debate on political decisions is one of the essential features of democratic governance. Which other institution than the **European Parliament**, with its legitimacy based on direct democratic elections and its authority resulting from public activity, could be better suited to respect the principles of democracy and transparency in this field of European integration policy?

From our point of view it is therefore indispensable to establish a consistent codecision competence of the European Parliament within the European Atomic Energy Community.

New policies to meet new challenges

In view of a better division and definition of competence in the EU the European Council of Laeken has also raised the question, which amendments should be made to the Treaty on the various policies. As far as the European nuclear policy is concerned the following substantial changes seem necessary to us.

European safety standards for nuclear plants with a high protection level

A Union which is close to its citizens must base its actions on a comprehensive concept of security, which does not only cover the internal and external security of the Union but also the safety from cross-border risks emanating from civil nuclear power plants. From our perspective, a high level of safety is required for civil nuclear power plants. In order to achieve this objective, high-level safety standards with European-wide applicability are necessary. However, neither the Treaty on European Community nor the Euratom Treaty currently provide for an explicit legal basis on which such standards might be based. We therefore propose for the following provision to be laid down in a future new Treaty:

„Art. X:

The Council shall, acting in accordance with the procedure referred to in Art. 251, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States in the field of nuclear installation safety.

The Council will take as a base a high level of protection.“

♦ **Fair competition**

The choice between different energy sources must remain subject to the autonomous decision of the Member States. From the perspective of internal market policy and against the background of the liberalisation of the energy markets, however, it will be necessary to create a level playing field for all sources of energy. A common market also needs common and consistent rules that are to be adhered to by all market operators.

An explicit legal basis for energy policy actions of the Union

While the provisions of the EURATOM Treaty contain clearly defined competences, the responsibilities for energy policy action of the European Community on the basis of the EC Treaty are less clearly formulated. For example there is no primary law provision on substantive objectives such as the supply of energy services in conformity with the principle of sustainability. That is why the Community's actions in the field of energy policy, for the most part, pursue the aim of establishing a common market. A coherent energy policy of the Union is moreover complicated by the fact that the competences and objectives are currently spread across the Treaties and within the EC Treaty. Given the importance of the energy sector for the prosperity and sustainable development of the Union, this is a less than satisfactory situation. We therefore consider it necessary to establish consistent primary law provisions governing the energy sector in the EC Treaty⁶. This would also entail the merging of Community competences for nuclear energy into a single legal framework.

⁶ Already in the paper of Hannes Farnleitner of 21 May of this year, in order to delimitate the competences between the European Union and its Member States (CONV 58/02) and with a view to „reducing the burden“ on Article 308 ECT, It was proposed to create a specific legal basis for the energy sector. Likewise, the “Complementary Competences” Working Group in their Draft Report of 2 October 2002 come to the conclusion that in order to avoid the constant reliance on Article 308 ECT in certain areas, including **energy**, new specialised legal fundamentals should be established (WG V – WD 30). The Commission representative in this Group, PONZANO, argued entirely in line with the above in his contribution of 24 September 2002 (WG V – WD 26).