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BRIEFING

ON

THE LEGAL PERSONALITY

AND EXTERNAL REPRESENTATION OF THE UNION

These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice
- 2 The Commission
- 3 The Court of Auditors, ESC and COR
- 4 Differentiated integration.
- 5 The common foreign and security policy
- 6 The role of the national parliaments
- 7 The hierarchy of Community acts.
- 8 Codecision procedure
- 9 CJHA
- 10 European citizenship
- 11 WEU, security and defence
- 12 Public services
- 13 Social policy
- 14 The European Parliament
- 15 The European Council
- 16 The Council of the European Union
- 17 The budget and the IGC
- 18 The IGC and transparency
- 19 Subsidiarity and the allocation of powers
- 20 The legal personality and external representation of the Union

**BRIEFING
ON
THE LEGAL PERSONALITY
AND EXTERNAL REPRESENTATION OF THE UNION**

1. SUMMARY

The European Union does not at present enjoy legal personality.

Although some institutions and/or Member States are aware of the problems raised by the absence of legal personality for the Union, the question has still not been debated as a major issue.

It in fact opens the way to a host of other questions: will there necessarily have to be communitarization of the second and third pillars before the Union can enjoy legal personality? What institution will be best placed to commit the legal personality of the Union, etc?

2. POSITIONS TAKEN AND VIEWS EXPRESSED

COUNCIL

In Chapter V of its report on the functioning of the Treaty on European Union, the Council states:

- The Council, the Commission and the Member States will have to resolve the problem of the Union's representation in the framework of the new World Trade Organization and vis-à-vis third countries (para. 51); and
- Since the TEU did not explicitly assign legal personality to the Union, it must act through the Community and/or its Member States, particularly as regards legal commitments to the outside world. This has given rise to difficulties for which certain solutions are being considered (para. 69).

COMMISSION

In its report of 10 May 1995 on the functioning of the Treaty of European Union, the Commission notes a deficiency in this connection. This can be interpreted to mean that the Commission is in favour of a legal personality for the Union.

PARLIAMENT

In its resolution of 17 May 1995 on the functioning of the Treaty of European Union with a view to the 1996 IGC, the EP asserts that the European Union should be given legal personality in its own right (para. 14 (ii)).

THINK TANK: Interim report by the chairman, Mr Westendorp (1.9.1995)

Item No 6:

- The report states that a number of Members were in favour of giving the European Union international legal personality. This was proposed as a basis for further consideration.

MEMBER STATES

The following have expressed their views very clearly:

- Italy:

In its communication of 23 May 1995 on the IGC the Italian Government considered the following absolutely necessary to meet the challenge of security:

- the Union to be given an international identity as a matter of priority, and, as regards the institutional structure of the second pillar:
- to have at its disposal a permanent body empowered to represent the European Union in matters of foreign policy.

- Luxembourg:

The government (memorandum of 30 June 1995 on the IGC) proposes (in the chapter on a more effective foreign and security policy) that appropriate solutions should be sought for endowing the Union with a legal personality and strengthening its ability to represent itself legally with the outside world.

Among other matters relating to the need to deepen the Union it proposes as a first priority that the European Union should be given the same legal personality as at present enjoyed by the Community, the ECSC and Euratom.

The following positions could also be interpreted as being in favour of giving the European Union legal personality, albeit less explicitly:

- Germany: (discussion paper of 13 June 1995)

Strengthening capability for action.

- **Austria:** (Austrian Government report)

The government wants the ability to act in relation to CFSP and internal and legal affairs to be strengthened.

In the chapter of the Austrian Government's document devoted to institutional matters, the absence of a legal capacity for the Union - as distinct from the Community of the first pillar - is recognized.

- **Netherlands:** (report by the Foreign Affairs Minister on institutional reform of the Union - 12 July 1995)

In the section on simplifying the text of the TEU the report recognizes that the European edifice as derived from the Treaty is a single Union provided with three pillars, the first of which is in turn subdivided into three Communities: the EC, Euratom and the ECSC. It points out that these Communities enjoy legal personality, whereas the Union does not, and that this has caused widespread confusion.

It is reasonable to conclude that the Netherlands Government would - in a concern for simplification - want the Union to be given legal personality.

- **Portugal:** (position of the Prime Minister - 4 June 1995)

A single institutional framework for all areas of Community activity, and in particular for the three pillars of the EU.

3. **OTHER VIEWS EXPRESSED**

3.1. NATIONAL CASE LAW

Of particular relevance is the ruling of 12.10.1993 of the Federal German Constitutional Court on constitutional proceedings against the Treaty on European Union, which states that:

. . . the treaty of Union nowhere points to any shared resolve of the contracting parties to institute, with the Union, an independent legal subject that would be endowed with powers in its own right. In the opinion of the Federal Government, the Union does not possess, either in relation to the European Communities or to the Member States, a distinct legal personality.

3.2. LEGAL THEORY

German legal theory is near-unanimously of the same opinion.

French and English legal theory also concur in considering that the Union has no legal personality.

Consequently:

- the Union may not act in its own right; it can act only through the Community institutions;
- the Union has no budget of its own; it depends on that of the Community (see in particular Article J 11 (2) of the TEU);
- at international level, the Union uses Community funds to secure positions or actions adopted (see Article 228a of the EC Treaty).

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