

CONV 782/03

CONTRIB 353

COVER NOTE

from Secretariat
to The Convention

Subject : **Contribution by Mr Peter Hain, Ms Lena Hjelm-Wallen, Ms Danuta Hübner, Mr Ivan Korcok, Mr Dick Roche Mr Tunne Kelam, Mr Rein Lang; member of the Convention - Mr Henrik Hololei, Mr Bobby McDonagh, Ms Ana Palacio, Mr Robert Zile, Mr Pat Carey, Mr Kenneth Kvist, Mr Urmas Reinsalu, Lord Tomlinson, Mrs Liina Tonisson; alternate member of the Convention:
- “Articles III.59 and III.60 in the draft EU constitutional treaty”**

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Peter Hain, Ms Lena Hjelm-Wallen, Ms Danuta Hübner, Mr Ivan Korcok, Mr Dick Roche Mr Tunne Kelam, Mr Rein Lang; member of the Convention - Mr Henrik Hololei, Mr Bobby McDonagh, Ms Ana Palacio, Mr Robert Zile, Mr Pat Carey, Mr Kenneth Kvist, Mr Urmas Reinsalu, Lord Tomlinson, Mrs Liina Tonisson; alternate member of the Convention.

Contribution TO THE EUROPEAN CONVENTION

**ARTICLES III.59 AND III.60 IN THE DRAFT eU CONSTITUTIONAL
TREATY**

**SUBMITTED BY THE FOLLOWING MEMBERS AND ALTERNATE MEMBERS
OF THE CONVENTION:**

GOVERNMENT REPRESENTATIVES

MR PETER HAIN
MS LENA HJELM-WALLEN
MR HENRIK HOLOLEI
MS DANUTA HUBNER
MR IVAN KORCUK
MR BOBBY MCDONAGH
MS ANA PALACIO
MR DICK ROCHE
MR ROBERTS ZILE

REPRESENTATIVES OF NATIONAL PARLIAMENTS

MR PAT CAREY
MR TUNNE KELAM
MR KENNETH KVIST
MR REIN LANG
MR URMAS REINSALU
LORD TOMLINSON
MRS LIINA TONISSON

1. We recognise that there could be a case for appropriate and effective European Union action in the area of administrative cooperation and in the area of tax fraud. However, we believe that measures in these areas must be decided by unanimity. We cannot therefore support the proposed change to the existing legal base for tax measures.

Taxation and the relationship between Citizen and Government

2. We believe that taxation questions are, both historically and in the contemporary world, of profound sensitivity and touch very directly on the relationship of the citizen to the State. One of the key components of a State's sovereignty is its capacity to fully express the preferences of its citizens on taxation, delivered through democratic control and accountability.

3. The structure of the tax system determines how resources are transferred from individual citizens (and the organisations they have created) to Government. Different structures deliver different outcomes and allow different levels of Government expenditure. Citizens of each Member State elect their Government on the basis of their proposed distribution of resources and level of public spending, and on the types and level of taxation required to deliver these. This is fundamental to the democratic control and accountability of government and results in a greater acceptance of taxation decisions by individual electorates.

4. The structure of the tax system and the level of Government spending varies greatly across the Union, reflecting these different preferences of citizens. The European Union is a collection of societies, cultures and economies reflecting diverse histories and backgrounds. Such diversity brings with it different perspectives, views and preferences on taxation and expenditure.

5. The removal of unanimity could reduce or remove the ability of each Member State to reflect the particular preferences of their citizens and to determine democratically the structure of the tax system and the level of Government spending that this supports.

6. We believe therefore that the right to determine taxation issues should continue to be held at national level. Unanimity on taxation matters in the Council ensures this.

Taxation as an economic policy instrument

7. Taxation is a powerful economic policy tool. The right of Member States to decide upon taxation issues allows them to take account of their own particular position in the

economic and business cycle. Losing this right could severely impair the ability of each Member State to manage the economic conditions particular to it. Therefore, it is important that Member States keep the maximum flexibility of economic policy to stimulate innovation and promote enterprise.

Tax administration and fraud

8. The articles put forward by the Praesidium could remove the right of Member States to determine their own tax system. Member State control of tax administration and enforcement is important as these are, of themselves, an intrinsic and key part of the tax system.

9. It is impossible to isolate tax administration and fraud from wider tax policy. Therefore allowing for QMV in this apparently limited area could affect the right of Member States to control much of their own tax policy.

10. We support co-operation in the field of administrative proceedings in general, and administrative cooperation is a helpful instrument in allowing Member States to properly control their own tax system. Successful cooperation requires Member States to work together willingly to obtain results or outcomes which they would not otherwise be able to achieve. Hence the advantage of preserving unanimity.

11. Tax administration and fraud cannot be isolated from wider tax policy. Because tax administration and tax enforcement are so central to the structure of tax systems, the changes that could be required by measures in these apparently limited areas could be far reaching. There would be a very real possibility that measures would be proposed on the legal basis of articles 59.2 and 60 that went well beyond anything that might at first sight be considered an issue of administrative cooperation or fraud. Therefore unanimity avoids the negative consequences of this wide scope.

12. The suggested limitation of QMV to measures which are necessary to ensure the proper functioning of the internal market and to avoid distortions to competition would do little to limit scope. It would be possible to advance arguments that a wide variety of measures are necessary to achieve these broadly drafted aims. We believe that significant

proposals concerning the tax base and tax rates could be presented as falling within the scope. There is therefore, in addition to the restrictions they would place on Member States' control of tax administration and enforcement, scope for the Praesidium's proposals to lead to substantial and unforeseeable restrictions on Member States' control over their own tax policy.

13. For these reasons, we cannot agree to the Praesidium's proposals. The right to determine taxation issues must continue to be held at national level. Therefore we believe that unanimity is the best solution to preserve the general interest.

ANNEX

SUGGESTION FOR AMENDMENT OF ARTICLES III.59 AND III.60

111.59.1 *OK*

111.59.2. *Delete*

111.60. *Delete*