



PARLIAMENT OF FINLAND

Unofficial translation

STATEMENT OF THE GRAND COMMITTEE

3/2010

**Report of the Council of State on the proposed
framework agreement of the European
Parliament and European Commission**

To the Council of State

INTRODUCTION

Preliminary

The Grand Committee of Parliament received on 10 March 2010 the Council of State¹'s report on the proposed framework agreement between the European Parliament and the European Commission (report E 5/2010 vp). The report was issued in response to a request made by the Grand Committee in accordance with article 97, paragraph 1 of the Constitution on 17 February 2010.

Preparation by sub-committee

This statement was prepared by the Grand Committee's working sub-committee.

THE GOVERNMENT'S REPORT

The proposal

The European Parliament voted on appointing the European Commission led by José Manuel Barroso on 9 February 2010. Immediately before this vote, the EP approved a resolution on relations between the European Parliament and the Commission (B7-0091/2010). In this resolution, the EP calls for the revision of the 2006 framework agreement between the European Parliament and the Commission "taking the

¹ The Finnish government is officially known as the "Council of State". For convenience, the unofficial appellation "Government" will be used in the body of the translation.

commitments given by the President-elect of the Commission, Mr Barroso, as a starting point”. No draft agreement is yet available, but negotiations based on the EP resolution are being pursued at a rapid pace. The agreement is meant to be approved in May or June of 2010.

In the resolution, the European Parliament specifies in detail those commitments by the Commission President that it wants included in the framework agreement. The agreement would significantly increase the Commission’s responsibility to the EP compared to the current situation.

President Barroso proposed at the European Parliament session on 9 February 2010 that the framework agreement should be extended also to encompass the Council. Representatives of the European Parliament have made the same proposal. This proposal has been discussed by the Committee of Permanent Representatives, *Coreper*.

The position of the Government

The report of the Government deals primarily with the issue of what attitude the EU Council should adopt in respect of the inter-institutional agreement. The Government has reservations about several of the European Parliament’s demands and observes that the Council’s legal service in its preliminary statement also considers that these demands are questionable in view of the EU’s basic treaties. The Government has reservations about the Council committing itself to the agreement for these reasons and also because it is doubtful that the Council would have any influence on the contents of the agreement.

POSITIONS OF THE GRAND COMMITTEE

General remarks

The Lisbon Treaty has been in force for four months at the time of writing. The Treaty was meant to determine the relationship between the EU member states and the Institutions after some twenty years of turbulence.

The Grand Committee brings to mind the legal nature of the European Union with a quote from the Constitution Committee’s opinion on the constitutional treaty (PeVL 9/2006 vp), recalling that the Lisbon Treaty expunged the “federal” elements and procedures of the constitutional treaty: “*The Constitutional Treaty does not change the fundamental nature of the Union. The Union remains a community of the member states and citizens, the founding document of which is legally a treaty between the member states. The Union’s competence is limited and determined in accordance with the so-called principle of delegated competence. The Union functions within the limits of the competence granted to it*”

by the member states through the Constitutional Treaty and in pursuit of the objectives set in the Treaty. All other competence belongs to the member states.”

The European Parliament resolution that lies behind the proposed framework agreement now under discussion gives the impression that the European Parliament sees the framework agreement as the recompense that President Barroso has committed himself to give as consideration for the EP's vote on appointing the Commission. The objectives stated in the EP resolution would, if realised, increase the powers of the European Parliament, compared to the results of the Lisbon Treaty.

The Grand Committee considers that the proposed framework agreement should be examined above all in terms of the European Union's democratic legitimacy. It is part of the Union's democratic legitimacy that the relations between and powers of the member states and Institutions can be changed only by amending the Treaties. An agreement between Institutions can therefore be at most an aid to implementing the Treaties, it can not create a new legal state of affairs.

Democracy also includes respect for legality. The European Parliament's democratic legitimacy is undisputable when it deals with the matters entrusted to the EP by the Treaties. When it tries to amend its competence unilaterally, without amending the Treaties, the EP is no longer performing the task for which citizens gave a mandate at the polls

The Grand Committee deplores that the European Parliament would bundle tasks entrusted to it by the Treaties - as now the appointment of the Commission - with unrelated issues having to do with the EP's ambitions in power politics. It is the duty of every democratic parliament, when faced with the election of persons or deciding the content of the laws, to make its decision transparently and for reasons that are publicly known and relevant to the issue at hand. A decision that is ultimately the result of a decision in a closed room to bundle unrelated issues is difficult to reconcile with the role of a parliament.

What was said above is linked to the European Parliament's habit, perceptible for a long time, of dealing with issues within its competence primarily in terms of increasing the EP's powers. The Grand Committee sees as a particularly worrying example of this the fact that already the bulk of EU legislation is agreed through so-called first reading agreements, *i.e.*, the content of legislation is decided by non-public negotiation between a few representatives of the EP and Council. This means that, in practice for most legislation, the European Parliament has abandoned a core task of a parliament, the thorough and public scrutiny of proposals and the arguments for and against them. Instead, laws are the subject of deals among a small group of persons nominally representing the EP and Council; the legitimacy of their mandate and their accountability are obscure. In the case of laws made in this way,

citizens should ask whether the European Parliament's contribution has added to or diminished the Union's democratic legitimacy.

The framework agreement

According to article 295 of the Treaty on the Functioning of the European Union, the European Parliament, the Commission and the Council may enter into mutual agreements about their cooperation and these agreements may have legal effect. According to the report of the Government, it would appear that using article 295 as the legal basis for the framework agreement would require that all three Institutions are parties to the agreement. The agreements between the European Parliament and the Commission before the Lisbon Treaty had no explicit legal basis.

The Committee agrees with the Government's assessment that it would not be useful for the Council to commit itself to the framework agreement unless it has a genuine opportunity to influence the contents of the agreement.

The Committee considers that, as a matter of legality, Finland should insist in the Council on clarification of whether a legally effective agreement between two Institutions is allowed by the Lisbon Treaty. If the Treaty does not prevent this, Finland may consider it possible that inter-institutional agreements are used to resolve the practical issues of implementing the Lisbon Treaty.

The Committee agrees with the Council's legal service that the Council should take action in the Court of Justice if the agreement in its final form infringes on the Treaties' institutional balance. Given the political importance of this question, the Committee adds that any uncertainty about the agreement's compatibility with the Treaties would already be sufficient reason to ask the Court to make a clarifying interpretation.

The European Parliament's claims

The European Parliament resolution alleges that the EP and the Commission have a special responsibility for the success of the so-called community method and that this would require an especially close relationship between the European Parliament and the Commission. The Grand Committee recalls that the nature of the community method, which is appreciated in Finland, too, includes reconciliation of national and community interests and, as an indispensable component, the Commission's independence of both the member states and of the other Institutions.

Finland has reason to state publicly that the member state governments represented in the Council have at least as much democratic legitimacy as the European Parliament; national governments

function subject to the confidence of freely elected national parliaments. The primary tool for national parliaments, including the Eduskunta, to influence decisions in the EU is participation in formulating the national positions that governments represent in the Council. It is impossible to accept, therefore, the EP's claim to a prioritised relationship with the Commission and any talk of an alliance of the Commission and EP against the Council.

As for the resolution's claim to equal treatment for the European Parliament and the Council, it should be noted that according to the Treaties, the parliament and Council are equals only in the issues in which the Treaties explicitly makes them equal, such as budgetary issues and a number of legislative issues.

The European Parliament's legislative initiatives

The European Parliament resolution demands that the Commission should, within precise time limits, give explanations to the EP if it does not come forward with a legislative proposal that has been requested by the EP according to art. 255 TFEU.

The Grand Committee observes that art. 255 TFEU explicitly allows the Commission to not make legislative proposals requested by the European Parliament. The Commission's monopoly of legislative initiative is the starting point of the Treaties. The European Parliament's claim is likely to limit the Commission's freedom of action and thereby change the institutional balance, and is unacceptable.

Citizens' initiatives

According to art. 11 of the EU Treaty, a citizens' initiative is a proposal by one million people to the Commission that it makes a legislative proposal. The European Parliament's demand that the Commission commit itself to close and early cooperation with the EP on citizens' initiatives lacks any basis in the Treaties. The Grand Committee considers that the signatories of citizens' initiatives must be confident that if the initiative leads to a legislative proposal, it will enjoy equal treatment with other proposals. This includes policy formulation in the member states, which presupposes a Council procedure. The Committee further observes that the Commission recently proposed a regulation on the citizens' initiative; the union's legislative procedure would be the correct opportunity for the EP to make its claims. This issue cannot be lawfully decided by just two Institutions.

Adaptation of the Better Law-Making agreement

The European Parliament's demand that the Commission agrees with the EP on key changes to the Agreement (between the Commission, Council and European Parliament) on Better Law-Making in

preparation for future negotiations with the Council on adapting the agreement to the Lisbon Treaty is based on a manifestly incorrect understanding of the EU's institutional structure. If successful, the EP's demand would destroy the Commission's independence and credibility. The EP's detailed demands concerning the content of the Better Law-Making Agreement deal with issues for which the Commission has been guaranteed independent discretion.

Monitoring the national implementation of directives

The European Parliament has for years sought to assume a role in monitoring the implementation of directives. The Eduskunta observes that the EP has sent to national parliaments questionnaires about the national implementation of various directives and invitations to meetings on this theme. The Treaties make the Commission responsible for upholding the Union's legislation, including monitoring the implementation of directives; in case of infringement the Commission may also call upon the Court of Justice. The European Parliament's competence in this field is at best indirect and linked to citizens' petitions or the overall scrutiny of the Commission's effectiveness. The EP's activity in relation to member states and their parliaments on the subject of implementing directives must be considered improper and the Eduskunta has thus usually ignored this kind of correspondence from the EP.

The Grand Committee considers that, even though the European Parliament's demands concerning the implementation of directives lack legitimacy, one should not reject out of hand reasonable proposals to increase transparency. The objective should be transparency for the benefit of all citizens not just an obligation to inform the parliament. The Committee observes that the Commission already maintains a register of how directives are implemented in the member states; the register is on the internet for anybody to see. The register needs to be improved. The Committee would welcome any action by the Commission to improve the transparency of its supervisory work; if possible, this should also concern infringement procedures.

The Grand Committee considers that Finland should continue to oppose the introduction, originally proposed by the Commission, of compulsory correlation tables for the transposition of directives, as long as such tables cannot be realised without infringing on member states' treaty-based freedom to choose the means of transposing directives.

The Committee points out that directives invariably contain time limits for transposition. The procedure for adopting directives is laid down in the Treaties. The general two-year time limit for transposition demanded in the EP's resolution encroaches on a subject that can only be regulated in the legislative procedure. Including a provision of this nature in the framework agreement would not be lawful.

The status of individual Commissioners

The Treaties give the member states, the European Council and the European Parliament precisely defined roles in appointing and dismissing the Commission; they also promise the Commission's President autonomy in leading the Commission. The demands in the EP's resolution concerning the Rules of Procedure and Code of Conduct for Commissioners, individual Commissioner's staying in office, and appointment of new Commissioners, and the reassignment of portfolios in the Commission would, if accepted, mean a serious breach of the institutional balance of the Treaties. They would also weaken the community method by limiting the Commission's independence. The European Parliament's demands cannot be accepted.

Demands related to the External Action Service

The European Parliament's resolution demands that "the Commission will support Parliament in the forthcoming negotiations on the European External Action Service (EEAS) with a view to guaranteeing the full accountability of that service, including a transparent procedure for the nomination of special representatives and ambassadors". The Grand Committee recalls that the status of the EEAS is defined in art. 27 TEU. The EEAS assists the High Representative. Its organisation and operations are decided in a Council decision after hearing the European Parliament and after approval by the European Commission. The European Parliament's demand contradicts the Treaty.

The Grand Committee finds problematic the European Parliament's demand that the EEAS should be "fully accountable", presumably to the European Parliament. When the External Action Service carries out duties related to the Common Foreign and Security Policy, it assists the High Representative in preparing or executing decisions that are within the exclusive competence of the European Council or the Council. The Treaties thus provide no legal basis for "accountability" to the EP in CFSP matters.

When the EEAS is dealing with non-CFSP external relations tasks, the European Parliament may have a justified interest to receive information concerning, for example, the execution of development cooperation policies or the negotiation of treaties. In addition, the EP naturally is entitled to information needed for the parliament to exercise its budgetary powers. The Grand Committee points out that the European Parliament's rights in these issues have been agreed in the Lisbon Treaty.

The Grand Committee considers that the European Parliament's justified demands for transparency can and should be accommodated in the Council decision on the organisation and operations of the EEAS; according to the Treaties, the EP will be heard about the contents of this decision..

EP hearings of nominee executive directors of regulatory agencies

The Grand Committee finds problematic the European Parliament's demand to hear nominees for the post of executive director of regulatory agencies in EP committees. The Grand Committee agrees that it is desirable to increase the transparency of the appointment procedure for executive directors of agencies that wield much power and spend a lot of money. The Grand Committee calls to mind, however, that the existence and the recruitment procedures of every EU agency are defined in a regulation that has been approved jointly by the European Parliament and the member states assembled in the Council. If recruitment procedures are to be changed, this should happen in a lawful manner, by amending the regulations, not by the *Diktat* of a single Institution. Only thus can we ensure that while increasing transparency, we safeguard the objective assessment of candidates' professional qualifications, which has been the strong point of Commission recruitment procedures. The Grand Committee is in favour of enabling public hearings of candidates for executive directorships of regulatory agencies through EU regulations; Finland may propose this for the Commission's consideration.

Commission programming

The Grand Committee finds problematic the demand in the European Parliament resolution that the Commission should present its key initiatives first to the parliament's plenary session and only afterwards to the public. It should be self-evident that, in democracies, important initiatives become public the moment they have been decided. The change demanded by the parliament would thus not increase transparency and could lead to misperceptions about the Commission's status as an independent actor.

The Grand Committee expects that the European Parliament's other demands concerning programming be thoroughly assessed in terms of their effect on the Commission's independence, which must be non-negotiable.

Statement

As its statement, the Grand Committee proposes,

that the Council of State take the above into consideration.

Helsinki, 23 April 2010

The following members took part in the approval of this statement:

chair Erkki Tuomioja /sd²

² Party group abbreviations: sd = Social Democratic Party; kok= National Coalition Party; kesk= Finnish Centre; vihr = Greens; ps = True Finns Party; vas = Left Alliance; r = Swedish People's Party; kd = Christian Democrats

vice-chair Eero Akaan-Penttilä /kok
vice-chair Antti Kaikkonen /kesk
members: Sirpa Asko-Seljavaara /kok
Timo Juurikkala /vihr
Heli Järvinen /vihr
Pietari Jääskeläinen /ps
Kyösti Karjula /kesk
Ulla Karvo /kok
Timo Kaunisto /kesk
Matti Kauppila /vas
Kimmo Kiljunen /sd
Miapetra Kumpula-Natri /sd
Markku Laukkanen /kesk
Håkan Nordman /r
Tuija Nurmi /kok
Sari Palm /kd
Kari Rajamäki /sd
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Sanna Perkiö /kok
Sari Sarkomaa /kok
Tapani Tölli /kesk.

Committee counsel Peter Saramo served as clerk.