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## Prime Minister Vanhanen on a referendum on the Constitutional Treaty

In June, the EU's Intergovernmental Conference finalised the drafting of the Union's new Constitutional Treaty. The new Treaty will replace the earlier Treaties and it is written in a unified format. The Treaty was first prepared in a Convention, consisting of some hundred members, and the preparation was completed in the Intergovernmental Conference. I participated in the entire process except for the last two months of the Convention. As the work of the Convention was drawing towards a conclusion, I brought up a question regarding the organisation of a consultative referendum on the Treaty and in this connection I stated that if the new Treaty introduced considerable changes to the Union's fundamental nature a referendum should be held in Finland.

Finland's aim throughout the work carried out in the Convention and Intergovernmental Conference was to adhere to the Union's current fundamental nature.

As we consider the need for a consultative referendum, we should first define with which to compare the agreed Treaty amendments. The previous referendum was held on Finland's accession to the European Union. At that time, the vote was on both the conditions for accession and approval of the Treaty of Maastricht.

The parliamentary Constitutional Law Committee argued that a referendum had to be held for reasons of general acceptability. The Committee was of the opinion that the EU membership would mean broad engagement to provisions and decisions that would be made outside Finland. Moreover, the Committee argued that the EU membership had not seriously been debated in connection with the previous parliamentary elections. On the contrary, if I remember correctly, party leaders had announced that Finland's membership in the EU would not become topical on the threshold of the elections.

Since Finland joined the EU, the Treaties have been amended twice: first in Amsterdam and then again in Nice. As regards the parliamentary elections last year, the work of the Convention was well under way and the key elements of the new Treaty already discernible. Before the parliamentary elections, all parties were in favour of the drafting of a new Treaty whereas they naturally did not comment on its details. The various forums for discussion on the preparation of the amendments to the existing Treaties were actively used. As regards my own election campaign, I remember that the Treaty negotiations played a prominent role there, too.

After the finalisation of the Constitutional Treaty, the parliamentary Constitutional Law Committee has not stated its opinion with regard to the need to organise a referendum. However, in its statement on the results of the work of the Convention, the Committee was of the opinion that the changes brought about by the new Treaty and those resulting from the agreements made in Amsterdam and Nice should together be mirrored to the situation that prevailed in 1994. I am of a slightly different opinion because the two latter-mentioned Treaties have been ratified and the ongoing discussion does not focus on them. This is an important aspect. I understand the expert opinions, that have been voiced during the debate on the referendum, whereby the Union's nature will change in stages in line with individual decisions and, therefore, citizens should every now and then have their say on the whole

development process. In my opinion, the debate should focus on comparing the current Treaty of Nice with the new Constitutional Treaty. The Treaties of Amsterdam and Nice are already in force as Finland has ratified them by a proposal from the Government and decision by Parliament. It is not possible to return to the time preceding these Treaties. The whole scenario is better understandable if we imagine the consequences should Finland reject the new Treaty. The Treaty would not be ratified and, as a result, we would return to the post-Nice situation - not to the situation in hand ten years ago. My position on the issue is somewhat formal and based on the present situation in which decisions must be made: the Government will present the proposal for a new Treaty and it must be accepted or rejected in its entirety.

Any decision regarding a referendum requires political not juridical consideration. In this I agree with the Constitutional Law Committee. The setting of the criteria to define the need for a referendum is also political in nature.

The Constitutional Law Committee has not stated its opinion as regards the order of enactment of the new Treaty and it will only do so after having received a relevant Government proposal on the adoption and ratification of the Treaty. The order of enactment and the need for a referendum are two separate issues and should be considered as such. Questions regarding the order of enactment require purely juridical assessment by the Constitutional Law Committee and the process must, e.g., pay attention to the so-called enabling clauses which, in certain clearly defined cases, will transfer "amendment powers" to the European Council. The matters falling under the enabling clauses are not of central importance as regards the Union's fundamental nature.

In addition to the aforementioned consideration on the relevant points of comparison, I consider it of utmost importance that the examination focuses on the Union's future nature, extent of the transfers of competence, changes in decision-making structures and the legal nature of the Treaty as well as on the changes that the new Treaty would introduce to Finland's position within the Union's internal division of powers.

The new Treaty will maintain the Union's fundamental nature as a union of Member States and citizens. For certain parts, in particular as regards external relations, the Union remains intergovernmental in nature but in most issues the Union applies a so-called Community method and thus practises supranational powers. In this respect, there will be no changes. The most important amendments to be introduced to the Union's decision-making powers will only accentuate this dual nature. The turning of the European Council into an institution and the strengthening of the European Council by a selected permanent President will, on one hand, reinforce intergovernmentality and the increased powers of the European Parliament as regards the legislative co-decision procedure and its powers in budgetary issues will, on the other hand, emphasise the significance of a supranational institution. The amendments can be seen as mutually balancing.

The new Treaty can first and foremost be described as a codification as the Treaty assembles constitutional issues that currently are scattered in the various Treaties and case law of the EC Court of Justice. This has mainly been achieved without altering the Union's competence.

Enlargement, the introduction of the single currency and development of the common foreign and security policy are among the factors that have affected the Union's true nature. Decisions on these issues have mainly been made by separate agreements and they have not required Treaty amendments. Changes in the common foreign and security policy have, however, taken place via Treaty amendments.

The new Treaty will considerably simplify the current complex system of several Treaties. In line with its title, it will continue to be an agreement based on international law. Any

amendment will require adoption and ratification by all Member States. The Treaty very clearly spells out that the Union exercises special limited competence conferred upon it by Member States. All other forms of competence will remain with the Member States. The Union cannot change this division of competence by its own decision.

The Union's institutional system will face significant changes with the strengthening of the position of the European Council and the new duties assigned to the European Parliament. The Union will also get a Minister for Foreign Affairs by the fusion of two existing posts. The voting system within the Council of Ministers will change and I will return to this issue in my assessment of Finland's position. The Council Presidency will change from a country-specific rotating Presidency to team Presidencies which will improve cooperation and division of labour among successive Presidencies. The number of seats in the European Parliament will change mainly due to enlargement. After 2014, the composition of the Commission will equal two thirds of the number of Member States on the basis of a system of equal rotation between the Member States. This corresponds with the Treaty of Nice but it also provides a more detailed definition of the principle of equal rotation among Member States.

Transparency and openness will be increased in the work of the institutions in line with Finland's objectives. The institutional system will change but the changes will not rock the foundation of the system agreed upon in the Treaty of Nice.

All the changes that I have discussed above are such that they would not change the Union's fundamental nature. Therefore, closer attention should be devoted to the changes that will affect the division of competence.

The new Treaty will clarify the division of competence among the Union and its Member States. The drafting of the Treaty was based on an idea that the Union's competence should not be changed except for in those fields that were to face more comprehensive changes in other respects as well. The aforementioned, in particular, applies to justice and home affairs and external relations which, but for few exceptions, developed in a manner corresponding to Finland's objectives. In the field of justice and home affairs, the Union's nature will change due to the abolishing of the pillar structure. But again, this was among Finland's most important objectives and agreed upon during previous Parliaments by a large consensus.

The aforementioned issue relates to the attribution of legal personality to the Union which will now be achieved. Finland has worked to this end for years. Member States' possibilities for cooperation in defence matters has been increased. This area will remain intergovernmental in nature. I believe that the changes in security cooperation have become familiar on the basis of earlier debate. The Treaty of Amsterdam introduced the most significant change in the defence field by stating that the European Council, acting unanimously, can make a decision that will lead to a common defence should such an issue ever become topical. The decision should be adopted by all Member States in accordance with their respective constitutional requirements. This is by far the weightiest enabling clause in the whole Treaty system. We adopted this arrangement when the Finnish Parliament ratified the Treaty of Amsterdam. In the earlier Treaty of Maastricht, the possibility for a common defence was described merely as a distant objective.

With regard to individual articles and in comparison to the earlier Treaties, the Union will acquire competence in very different fields and manners. Civil servants are currently analysing the new Treaty but the work is still under way. In the following, I will present a list of issues that relate to competence and certain other factors. The list is based on my personal preliminary assessment and should not, therefore, be considered as a juridical analysis. A number of the articles that I have included in my list will face only minimal changes such as a change in the wording to better correspond the actual practice. Despite these shortcomings, my attempt was to put together a list that would cover all changes in competence.

- combating discrimination has been turned into a mainstreaming principle;
- the protection of animals must be given due consideration;
- the Union has the right to enact European Laws in matters that fall under its competence, in particular, with regard to principles governing economy and financing;
- as regards the right to move and reside freely, the Union obtains competence in areas that were earlier ruled out by the Treaty of Nice;
- the legal base that enables free movement will be extended to cover both employed and self-employed workers;
- under the scope of customs cooperation, the Union may exercise powers in the application of national criminal law and national administration of justice;
- competence will be increased in the fight against organised crime, terrorism and trafficking in human beings;
- Germany's right to grant certain aids may be revoked five years after the adoption of the new Treaty. Earlier, the Union did not possess such powers;
- a slight increase in the competence to monitor the internal market with regard to state aids
- new competence to enact laws to provide European level protection of intellectual rights;
- coordination of economic policy will be paralleled by coordination of employment policy;
- economic and social cohesion has been supplemented by territorial cohesion and they all fall within the scope of shared competence;
- the article on regional policy has been rephrased to include a provision on strengthening territorial cohesion whereby particular attention must be given to those areas that are subject to severe and permanent disadvantages brought about by natural or demographic conditions such as the sparsely populated northernmost regions;
- the objectives of structural funds must be such as to strengthen territorial cohesion;
- mainstreaming in the field of environmental protection has been written in the Treaty and Part I on the Union's objectives also includes environmental objectives. The part on environmental protection is more accentuated than before but it does not necessarily mean increased competence;
- the competence to enact laws over measures in space policy. This is a completely new competence;
- competence over energy policy is slightly increased in a manner that does not empower the Union to have a say in the energy choices of individual Member States;
- in the field of justice and home affairs, there are several articles on, e.g., police cooperation, asylum procedures and border control that confer competence upon the Union;
- judicial cooperation in civil law will be strengthened;

- judicial cooperation in criminal matters will be strengthened;
- the Union will obtain competence as regards the sanctions of criminal offences;
- the competence of Eurojust will be extended;
- the Council may establish a European Public Prosecutor's Office. The European Public Prosecutor's Office will be responsible for investigating offences against the Union's financial interests. The responsibilities of the Office may be extended to cover serious crimes affecting more than one Member State;
- the Union has the right to support tourism in Member States;
- competence to support sports;
- competence to support civil protection;
- the Union may support a Member State in its efforts to improve its administrative capacity to implement Union legislation;
- the Union's competence in crisis management will be specified;
- the Union has the right to assign a special task to a group of Member States (in the field of crisis management);
- the Union has competence to establish the European Armaments, Research and Military Capabilities Agency (a political decision to this end has already been made);
- the Council (Member States) has the right to adopt the initiation of structured cooperation in military matters and decide those participating in such action;
- the Article on commercial policy covers direct foreign investment;
- competence has been increased in the fields of trade in services but the Treaty includes, from the Finnish point of view, an important security clause which requires unanimous decision-making in certain matters regarding education, health and social services;
- competence to provide ad hoc assistance for people in third countries;
- competence to provide humanitarian aid is improved;
- a new legal base that covers, e.g., terrorist attacks and natural disasters.

The above list is extremely tentative and unverified but, I dare hope, exclusive. There might still, however, be individual shortcomings. Attention should not be devoted to quantity but quality. The list shows that the only a very few of the hundreds of articles were subject to changes in competence. This is explained by the fact that the aim of the Treaty negotiations was not to introduce considerable changes into the Union's basic functions. The Union's competence is increased in fields among of which the justice and home affairs is clearly the most significant. In the field of justice and home affairs the amendments are in line with Finland's long endeavoured objectives except for a small number of details regarding criminal law.

When assessing the Union's fundamental nature, the aforementioned changes in competence must be compared, in both extent and significance, to the Union's current competence. At the moment, the Union exercises extensive competence in matters such as the single currency, trade policy, competition monitoring, agricultural policy, customs policy and traffic, to mention a few. The Union also has, e.g., a common foreign policy and

exemption from the requirement of a passport among most Member States. Against this background, the new amendments do not seem very radical in nature. In many respects, the changes correspond with Finland's objectives in the earlier negotiations. Therefore, I am of the opinion that the changes in competence are not so significant as to require a referendum.

Finland's position in the Union's internal division of labour will change but not so much because of the new Treaty but rather because of enlargement. The reduction of seats in the European Parliament is an example of that. The introduction of dual majority means that Finland's relative weight in the Council of Ministers will be approximately the same as in the Treaty of Nice and as new members join the Union our relative voting power will reduce. The reform of the Commission after 2014 will treat all countries in an equal manner.

As the whole Treaty has been rewritten, I cannot, in this context, describe its contents and significance in their entirety.

After the Intergovernmental Conference had been brought to a conclusion, I announced that I was strongly in favour of adopting the new Treaty. It is much better than the current jungle of Treaties. It clarifies the Union's role and makes it better understandable. It improves the Union's possibilities to take action in areas that demand greater cooperation, such as the fight against organised crime and the strengthening of the Union's external capabilities. The new Treaty will also simplify decision-making. The number of legal instruments will be reduced and the transparency of decision-making increased. As regards the most important policies, the Treaty amendments are entirely in line with Finland's objectives. Even if we find ourselves in the minority with regard to certain individual issues, it does not mean that the new Treaty would be less favourable to us than the old Treaties. The new Treaty will increase the Union's possibilities to manage its responsibilities. We need a well-functioning Union and, therefore, a new Treaty.

In Finland, decisions on the adoption of the new Treaty must be made in a manner acceptable to citizens. Above, I have attempted to describe all the important factors affecting the Union's fundamental nature and, in my opinion, they do not give grounds for a consultative referendum. The assessment can perhaps be based on a different set of criteria. That is a question of assessment. According to the Finnish Constitution, Parliament must discuss and make decision on the Treaty. That is an extensive task of which my list on the changes in competence gives but a meagre idea.

The leaders of the Government parties discussed the issue at the beginning of August and we were of the same opinion. The argumentation I have put forward above is, however, purely personal. I hope that the reasoning will gain wide public acceptance and that citizens will trust in the discretion of the people they have chosen as their representatives.

The deliberations in Parliament will take a long time and that will enable citizens to lobby members of parliament and influence their views. This requires that citizens be provided with information on the content and significance of the new Treaty as they have a right to that information. Certain quarters have argued that a referendum should be held because it would increase citizens' awareness of and, hence, discussion on the important Treaty. A referendum cannot, however, be justified on the basis of citizens' need for information. The Government will ensure, with different means, that every citizen will have adequate access to information. In addition to the Government, other political decision-makers and, in particular, members of Parliament must also take active part in the information campaign. The Treaty in hand is of utmost importance to us and the Union as a whole and it will hopefully stand up for years to come.

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Prime Minister