



PARLIAMENT OF FINLAND

Unofficial translation

STATEMENT OF THE GRAND COMMITTEE

8/2010

**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 State's¹ report on the proposed framework agreement between the European Parliament and the European Commission (report E 5/2010 vp). The Grand Committee issued a statement in response to the report on 23 April 2010 (SuVL 3/2010 vp).

The Government provided supplementary reports on 13 July 2010 (1. VNK 13.07.2010) and 15 September 2010 (2. VNK 15.09.2010). The supplementary reports concerned the outcome of negotiations on the framework agreement and the EU Council's legal service's assessment of the agreement.

This statement concerns the Government's supplementary reports.

Preparation by sub-committee

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

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.

Expert testimony

The working sub-committee heard the expert testimony of:

- Joni Heliskoski, Head of Unit, Ministry for Foreign Affairs

THE GOVERNMENT'S REPORT

The Framework Agreement

Negotiators representing the European Parliament and the Commission concluded in June 2010 discussions on the contents of a framework agreement to regulate cooperation between the two institutions. The Commission has already authorised Chairman Barroso to sign the agreement on its behalf. The agreement will enter into force when it has been signed, after conclusion of the necessary formalities at the European Parliament's plenary session in October 2010.

The position of the Government

The Government states in its supplementary report of 13 July 2010 that the framework agreement affects the institutional balance and gives the European Parliament powers that are not foreseen in the treaties. The framework agreement thus does not fully respect the spirit of the Lisbon Treaty. Although the Government welcomes the Commission's and European Parliament's desire to enhance their cooperation, any inter-institutional agreement should aim to promote the practical implementation of the fundamental treaties, and should fully respect the letter and spirit of the treaties. Enhanced cooperation between the European Parliament and the Commission, however desirable, cannot be at the expense of a third institution, the Council, in violation of the fundamental treaties.

The Government's second supplementary report (15 September 2010) says in effect that it would not be opportune at this stage to initiate proceedings in the EU Court of Justice to clarify the legality of the framework agreement. However, in the assessment of the EU Council's legal service, the legality of the framework agreement is questionable.

POSITIONS OF THE GRAND COMMITTEE

General remarks

The Grand Committee agrees with the Government's position, making a few additional remarks on the impact of the Commission's and European Parliament's actions on the institutional balance and the status of the Council. The Committee also makes some observations concerning public access to documents related to this issue.

The Institutional Balance

The Grand Committee reiterates its assessment of 23 April 2010 (SuVL 3/2010 vp) that the framework agreement changes the institutional balance created by the fundamental treaties.

The Grand Committee considers that the framework agreement increases the powers of the European Parliament in a manner not envisaged in the fundamental treaties, in respect of, e.g., infringement procedures and treaty negotiations. The agreement correspondingly weakens the Commission's and its chairperson's freedom of action, monopoly of initiative and independence in relation to the European Parliament. The notions underlying the framework agreement; of a particularly close relationship between the European Parliament and the Commission – a new special partnership in the words of the framework agreement – and of full equality of treatment of the Council and the European Parliament; cannot be inferred from the treaties.

The Grand Committee finds this development worrying. It should be recalled that respect for the Union's fundamental treaties is the cornerstone of the Union's legitimacy.

The Grand Committee underlines that the competences of the institutions have been bindingly defined in the treaties. The principle of institutional balance implies a requirement that each institution exercises its competences within the bounds of the treaties and with respect for the competences of the other institutions. No institution can infringe on the treaty-based competences of other institutions. The Grand Committee notes that this inflexibility of the institutional system serves to ensure that the Union acts only within the limits to which the Member States have agreed when ratifying the fundamental treaties. No institution can alter this carefully constructed inflexibility unilaterally or through an inter-institutional agreement without exceeding its competences and infringing on the treaties.

Politically, this is also about respecting the wishes of citizens. The Lisbon Treaty was approved following an exceptionally vigorous public debate after an earlier draft treaty had been rejected by referenda in two Member States. The Lisbon Treaty was meant to address citizens' concerns that the European institutions could acquire additional powers silently and without the express consent of Member States. This is why the institutions have to take competence issues seriously.

The Grand Committee requires that the Government acts so that the entry into force of the framework agreement does not *de facto* jeopardise the Council's institutional interests and status in the EU. The Council's disapproval of the framework agreement and its strong doubts about the agreement's legality should be expressed clearly enough to prevent any loss of legal standing. The Grand Committee considers that Finland may support legal action, if this option comes up in the Council. The Grand

Committee further observes that it will assess separately what action it may be opportune for Finland to take, once the Government has reported on the outcome of deliberations in the Council. The Grand Committee emphasises that the application of the framework agreement must be subject to continuing legal scrutiny.

The position of the Council

The Grand Committee reckons that the framework agreement can be understood as the European Parliament's and the Commission's response to allegations of increased inter-governmental decision-making and of a seeping of power to the European Council. The European Parliament has criticised the chairman of the Commission for letting the Commission lose its grip as the engine of the community method, effectively weakening also the position of the European Parliament. The framework agreement can be seen as part of an ongoing power struggle between all the main actors mentioned in the Lisbon Treaty: the Commission, the Council, the Chairman of the European Council, the High Representative and the European Parliament.

The Grand Committee reiterates its previous statement (SuVL 3/2010 vp) that it is impossible to accept 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. It follows that it has become increasingly important to ensure that Member States enjoy equal treatment and that the Council can serve as an adequate counterbalance to the strengthened axis of the EP and Commission. Particular attention should be paid to the coordination, consistency and continuity of work in the Council. In the opinion of the Grand Committee, the General Affairs Council has a crucial role in this respect and it should be given the opportunity to make full use of its powers under the Lisbon Treaty.

Public Access to Documents

The Grand Committee has in its possession the Council's legal service's opinion on the legality of the framework agreement (document 12964/10 LIMITE JUR 348 INST 302), which was attached to the Government's supplementary report of 15 September 2010. The Council's legal service considers this document to contain legal advice which is protected under Article 4(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents and which the Council has not released to the public. Because of this, the Government asked the Grand Committee to issue a secrecy order on the government report and Council document, as foreseen in Section 50.3 of the Constitution.

The Grand Committee approved the request and issued a secrecy order on 15 September 2010. The Grand Committee regrets, however, that the interpretation given to the transparency regulation means that the opinion of the Council's legal service cannot be made available to the public.

The Grand Committee notes that the opinion of the legal service contains a clear juridical opinion to the effect that the framework agreement is possibly contrary to the fundamental treaties and the secondary legislation of the European Union. It is obvious that this document is of great relevance to the public's ability to evaluate the EU's democratic legitimacy. The Grand Committee requires that the Government takes all necessary action to ensure that the central observations in the legal service's opinion are made public, as was proposed in the Government's report.

Statement

As its statement, the Grand Committee offers,

that it agrees with the position of the Council of State.

Helsinki, 24 September 2010

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

chair	Erkki Tuomioja /sd ²
vice-chair	Eero Akaan-Penttilä /kok
vice-chair	Antti Kaikkonen /kesk
members:	Sirpa Asko-Seljavaara /kok
	Timo Juurikkala /vihr
	Heli Järvinen /vihr
	Ulla Karvo /kok
	Timo Kaunisto /kesk
	Matti Kauppila /vas
	Esko Kiviranta /kesk
	Miapetra Kumpula-Natri /sd (partly)
	Markku Laukkanen /kesk (partly)
	Tuija Nurmi /kok
	Sari Palm /kd
	Kari Rajamäki /sd
	Kimmo Sasi /kok
	Jouko Skinnari /sd
	Esko-Juhani Tennilä /vas
	Tuulikki Ukkola /kok
	Antti Vuolanne /sd (partly)

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

Substitute members:

Leena Harkimo /kok
Krista Kiuru /sd
Risto Kuisma /sd
Jari Leppä /kesk
Sari Sarkomaa /kok.

Committee counsel Peter Saramo and Anna Sorto served as clerks.

DISSENTING OPINION

Justifications

The Grand Committee's statement does not explicitly call for the Council to initiate legal proceedings against the European Parliament and Commission in the EU Court of Justice, even though the legality of the framework agreement is dubious.

Opinion

The Left Alliance proposes that the operative sentence, in the eighth paragraph of the Grand Committee's opinion, should read as follows:

The Grand Committee considers that Finland should propose that the Council initiates legal proceedings.

Helsinki, 24 September 2010

Matti Kauppila/vas

Esko-Juhani Tennilä/vas