

CONV 509/03

CONTRIB 209

NOTE DE TRANSMISSION

du:	Secrétariat
à la:	Convention
Objet:	Contribution présentée par MM. Kimmo Kiljunen et Matti Vanhanen, membres de la Convention, ainsi que M ^{me} Riitta Korhonen et M. Esko Helle, membres suppléants de la Convention "Rapport du Conseil d'État sur les positions de la Finlande concernant l'avenir de l'Europe et les questions soulevées au cours des travaux de la Convention"

Le Secrétaire général de la Convention a reçu la contribution figurant en annexe de MM. Kimmo Kiljunen et Matti Vanhanen, membres de la Convention, et Mme Riitta Korhonen et M. Esko Helle, membres suppléants de la Convention.

Parliament of Finland
Delegation in the European Convention

The Grand Committee (European Affairs Committee) of the Parliament of Finland adopted on Friday 17 January 2002 a statement to the Finnish Government on Finland's positions concerning the future of Europe and issues arisen during the Convention.

The statement concerns some current institutional questions under debate.

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

Helsinki 24 January 2003

Kimmo Kiljunen MP
Member of the Convention

Matti Vanhanen MP
Member of the Convention

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PARLIAMENT OF FINLAND

Statement of the Grand Committee 6/2002 vp

Report of the Council of State on Finland's positions concerning the future of Europe and issues arisen during the Convention

To the Council of State

INTRODUCTION

History

At its meeting on 18 December 2002, the Grand Committee found it necessary that the Council of State submits to Parliament as soon as possible a report in the meaning of section 97 of the Constitution, containing a comprehensive assessment of the issues arising at the Convention. The Council of State submitted its report on 17 January 2003.

The general election in March 2003 will interrupt the work of the Eduskunta at a time when critical decisions concerning the future of Europe may be made. The Committee has been informed that the Greek presidency has as the target that the results of the Convention could be submitted to the European Council of Thessaloniki. This would require the substantive work of the Convention to be completed in April 2003. However, the plans of the Convention itself provide for work to be concluded by June 2003. The Committee deems it essential that the positions of the Eduskunta are stated in as complete a form as possible, to provide a normative frame of reference for Finland's delegates to the Convention until the new Eduskunta has had time to deal with this issue.

The Convention on the Future of Europe will begin debating institutional issues at its plenary session on 20 and 21 January 2003. The Grand Committee therefore began preparing this statement prior to the completion of the Council of State's report. The Committee will issue a further statement later if required.

This statement is based on the Council of State's report (E 139/2002 vp) the reports of the Eduskunta's delegates to the Convention (the deputies Kimmo KILJUNEN, Matti VANHANEN, Riitta KORHONEN and Esko HELLE), documentary information produced by the Convention

secretariat and national parliaments and governments participating in the Convention and on expert testimony.

Preparation in sub-committee

The sub-committee appointed to monitor the issue of the future of Europe has prepared this issue.

Expert testimony

The committee has heard the testimony of the Prime Minister's delegate to the Convention, Dr. Teija TIILIKAINEN.

THE COMMITTEE'S OPINIONS

Justification

Finland's general objectives at the Convention

The Grand Committee approved its preliminary objectives prior to the Convention in its statement (SuVL 4/2001 vp) concerning the Council of State's report on the future of Europe (VNS 3/2001 vp).

In that report, the Grand Committee took the position that that any debate on reform of the European Union must proceed from questions of content, that is, the union's ability to respond to citizens' needs and concerns. These issues have to be linked to the formal questions of how the Union is developed in order to increase the effectiveness, comprehensibility, transparency and the acceptability and democratic legitimacy of the Union's actions. The Committee finds it easy to agree with the idea expressed by Prime Minister Tony Blair in Cardiff on 28 November 2002, that Union reform is not so much about how power is shared between EU institutions or between the EU and member states as about making the institutions and procedures more efficient.

The Committee has repeatedly stated that EU enlargement, that is, overcoming the division of our continent, is the primary historical end, compared to which the forms and structures of Union decision-making are, to some extent, means. To simplify greatly: an enlarged Union, able to make decisions effectively, is in Finland's interest. Finland has no need, however, to abandon the principle that all member states are equal irrespective of size. The matter of the Union's comprehensibility, how well citizens are able to understand the workings of the Union, is actually a question of legitimacy, the solution of which will largely decide whether future new arrangements

are acceptable. The Grand Committee requires that the draft treaty will greatly clarify decision-making and the institutional structure. It should also respect the principles of equality of the member states and their citizens. The draft treaty must not weaken Finland's parliamentary system of EU policy-making.

The definition and competence of the Union

The European Union shall, in future as now, be developed as a close community of the member states and the peoples of Europe.

The committee is prepared to accept the Union being given singular legal personality. Legal personality should, however, be introduced in a manner that does not imply any uncontrolled transfer of competence from the member states to the Union.

The committee reiterates its support (previously uttered in committee statements SuVL 4/2001 vp and SuVL 5/2002 vp) for clarifying the division of competence on the basis that all Union competence shall be limited special competence. All competence, that has not specifically been given the Union, pertains to the member states. Maintaining the Union's necessary flexibility may require that an exception clause, similar to article 308 in the present treaty, be included in the future treaty. In future, application of the exception clause should be as rare as possible. The clause should be applied only in individual cases and subject to strict preconditions stated in the treaty. The influence of national parliaments must be safeguarded. The exception clause should not be used to circumvent national parliaments' right to approve through ratification additions to the Union's competence.

As regards open coordination, the committee refers to its opinion which is negative in principle (expressed in statements SuVL 4/2001 vp and SuVL 1/2002 vp). Finland should aim at limiting the use of open coordination and at introducing manageable procedures that are subject to democratic scrutiny and do not impose excessive burdens on the different levels of the administration.

Concerning flexibility, the Grand Committee refers to its statements during the inter-governmental conference preceding the Nice treaty (SuVL 1/2000 vp, SuVL 3/2000 vp, SuVL 5/2000 vp), in which the committee supported making flexibility or enhanced cooperation within the Union's institutional system more attractive than interstate cooperation outside the institutional system.

The Union's institutions

The institutional system

The committee previously noted (in statement SuVL 4/2001 vp) that the community method has proved useful in those areas where competence has been granted to the supranational level. Any proposed institutional changes should be evaluated in terms of expansion of the community method or its characteristics.

The committee is of the opinion that the principle of good administration should be concretised in the treaty provisions concerning the general characteristics of the institutional system. This may, for example, involve obliging the institutions to compile a unitary code of administrative procedure.

The European Council

Regarding the role and tasks of the European Council, the Grand Committee refers to its statement SuVL 2/2002 vp. The committee maintains its assumption that the European Council is not part of the EU Council, but a separate institution that provides stimuli and broad political guideline for the Union's development. Qualified majority voting corresponds badly with this vision of the European Council's role. The aim should be that the European Council is not called on to decide matters that are within the competence of the EU Council.

The ideas in the Convention presidency's treaty proposal for organising the presidency of the European Council have so far not been elaborated or explained. The Grand Committee assumes that this issue will depend on the role and tasks given the European Council. The committee's remarks on the rotating presidency of the EU Council, later in this statement, may be applied also to the European Council.

Certain member states have proposed transferring the tasks of the president of the European Council and EU Council to a separate entity, styled the President of the European Union, and equipped with independent powers. Most recently the President of France and the Federal Chancellor of Germany have published such a proposal. All such proposals are said to respond to the problems arising from the Union's alleged short-termism.

The committee is of the opinion that these proposals do not remedy the problems they are meant to solve. On the contrary, they aggravate the clutter in the Union's decision-making by introducing yet another power centre into an already complex system. The proposal for a Union President contains a fresh derogation from the community model in favour of the hegemony of the large member states.

The committee is not convinced that the difficulties observed in the work of the European Council and EU Council are the result of the rotating presidency or any short-termism caused by rotation. When examining the European Council's real task under the treaty, political leadership, it becomes apparent that existing arrangements have allowed the Union to cope quite well with such vital projects as enlargement, economic and monetary union or the fight against terrorism. Any failings in the European Council's work seem due rather to political disagreement among member states, the domestic situation in some large member states and a stubborn tendency to submit to the European Council community matters that the EU Council has competence to resolve. The intergovernmental approach favoured since the Maastricht treaty appears to have undermined the Union's capacity for balanced action. That this would happen should have been almost self-evident as the arrangements made for the benefit of some large member states were not matched by any commitment that they seek agreement on policies. In these circumstances, adjustments of the Union's structures are all too patently disingenuous. The committee would remind that a Union President, to be at all credible as international spokesman, would need the authority to speak also for those member state governments that have permanent seats on the UN Security Council and possess nuclear weapons.

The proposed official, when styled "European President" is difficult to conceive of as anything but the - symbolic or real - "Head" of a federal Union. The committee is of the opinion that even a symbolic "Head" would make sense only, if the Union were the focus of its citizens' identity. This it is not. At worst, electing a European President would further intensify perceptions of the Union as an elite that has lost contact with the people.

The Grand Committee is of the opinion that any proposals for an independent presidency of the European Council or EU Council should be evaluated in terms of its benefits to the performance of the institutional system. The committee has not become aware of any grounds on which such arrangements would appear particularly useful.

In the committee's opinion, the equality of member states must be maintained when reforming the presidency of the Council. Electing a permanent president of the European Council would impair this goal. The committee's point of departure is that the rotating presidency of the European Council should be preserved. On the basis of information so far available, the committee is unfavourable to proposals for a European President.

The European Parliament

The Grand Committee reiterates its opinion (in statement SuVL 5/2001 vp) concerning the

maximum size of the European Parliament. The committee draws particular attention to its remarks about equal representation of the member states joining the Union in 2004.

The committee emphasizes that a proportional system should apply to European Parliament elections. Otherwise, the committee has reservations about standardising the method of electing MEPs in any great detail. The committee agrees with the Foreign Affairs Committee's rejection (in report UaVM 2/2000 vp) of the introduction of European lists for the election of the European Parliament.

The role of the European Parliament is intimately linked to the growth of its legislative powers as the use of co-decision is extended, and its budget power. The Grand Committee is favourable in principle to extending the use of co-decision. The committee does, however, agree with the Council of State (report E 130/2002 vp) that extensions must be examined case-by-case. The committee also agrees with the government report that the institutional balance must be maintained in the Union's budget procedure.

The EU Council

Concerning the nature of the Council, the Grand Committee refers to its statement SuVL 4/2001 vp with the specification that the committee's vision of a single and indivisible Council may need to be modified, if proposals to change the structure and presidency of the Council are deemed acceptable.

The committee is of the opinion that the Union's capacity to make decisions needs to be improved both in terms of the present and of enlargement. This requires, among other things, extending the use of qualified majority voting; the sectors concerned will be identified separately. During Finland's membership of the Union, QMV has proven useful for small member states.

The Grand Committee reiterates its earlier opinions (in statements SuVL 4/2001 vp, SuVL 1/2002 vp and SuVL 2/2002 vp) concerning greater openness, publicity and accountability of the Council's legislative work. When the Council acts as legislator, its procedures should approximate the practices of a legislative body. The publicity of Council meetings should be increased. In addition to public meetings, publicity of documents is essential for the Council's accountability. The publicity of agendas, draft decisions, voting records and voting statements as well as declarations by member states or institutions, and other documents relating to decisions, should be the rule.

For the Council's remaining policy-making tasks, the current procedures, which resemble those of diplomatic conferences, are appropriate. The real challenge of the Convention is to define the decisions made, and the instruments employed, by the Council in such a way that the distinction

between political and legislative decisions can be upheld in all circumstances. It is unworthy of a Union that thinks of itself as democratic to make decisions that deeply affect the rights and obligations of citizens, e.g., in justice and home affairs, on the sole basis of political expedience.

The Nice treaty's allocation of votes, that sets three conditions for a decision (qualified majority of votes in the Council, majority of member states, the member states making up the qualified majority represent at least 62 percent of the Union's population) is not particularly clear and does not treat member states fairly. The committee continues to prefer a simple dual majority (majority of member states and majority of the Union's population). Of the alternatives proposed, this is the clearest and it is impartial between member states and groups of states.

The existing rotating presidency has in certain circumstances weakened the effectiveness of the Union. Particularly after enlargement, the rationalization occasionally advanced for rotation, that it allows member states to keep their priorities visible and that it increases the Union's visibility in individual member states, are no longer necessarily valid. On the other hand, of the available alternatives, rotation has been the best guarantee of the equality of member states, something that is important to small member states like Finland.

The committee has reservations about the notion of a detached presidency of the Council, as this in practice would add yet another independent actor to an already complex system. Also, a separate presidency would not necessarily increase the equality of member states.

The Committee considers it desirable that the presidency reverts to its original meaning of technical chairmanship. This could include abandoning separate presidency programmes and replacing them with multi-year programmes for each Council.

As stated previously (in statement SuVL 2/2002 vp), the Grand Committee is prepared to examine in an unprejudiced spirit all proposals concerning the presidency of the Council and its duration, as long as the proposals are based on the equality of member states. Proposals involving shared presidencies are also open for study, as long as they don't create excessive concentrations of power around the presidency. As a practical matter, the committee remarks that no material grounds require the rotating presidency to extend to all of the technical working groups assisting the Council. Any presidency arrangements must not lead to the creation of divisive blocs within the Union. Supporting the presidency should remain the task of member states not the Council secretariat.

The Commission

Concerning the composition of the Commission, the Grand Committee is prepared to examine any

proposals that increase the Commission's effectiveness and secure the equality of member states under all circumstances. The committee views as essential maintaining the Commission's independence and its original role as the originator of proposals to develop the Union.

The Grand Committee maintains its position (in statement SuVL 5/2001 vp) that the Commission's collegiality and the equality of its members are particularly important to small member states. A more emphatic role for the Commission President might erode this collegiality.

The Grand Committee does not wish to address the mode of electing the Commission and its President at this time.

The Congress of Peoples

The presidency of the Convention has proposed a Congress of Peoples to enhance cooperation between members of the European Parliament and national parliaments. The Congress is not necessarily the best way to enhance such cooperation. The proposal seems to be for a very large institution that meets infrequently and only for a few days at a time. The proposed Congress would not have any preparatory bodies similar to parliamentary committees. Because the Congress would have many members and sessions would be scarce, most delegates to the Congress would be unable even to speak. The Congress would thus become an institution that is only convened to applaud decisions that have already been made elsewhere. This would at any rate not increase the Union's democratic legitimacy.

To the extent that the proposed Congress is meant to address the question of national parliaments' involvement in EU decisions, the proposal is also a failure. Nowhere in Europe can national parliaments delegate their powers, except in accordance with constitutional principles concerning division of power, to an executive enjoying parliamentary confidence and to the judicial power. The proposed structure of the Congress would ensure that no parliament had any real influence on its decisions. The Grand Committee takes the position that common action by national parliaments must be based in arrangements agreed among the parliaments themselves. The committee makes reference to the reform of the European parliaments' organisation, COSAC, that is to be decided in January 2003.

The Grand Committee disapproves of the proposed Congress of Peoples.

Other institutions and consultative bodies

Changes have been proposed to the method of selecting members of the Court of Justice of the European Communities. In certain proposals, the Congress of Peoples would appoint the president

of the Court, who would go on to appoint the other members. In other proposals, the President of the Court and superior judges from some member states would form a committee to “sieve” member states’ candidates for judgeships. *The Grand Committee finds these proposals impossible to accept.*

The committee notes that the present Court’s greatest strength is that it assembles the foremost experts on the vastly different legal systems and traditions of all the member states. The Court deserves recognition for having created in the extreme pluralism of the Union a jurisprudence that all member states can recognise as authoritative. It is also thanks to the broad spectrum of schools and nationalities on the Bench that the Court’s decisions have invariably been possible to apply in practice in all member states.

The Grand Committee recalls the remark of the Law Committee (in report LaVM 16/2001) that there remain in the rules of procedure of the Court of Justice of the European Communities rules, concerning due process and the standing of parties, which would require parliamentary approval. The EU Treaty and the European Convention on Human Rights guarantee the principles of the rule of law and democratic governance. These principles require that the European Parliament and national parliaments have influence on the legal procedure applied by the Union’s courts.

As it is a principal task of the Convention to propose simplifications of the institutional system, the status of such institutions as the Committee of the Regions and the Economic and Social Committee should be examined without preconceptions. The Grand Committee finds it doubtful whether these institutions’ real contribution to the Union’s decisions is proportionate to their size and formal status.

For as long as Finland has been a member of the Union, accountancy questions have regularly developed into full-blown political crises. It is at the very least worth examining whether there are structural reasons for this situation.

The Union’s action in the world and the Union’s external representation

The Grand Committee and the Foreign Affairs Committee have in previous statements (SuVL 1/2002 vp, SuVL 4/2002 vp, UaVM 18/2001 vp) been receptive to extending the community method also in external relations. The committees are also flexible concerning external representation. Merging the external relations Commissioner with the High Representative and other arrangements to make external action more effective would be compatible with the committees’ earlier statements.

Other matters

Procedures for amending the constitutional treaty

The Grand Committee reiterates its opinion (in statement SuVL 4/2001 vp) that it will consider proposals concerning the amendment of treaty provisions on certain conditions. The member states must retain their right to approve fundamental changes of the treaty by consensus. Such changes must be subject to ratification in the member states. If the competence-competence, the right to determine the competence of the union, shifts away from the member states, the basic character of the Union will change.

The committee is tentatively prepared to consider a less cumbersome procedure for amending more technical treaty provisions. A final opinion can be expressed only when the nature of these technical treaty provisions is known.

Resignation and expulsion from the Union

Supplementing the treaty with provisions governing the expulsion and suspension of member states is corollary to the Union's identity as a community of values. The rise to power in a member state of a government that violates human rights or other fundamental values is an unlikely but serious menace, to which the Union must be able to respond.

The right of member states to resign from the Union of their own volition is a matter of international law. Adding to the treaty provisions concerning resignation is essential, as resignation also involves the dissolution of complex commercial and economic arrangements.

Statement

As its statement the Grand Committee respectfully requests,
that the Council of State takes due note of the above.

Helsinki, the 17th of January 2003

The following members participated in the conclusive deliberation of this matter:

Chairman Esko AHO /kesk
Vice-Chair Kimmo KILJUNEN /sd
Vice-Chair Kirsi PIHA /kok
Members

Eero AKAAN-PENTTILÄ /kok
Maria Kaisa AULA /kesk
Tuija BRAX /vihr
Mikko ELO /sd
Tuula HAATAINEN /sd
Jyri HÄKÄMIES /kok
Jouko JÄÄSKELÄINEN /kd
Anneli JÄÄTTEENMÄKI /kesk (partially)
Riitta KORHONEN /kok
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Johannes LEPPÄNEN /kesk (partially)
Leena LUHTANEN /sd
Håkan NORDMAN /r
Jussi RANTA /sd
Jouko SKINNARI /sd
Katja SYVÄRINEN /vas
Kari UOTILA /vas
Matti VANHANEN /kesk
Marjatta VEHKAOJA /sd

Substitute

Members

Timo KALLI /kesk (partially)
Leena RAUHALA /kd (partially)
Mirja RYYNÄNEN /kesk¹

The clerks of the committee were Peter Saramo and Helena Tuuri, counsel.

¹ Key to abbreviations: kd = Christian Democrat Party group, kesk = Centre Party group, kok = Conservative group, r = Swedish parliamentary group, sd = Social Democratic group, vas = Leftist group, vihr = Greens parliamentary group