

STATEMENT OF THE GRAND COMMITTEE

1/2003 vp

**The Government Report on Finland's positions
concerning questions arising at the Convention
on the future of Europe**

*To the Council of State**

PRELIMINARY REMARKS

On 17 January 2003, the Government delivered to the Eduskunta's Grand Committee a report in the sense of section 97 of the Constitution, on Finland's positions concerning questions arising at the Convention on the future of Europe (E 139/2002 vp). On the same day, the Committee approved a statement (SuVL 6/2002 vp) as the outgoing Eduskunta's normative instructions to the Government and to Finland's representatives at the Convention until the new Eduskunta that was elected in March 2003 issued a fresh statement.

The Grand Committee deems it necessary to define and confirm the most important Finnish positions relating to the Convention's mandate before the European Council of Thessaloniki, where the heads of state and governments of the Union's member states will first assess the results of the Convention and decide their future treatment.

This statement is based on reports received from the Government after the previous statement, on the reports of the Eduskunta's delegates to the Convention and on documents produced by the Convention secretariat and by other delegations. The documentation has been registered on the Eduskunta's public web server and the internet pages maintained by the Convention secretariat.

* For convenience, the Council of State is called "Government" in the body of the translation.

THE COMMITTEE'S OPINIONS

The Convention's assignment and nature

The conclusions of the Laeken European Council call for the assignment of the Convention to end in time for its results to be presented at the Thessaloniki European Council. According to the Laeken conclusions, the Convention shall prepare a final document that may contain either alternative proposals, indicating their respective levels of support, or recommendations, if consensus has been reached. The final document forms, with the results of discussions in the member states, the basis for deliberations at the forthcoming inter-governmental conference. Final decisions will be made by the inter-governmental conference.

The Convention's final session on 13 June 2003 adopted a draft treaty containing, *int. al.*, draft articles about the Union's institutional system. However, part III of the draft treaty, containing the Union's policies and activities, awaits deliberation at a further session of the Convention, in July. The task of the Thessaloniki European Council is to decide, firstly, the status of the Convention's results at the upcoming inter-governmental conference and secondly, whether to extend the Convention's mandate in respect of the remaining issues.

The above precise reading of the Laeken conclusions should guide the Thessaloniki European Council's conclusions regarding the Convention's results. The member states have appointed the Convention as but one – albeit important – forum preparing the inter-governmental council. There is no agreement that its final document should be binding on the IGC, only that it should be a basis for discussion together with the opinions emanating from the member states.

On the basis of recent experience, the convention method is, in itself, useful. Recognition is due the convention method's greater publicity and transparency, compared to IGCs, as well as its demonstrated ability to innovate in certain issues. The Convention delegates' independence from guidance by the states or institutions that nominated them was necessary for the Convention to achieve results. This independence also implies that the results of the Convention need to be submitted to scrutiny by a democratically accountable inter-governmental conference.

The Committee further notes that the Convention's final session did not achieve the consensus required by the Laeken conclusions. Valid criticism has been voiced about the Convention presidium's representativity and procedures. The Committee believes that public debate is necessary to assess how the Convention's results relate to the Laeken assignment, particularly as it relates to simplifying the Union's decision-making.

The Committee recalls that the Convention has no standing independent of the Laeken conclusions and the European Council. Thus any suggestions that the Convention or its presidium continue their work beyond the actual convention assignment should be rejected.

The Grand Committee has required, since the Convention was set up, that there must be sufficient time for public and parliamentary scrutiny of the Convention's results between the end of the Convention and the beginning of the inter-governmental conference. Although parliaments and governments should continue to interact during the inter-governmental conference, it is important that the national delegations to the IGC base their actions on democratically legitimised and sufficiently elaborated national positions.

The Committee requires that Finland's representatives at the Thessaloniki European Council uphold the requirement of the Laeken conclusions that the Convention's final document together with the results of debates in the member states shall be the point of departure for the deliberations of the inter-governmental conference. It shall be an absolute requirement that sufficient time is reserved for public debate and parliamentary scrutiny between the end of the Convention and the beginning of the IGC.

If the European Council decides to extend the mandate of the Convention, it

shall be a condition that its work is limited to the issues that were unresolved on 13 June 2003 and shall end within July 2003. The European Council should explicitly note that the Convention's assignment ends when it issues its proposal.

General principles

With reference to the Eduskunta's and the Grand Committee's earlier positions concerning the EU's institutions and future, the Committee considers that the Convention's proposals and the Government's positions should be examined in relation to certain questions of principle. Among these principles are keeping the competence-competence in the hands of the member states, respect for the equality of the member states, the primacy of the community method, maintaining the institutional balance and increasing the effectiveness, clarity and transparency of the Union's decision-making. The Convention's proposals should be assessed on how they correspond to the fundamental values of our political and legal culture.

The member states are the source of the Union's authority. This means that the member states must retain the power to set the limits of the Union's competence (the so-called competence-competence). The Union's activities must be based on explicit authority granted to the Union. The Union's institutions shall not be able to regulate the basis of their activities in a manner binding on the member states. The general directions of the Union's development must be retained by the holders of the competence-competence.

The principle of the equality of the member states must be respected. This implies the equality not only of the member states, but of their citizens and of businesses in the member states. Any structure that distorts the equality of the member states might lead to inequality between citizens and businesses. The equality of member states does not preclude decision-making procedures that take into account differences in member states' populations or solutions that reinforce the institutions. These solutions must, however, be based on the principle of equality.

The status of national languages in the Union has a direct bearing on the equality of citizens. Democratic values impose as a minimum requirement that laws with relevance to the rights and duties of citizens are published in equally authentic versions in the national languages of every member state that has not surrendered this right. Members of the European Parliament must be able to exercise their mandate in the language of their native state.

The Eduskunta has repeatedly stressed the primacy of the community method in developing the Union. The community method means decision-making that is based in common institutions and common procedures. The European Commission has a crucial role as guardian of the common interest, the special interests of all member state, large and small, and of common rules. Member states make joint decisions in the Council of Ministers, where even large member states may find themselves part of a minority. The elected European Parliament participates in legislative and budget decisions with full powers; it scrutinizes the work of the Commission and realizes the Union's transparency to the body politic. Union decisions are subject to the jurisdiction of the Community's Court of Justice.

It is essential to maintain the institutional balance. The Union's activities must be based on a division of powers and on scrutiny, with each institution dependent on the trust and loyal cooperation of the other institutions, *i.e.*, checks and balances. No institution can be raised above the others without a corresponding increase in accountability. The institutional balance does not, of course, preclude reinforcing the Community's institutions. Every institution can be strengthened and their functioning should be reinforced in parallel, so as to maintain the balance.

Every reform should enhance the effectiveness, coherence and transparency of the Union and its decision-making. This is a prerequisite for the Union's democratic legitimacy and scrutiny. New institutions should be viewed with disfavour.

The fundamental treaty of the Union should not infringe on the constitutional arrangements of member states. In relation to the Union, each member state is one, indivisible political entity that decides according to its own constitution how it formulates its opinions about community issues and how it is represented in the Union's institutions.

The draft Treaty establishing a Constitution of the European Union

The Grand Committee's opinions below are based on the Government reports, including the Government's opinions, delivered by 11 June 2003, and on the document approved by the Convention on 13 June 2003. In view of the time available, the Committee limits its comments to a few issues arising from the Convention. Otherwise, *the Committee agrees with the Government's opinions with the amendments and comments stated below.*

The Union's institutional structure

The Grand Committee has repeatedly stated that the Union's institutional structure should be examined with reference to the demonstrably successful community method. The Committee believes that the existing institutional system is functional and that the need for reform has more to do with improving its effectiveness than with changing its structure.

The European Council

The Committee has reservations about making the European Council one of the Union's institutions. In the draft treaty, the European Council has the same task as in the current treaty: to give necessary stimuli for the Union's development and to provide general political guidance. In the view of the Committee, no value is added to the Union's decision-making by adding to the institutional system the summits of heads of state and government, which are supposed to deal with broad policy. Such an arrangement may at least symbolically undermine the position of the member states as sources of the Union's authority and principals of its activities.

The Committee observes that the European Council's effectiveness has in recent years been diluted, when its meetings have been weighed down by questions that fall within the competence of the EU's institutions and have nothing to do with political leadership. This type of decision-making has also been very problematic for

transparency, as it means replacing normal, structured legislation with decisions taken behind closed doors in the European Council.

The Committee considers that the treaty should restore the European Council's original function as the provider of political stimuli and guidance. The best structure for this is the current one, from which the Union has departed: according to the letter of the current treaty, the European Council is a summit meeting of the heads of state or government of the member states, from which the Union derives its authority; it works outside and above the institutional structure.

The Convention's proposal that the European Council should not adopt legislation is insufficient. The treaty should forbid shifting to the European Council business within the remit of the Council of Ministers.

The Committee does not consider the Convention's proposals for the European Council fortunate in terms of increasing its effectiveness or maintaining the institutional balance.

The president of the European Council

The Committee has consistently examined proposals for the chairmanship of the European Council in terms of the value they add to the functioning of the institutional system and in terms of the institutional balance. The Committee continues to believe that the rotating presidency can not be held responsible for the difficulties experienced in the work of the European Council. On the contrary, experience shows that the European Council has been highly successful when deciding issues in which the member states have a genuine commonality of interest. Conversely, the European Council has been relatively feeble when the large member states were unwilling to commit themselves to community decisions.

The Committee points out that, if the president of the European Council may not be a member of an institution or of a member state government, he or she would be completely dependent on either the Council secretariat or on some secretariat that is created particularly. Experiences of the poor transparency and unclear

accountability of the current Council secretariat do not encourage approval of the proposed arrangement.

Despite its negative attitude, the Committee is nonetheless prepared to examine limited proposals for the presidency of the European Union as questions of method. So far, however, no convincing grounds have been advanced for the belief that an independent presidency would improve the effectiveness of the European Council nor has it been explained how the presidency could fail to disrupt the institutional balance.

The Committee requires that at the inter-governmental conference, the proposal for a president of the European Council is examined on the basis of publicly expressed justifications, related to strengthening the Union. If there is such justification, the proposal may be accepted by the unanimity of the member states.

The Council of Ministers

In the view of the Committee, the Council's task is to forge the views of the member states into community positions. For the Council to function, internal preparation and coordination in the member states must be so effective, that national representatives in each composition of the Council represent a single national position.

The Committee has repeatedly required that the Union must adopt laws affecting the rights and obligations of citizens publicly and according to the procedures of a legislative body. The current composition of the Council is appropriate for decisions that involve the reconciliation of member states' political views rather than legislation.

There is no cause to regulate the composition of the Council at the level of the treaty; it must be possible to regulate this matter pragmatically through rules of procedure. The Committee deems it important that the Council can meet in

compositions of specialised ministers, e.g., of employment and social affairs, when this is warranted by the importance of a particular subject.

The Committee agrees with the Prime Minister's statement (PI 1/2003 vp) that chairing the Council must be the task of the member states. The rotating presidency should be retained at least in those compositions of the Council and its subsidiary organs, where political reconciliation is the principal form of decision-making. Otherwise, the Committee is prepared to consider, for example, group presidencies and other reforms as questions of expedience.

The Committee considers that, at the inter-governmental conference, Finland should support such arrangements of the Council as guarantee the democratic legitimacy of the Union's legislation. This implies that the legislative body should function publicly and on the basis of binding rules of procedure that ensure the participation of national parliaments and scrutiny by civil society.

Qualified majority voting

In the view of the Committee, the Convention's proposal for a qualified majority (a majority of member states representing at least three fifths of the Union's population) is clearer than the current arrangement, but still insufficient. Finland should maintain its long-standing demand for a simple dual majority (a majority of member states and of the population), which is the most clear and coherent proposal made, and the most even-handed towards the member states.

It follows from what was said above that qualified majority voting is not appropriate to the nature of the European Council.

The European Commission

In the view of the Committee, the Convention's proposal for the composition of the Commission is unacceptable. There is no reason to view the Commission like a corporate board or a government authority, for which an optimum manning level can be determined beforehand, simply in terms of efficiency. Even after enlargement the number of Commissioners will not be significantly larger than the membership of some member state governments. A growing corps of commissioners may challenge the

leadership of the Commission's President, but the Committee does not believe that a larger Commission in itself is such a problem, that it justifies abandoning the undisputed advantages of the current structure.

The particular strength of the Commission is that the accumulated experience and social contacts of its members genuinely reflect the full variety of the Union. The Commission's ability to represent and to take into consideration the particular characteristics and needs of each member state is an important part of its legitimacy. The Committee would also not underestimate the political fact that, for citizens, the Commissioner of their own nationality is the best known representative of the Union, the one who gives the EU a human face.

In the view of the Committee, splitting the Commission into substantive and non-voting Commissioners from 2009 will weaken the institution by turning some of the Commissioners into simple representatives of their home countries with no responsibility for the Union's common interest.

The Committee notes with satisfaction the Convention's attempt to introduce an element of gender equality into the Commission's nomination procedure. The current state of European debate on equality would be better served by a wording that called for nominees to be of both sexes. *The Committee further considers that gender equality should be considered not only in the nomination, but also in the appointment of the Commission; equal representation of the sexes should be a treaty rule, departures from which would require public justification.*

In its previous statements, the Grand Committee was prepared to examine also such proposals for the Commission that did not involve a Commissioner from each member state, provided that the equality of member states was ensured. Such a proposal, involving a rotating right of nominating candidates to the Commission, has also been advanced at the Convention. Nonetheless, the Committee now considers, *int. al.*, in view of the creation of a permanent president of the European Council, that the primacy of the community method, including the independence of the Commission, and the equality of the member states can be maintained only if the Commission includes a national of each member state. The Committee notes that a situation, in which some

large member state is unrepresented in the Commission, could not fail to disrupt the institutional balance.

The Committee requires that Finland's representatives at the inter-governmental conference support the position that the Commission must include a voting member from each member state also after 2009.

The Foreign Minister

In the opinion of the Committee, the Convention's proposal for a foreign minister of the European Union corresponds to the Finnish view of the Union's institutional system. The Committee further notes that the proposed arrangement makes better provision for the foreign affairs representative's political accountability to the member states and the institutions than does the current structure of the High Representative.

The Committee rejects, however, the proposal that the vice president of the Commission who is appointed foreign minister would preside over the foreign affairs council, as this structure would upset the division of powers in the Union and the institutional balance.

The European Parliament

In the view of the Committee, there is no need to change the current basis for allocating seats in the European Parliament. The Committee rejects the Convention's proposal that seats be allocated according to regressive proportionality. Also, each member state should have at least six seats in the European Parliament, rather than the four proposed by the Convention.

The Union's legal instruments

The draft treaty's proposals concerning the nature of the union's legal instruments, their adoption and publication correspond to the idea of a introducing a hierarchy of community norms, which the Committee has expressed repeatedly since 1995.

Although favourable, the Committee notes that only practical experience will demonstrate the value of this reform.

In the view of the Committee, the reform of the Union's legal instruments should be understood as a universal requirement that those laws that have a general effect on the rights and obligations of citizens should be adopted by institutions, whose legitimacy is derived from the will of the people as expressed in elections; the Council of Ministers and the European Parliament are such institutions. Administrative decrees must derive their authority from a law, and must be subject to recall by the legislator.

Democracy in the Union

The Grand Committee is broadly satisfied with part VI of the draft treaty, which deals with democracy in the Union.

While agreeing with the Government that the principle of the equality of member states needs to be stated in the treaty, the Committee believes that this purpose would be better served if the principle of equality of member states and their status as the source of the Union's authority were inserted into part I of the treaty.

The Grand Committee is glad to share the Government's pleasure in the provisions for transparent decision-making in article 49. Transparent lawmaking and public access to documents are among those basic democratic values, whose absence have for too long undermined the democratic legitimacy of the Union.

The Committee underlines that implementing transparent lawmaking will require far-reaching reforms of rules of procedure and of practices. The introduction of transparency must not be pretence. The Committee notes that in democracies, transparent procedures that can be followed by the general public, and confidential preparation of decisions, are not mutually exclusive. Also the introduction of the rule of public access to documents requires the creation of new procedures, allowing citizens quick and effective redress when needed.

Reform of the Council makes it essential to regulate at the treaty level also the Councils preparatory working groups and the Committee of Permanent Representatives (*Coreper*). The working groups and *Coreper*, like the Council, have so far applied the procedural rules of diplomatic conferences. This involves the principle

that commitments made by a negotiator are binding on his or her principal. This procedure is effective and, when negotiations involve political reconciliation (foreign affairs, horizontal issues), usually also appropriate. When applied to actual lawmaking, however, the method causes serious questions of democratic legitimacy.

The principle that the Union's decision-making shall be transparent and subject to scrutiny requires that all working groups function on the responsibility of the Council compositions that established them. Correspondingly, national ministers are responsible to the Union, to other member states and, above all, to their national parliaments and citizens, for the actions of every working group member under their control. In certain cases, the Council secretariat has exercised political power by virtue of its specialist status. Hence, political accountability of the Council secretariat should be introduced, for instance through the intermediary of the presidency of the Council. It should be self-evident that an up to date list of every active working group and its members should be available to any interested person.

In the view of the Committee, the ancillary and preparatory organs of the Council exercise political power belonging to the Council. In order to enhance the democratic legitimacy of this use of power, the treaty should explicitly state that the Council as an institution includes its ancillary and preparatory organs, whose activities the Union shall regulate by binding legislation.

The Union's resources

The Grand Committee agrees with the Government's position that the proposed articles in part VII of the draft treaty, concerning resources, broadly conform to Finland's views. When discussing the system of own resources, Finland should stress the objective of shifting from a VAT-based to a GDP-based resource.

The Committee nonetheless considers that the proposal does not in itself solve the actual problem, which has to do with the poor transparency of the Union's resource system. Member states' permanent uncertainty about the ratio between contributions paid and disbursements received cause unnecessary political instability. An additional problem is the imbalance between certain member states' financial ability

and their contributions. It is not equitable that some member states can resort to a rebate to avoid their share of contributions.

The Committee draws particular attention to the article concerning the multi-year financial framework. This effectively determines the Union's maximum expenditure and thus regulates the division of competences between the Union and the member states. The Committee therefore agrees with the Government that the multi-year financial framework should be decided unanimously or at least by a so-called super-qualified majority.

The Committee agrees with the Government's rejection of the euro tax. The Committee notes, however, that all the implications of the euro tax have not yet been sufficiently explored. Among issues to be explored, which might argue for the euro tax, could be, for example its positive effect on the transparency and equity of the Union's resource system.

The protocol on national parliaments

The Grand Committee has had and continues to have reservations about any proposals aimed at regulating in detail the role of national parliaments by Union legislation. The Committee considers that such arrangements are neither necessary nor sufficient to ensure the position of national parliaments. They may, in certain circumstances, undermine the Finnish Eduskunta's constitutional role by creating a default value for parliamentary participation that is less than the current Finnish situation.

National parliaments influence national policies through their governments. The relationship between a national parliament and government are among those core issues of national sovereignty that should not be regulated at the European level. The Grand Committee assumes that national parliaments in every member state can participate in and supervise their country's European policies – if these parliaments choose to exercise their powers.

The Grand Committee recognises that, for reasons related to the political culture in most member states, many national parliaments view the protocol arrangement as necessary. Actual harm could ensue from the protocol only, if national political opinions were commonly to be replaced by disparate government and

parliamentary opinions. The Committee is therefore prepared to accept the arrangement in the protocol on the following conditions:

- The protocol must under no circumstances impair the Eduskunta's constitutional powers or its right to receive information;
- the Government, acting subject to the confidence of the Eduskunta, shall continue to be Finland's only representative in the Union's institutions;
- the protocol's provisions concerning the institutions' duty to provide information and documents to national parliaments shall not impair the Government's duties or the Eduskunta's rights under sections 96 and 97 of the Constitution;
- the Government shall at the inter-governmental conference in appropriate form indicate the primacy of the Finnish Constitution in regulating relations between the Government and the Eduskunta.

If the protocol is to have any real effect on the position of national parliaments, it should state, more clearly than now, that national parliaments are one pillar of the Union's democratic legitimacy, the European Parliament being the other, and that national parliaments are, in the constitutions of all member states, the supreme holders of all public power. Without intruding on national constitutional arrangements, the protocol could note the current consensus on minimal requirements arising from the role of national parliaments. Such minimum standards were approved by the national parliaments' European committees and representatives of the European Parliament at COSAC in December 2002 (the so-called Copenhagen Parliamentary Guidelines).

The Grand Committee has serious reservations about the notion that national parliaments should appear as independent actors in relation to the Union's institutions. In the Finnish constitutional context, this would be both strange and pointless. If it were to observe a breach of the principle of subsidiarity or proportionality, the Eduskunta would naturally instruct the Government to take appropriate action in the Council, just as it directs the Government on any substantive issue.

The Grand Committee considers that the protocol should be complemented by a provision enabling national parliaments to cooperate also without the participation of the European Parliament, when this is desirable. This may occur, for example, when national parliaments address a joint position to the Union's institutions, of which the European Parliament is one.

The protocol on subsidiarity and proportionality

The emphasis put on the subsidiarity principle in discussions about the Union's decision-making has long had more to do with its importance in theory than with any substantive significance. The Committee need provide no further comment than to refer to the valid remark of the Åland Legislature, that it is entitled to be treated as a legislative body. This can, however, be accomplished by domestic arrangements.

The Union's policies

In the draft treaty provided by the Convention's presidium on 27 May 2003, part III devotes 339 articles, and some protocols and attachments, to the Union's policies and activities. The Government's EU ministerial committee has adopted its opinions of the proposal on 11 September 2003.

Most of the text is a restatement of the Treaty of Nice. However, the presidium draft also proposes some important changes to the Union's policies. The presidium proposes, for example, that qualified majority voting is introduced in environmental and energy taxation and social security. New legal bases are proposed for, *int. al.*, sport, space, energy, rescue services and intellectual property. The draft proposes to transfer the common external trade policy in its entirety to the community competence; this would include the sectors excepted at Nice (culture and audiovisual services, educational services and social and medical services).

Some of the proposals conform with the Eduskunta's previous positions, *e.g.*, the proposal to apply QMV to environmental taxes. Others are at variance with the Eduskunta's earlier positions, *e.g.*, transferring trade in cultural, social and

medical services to the sole competence of the Community. Some proposals have not previously been examined in depth.

The Committee does not consider it practical to adopt detailed positions on part III at this stage. The Committee recalls that it dealt with policies and their foundations in connection with the inter-governmental conferences leading to the Amsterdam and Nice treaties and with the WTO process. The Committee's earlier opinions can generally be thought of as still valid.

The Committee underlines that care should be taken that basic public services, such as cultural, education, social and health services remain in the national competence in the new constitutional treaty. Similarly, public support for ventures of public utility must remain permissible. Also the principle that viable agriculture must be possible throughout the European Union should be reflected in the treaty. It is also important to ensure that any solutions concerning the Union's policies do not disrupt the balance of the Union's values and objectives as stated in the beginning of the treaty.

The Committee will adopt detailed positions on the various policies in connection with the IGC process.

The Committee requires that the Government provides, before the onset of the inter-governmental conference, a statement of the general criteria by which Finland assesses the policies enumerated in part III of the draft treaty, both as regards the utility of regulating them in the treaty and as regards the decision-making procedures to be applied. The statement may either be included in the Government's general statement prior to the inter-governmental conference or delivered separately.

The Convention method

The requirement in the draft treaty, that convening a Convention shall be compulsory before any amendment of the treaty, gives rise to some preliminary remarks about the Convention method. On the basis of the experience from two Conventions, the method is useful. The Convention's publicity and transparency are worth retaining. The Convention's ability to innovate may largely be due to its independence and that of its members. However, the convention method also has a serious problem of democratic legitimacy; its members are sufficiently representative of and accountable to the states or institutions that they nominally represent if the Convention is a preparatory body, but not if the Convention was to actually make decisions. The independence of the delegates to the Convention implies that its results need to be submitted to a democratically accountable body, *i.e.*, an inter-governmental conference.

Because of Finland's advanced system of parliamentary scrutiny, the work of the Convention is less clearly rooted in the popular will, as expressed in elections, than is a traditional inter-governmental conference. It follows that the Eduskunta cannot easily accept the Convention as anything more than a helpful preparatory body.

The Grand Committee agrees with the Government's negative view of making the convention method a treaty obligation. Even if experiences of the convention method are favourable, this does not justify binding to a particular composition and procedure a preparatory process that may occur decades from now.

The Committee considers that the treaty's provisions on the procedure for amendments should enable IGCs to be prepared by different kinds of procedure that are appropriate at the time and allow for the greatest possible transparency without, however, committing the member states in advance to one particular preparatory body and procedure.

Statement

The Grand Committee submits,

*that the Council of State shall take the above
into consideration.*

The names of the 23 members who approved this statement are in the Finnish original.