

Working Group XI

Working document 1

Working group XI "Social Europe"

Subject: Comments to points 1, 2 and 3 of the Mandate

Contribution by Mr. Vytenis Povilas Andriukaitis
Representative of the Seimas of the Republic of Lithuania

To the Working Group on Social Europe

Mr. Chairman, dear colleagues,

Beyond any doubt, the values of the European Union and its citizens must be protected and promoted. We need the European area that is not characterised not only as that of freedom, security and justice, but also that of social justice. We have a unique opportunity to put the European Social Model on the agenda of the Convention and find answers to some of the urgent social questions.

Because of the time constraint we are confronted with, I would like to give my short answers to the first three questions of the draft mandate of the Working group on Social Europe:

1. I suggest that the Union's basic values, as set out in Article 2 of the preliminary draft Constitutional Treaty, also include solidarity, equality and social justice.
2. The Union's general objectives, as specified in Article 3 of the preliminary draft Constitutional Treaty, include promotion of full employment and accessible and financially sustainable social protection of high quality organised on the basis of solidarity.
3. It's difficult to give a straightforward answer to this series of questions at this stage of the debate. The question of Union/Community competencies in social matters is a fundamental one. At first, it might seem that the shared or concurrent competencies of the Union/Community and the member states in social matters might be sufficient, provided that the existing social policies are streamlined. On the other hand, the Union's activities based on Council directives with "minimum requirements for gradual implementation" of the social activities of the member states can hardly be considered satisfactory in the rapidly changing EU.

The Convention Working Group on Charter has emphasised that the incorporation of the Charter of Fundamental Rights of the EU does not confer any new competencies on the Union/Community.

Most of the present member states and candidate countries have ratified, with certain reservations, the European Social Charter of 1961 and the Amended European Social Charter of 1996. I would like to suggest that the working group pay a special attention on the provisions of these instruments so that the reservations are removed and action as to their implementation is taken, including that on the Union level.

I would also like to draw the group's attention to the paper by Dr. Frank Vandebroucke, Minister for Social Affairs and Pensions of the Belgian Federal Government, presented at the Max Planck Institute for the Study of Societies in Koln on 17 June 2002 in which specific Treaty amendments in social matters are proposed. I fully share Dr. Frank Vandebroucke's views and think that the proposals merit the group's attention.

10 December 2002

PROPOSITIONS DE PERVENCHE BERES
CONCERNANT LES 3 PREMIERES QUESTIONS DU MANDAT

L'enjeu du groupe de travail "Europe sociale" est de :

- rééquilibrer les objectifs économiques de l'Union au moyen d'objectifs sociaux et environnementaux.

- doter l'Union des moyens de mise en œuvre aptes à la réalisation de ces objectifs ;

Dans cette perspective je propose que le groupe de travail réponde aux questions qui lui sont posées de la manière suivante.

Question 1. L'article 2 de l'avant-projet de Traité constitutionnel entend définir brièvement les valeurs essentielles de l'Union. Quelles valeurs essentielles cette disposition devrait-elle contenir dans le domaine social, tenant compte de celles déjà contenues dans la Charte des droits fondamentaux de l'UE ?

- Les valeurs de l'Union doivent refléter celles contenues dans la Charte des droits fondamentaux. Il faut dès lors parler de dignité **de la personne** et non plus de "dignité humaine". Le groupe de travail devrait rappeler que l'intégration du texte de la charte *in extenso* en Préambule ou à

l'article 2 serait la manière la plus efficace, la plus claire et la plus exhaustive de définir les valeurs de l'Union.

- En tous les cas, les valeurs de l'Union doivent refléter et mentionner **le modèle social européen**, ce qui implique que soient ajoutés :
 - **la solidarité** (dès après l'Etat de droit) ;
 - le **développement durable** ;

Question 2. L'article 3 de l'avant-projet de Traité constitutionnel entend définir les objectifs généraux de l'Union. Dans quelle mesure et comment ces objectifs généraux devraient-ils inclure des objectifs en matière sociale?

L'article 3 de l'avant-projet de Traité constitutionnel doit abolir la subordination des objectifs sociaux et environnementaux face aux objectifs économiques, telle qu'elle s'est imposée dans l'actuel article 2 TUE et dans les articles 2 et 3 TCE. A cette fin je propose les modifications suivantes :

- *1er alinéa : sauvegarde des valeurs communes*
 - ajouter **autour du modèle social européen** ;
- *2e alinéa : cohésion économique et sociale*
 - ajouter **le progrès économique et social** et consacrer explicitement **l'équilibre entre ces deux dimensions** ;
 - cohésion économique et sociale : ajouter la cohésion **territoriale** ; préciser que cette triple cohésion appelle notamment **le respect des missions de services publics et de la viabilité financière des organismes qui en ont la charge. Les services publics non marchands doivent être expressément exclus du champ des règles de la concurrence et du commerce international.**
- *3e alinéa : renforcement du marché intérieur et de l'UEM*
 - ajouter **dans le cadre d'une économie sociale de marché.**

Cela suppose que le marché intérieur soit achevé au-delà des dispositions concernant la concurrence, notamment en abolissant les formes de dumping qu'ont pu développer les Etats membres. A cette fin :

- ajouter **en développant l'harmonisation fiscale et la définition commune de minima sociaux ;**

- ajouter la capacité de l'Union de recourir à la définition **de biens collectifs et de services publics européens.**

- *4e alinéa : emploi et protection sociale*

- remplacer "promotion" par **réalisation,** dès lors qu'il s'agit d'objectifs généraux, la formulation peut et doit être plus impérative ; ajouter un niveau élevé de **protection de la santé et la protection des consommateurs** ;

- **le plein emploi** doit remplacer "un haut niveau d'emploi " ;

- mentionner explicitement **la lutte contre la pauvreté et l'exclusion** ;

- ajouter la **solidarité entre les générations** ;

- *dernier alinéa : politique étrangère*

- "...promouvoir les valeurs de l'Union **et notamment son modèle social** dans le monde extérieur" ;

Question 3. Relativement aux compétences de l'Union, estimez-vous qu'il y ait lieu de modifier les compétences actuellement attribuées à l'Union/Communauté en matière sociale? Si tel est le cas, quelles compétences nouvelles devraient être attribuées à l'Union/Communauté en matière sociale, et dans quelle catégorie de compétences les placer ?

L'Union européenne doit disposer :

- de compétences attribuées par les Etats membres ;
- de compétences complémentaires à celles des Etats membres.

L'Union doit également mettre un terme aux exceptions recouvertes par l'article 137.6.

- Pour les premières :

Partant du principe que certains aspects de la politique sociale sont d'intérêt commun, l'Union doit être en mesure de développer des politiques dans ce secteur, permettant une action publique au-delà de la simple édicition de règles communes. Ces politiques pourront être menées en ayant recours le cas échéant **à des ressources propres.**

Elles devront recouvrir :

- l'harmonisation sociale à la hausse ;
- l'harmonisation fiscale là où elle est nécessaire au bon fonctionnement de systèmes de protection sociale ;
- la définition de minima sociaux européens ;
- la définition de services publics européens ;
- l'objectif d'un plein emploi de qualité ;
- le droit du travail (contrat de travail européen, convergence des salaires, compte-formations, etc) ;
- la lutte contre la pauvreté et l'exclusion ;
- la responsabilité sociale et environnementale des entreprises ;
- le dialogue social et le rôle des partenaires sociaux ;
- la protection des consommateurs ;
- l'égalité des femmes et des hommes.

Il pourra être développé lors de l'examen du point 6 les modalités (VMQ et codécision) qui devront être utilisées à cet effet.

- Les politiques complémentaires de l'Union sont celles relatives à la gouvernance socio-économique de l'Union (GOPE, pacte de stabilité, SEE, etc.), et ont pour objectif de voir les Etats membres élaborer leurs politiques économiques et sociales en cohérence avec les grandes orientations de l'Union. Elles seront abordées plus en détail lors de l'examen du point 5 relatif à la coordination des politiques économiques et sociales, et du point 4 sur la méthode ouverte de coordination.
- Enfin l'Union européenne devra pouvoir agir dans les secteurs actuellement couverts par l'actuel article 137.6 relatifs aux rémunérations, au droit de grève (conformément à la Charte des droits fondamentaux) et au lock-out.

Pervenche Berès

COMMENTS BY MS MARIA BERGER AND MR CASPAR EINEM

Ms M. BERGER,
M. C. EINEM,

1. *Article 2 of the preliminary draft Constitutional Treaty sets out to define briefly the Union's basic values. What basic values should these provisions contain in the social field, taking into account those already present in the Charter of Fundamental Rights of the EU?*

The article 2 of the preliminary draft Constitutional Treaty should contain the following values:

- human dignity
- fundamental rights as set out in the Charter of Fundamental Rights of the European union.
- solidarity
- equality and non-discrimination
- the active promotion in particular of the equality of men and women
- democracy
- the rule of law
- tolerance
- respect for international law
- the protection and establishment of global peace, freedom and development

2. *Article 3 of the preliminary draft Constitutional Treaty sets out to define the Union's general objectives. To what extent and in what way should these general objectives include social objectives?*

Article 3 should contain the following general objectives of the Union.

- 1) The Community shall have as its objective to guarantee for the citizens fo the Union a life of freedom, safety, security and prosperity free from economic and social need and poverty.

2) For these purposes it shall establish and guarantee an economic, social and monetary union and shall guarantee throughout the Union and through the implementation of the common policies and measures outlined in titles A2 and A3:

- a harmonious, balanced, [...] sustainable and ecologically sound development of economic activities,
- general and non-discriminatory access to services of general interest,
- full employment based on good quality of work and providing a minimum living income,
- a high level of social protection and security,
- equality between men and women in all areas of life,
- smooth relations between the generations,
- sustainable and non-inflationary growth,
- a high degree of competitiveness and convergence of economic performance,
- sustainable environmental development and
- a high level of protection [...] of the environment and
- improvement of the quality of the environment,
- the raising of the standard of living and quality of life,
- economic and social cohesion,
- the right to information, consultation and co-decision of employees in all issues that concern them,
- solidarity among Member States and
- solidarity among the citizens of the Union.

3 *As regards the Union's competences, do you consider that the present competences of the Union/Community in social matters should be modified? If so, what new competences should be conferred on the Union/Community in social matter, and in which category of competences should they be placed?*

Due to this short deadline I refer to the contributions made by Caspar Einem and me (CONV 232/02 and CONV 364/02). Please find them annexed.

I will provide you as soon as possible with a proposal that adapts our already made contributions to the structure of the preliminary draft Constitutional Treaty.

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 4 September 2002

CONV 232/02

CONTRIB 81

COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Contribution from Mr Caspar Einem, member of the Convention, and Ms Maria Berger, alternate member of the Convention: "Towards a social Union"

The Secretary-General of the Convention has received the attached contribution from Mr Caspar Einem, member of the Convention, and Ms Maria Berger, alternate member of the Convention.

Contribution
by
Caspar Einem
Member of the Austrian National Assembly
and
Maria Berger
Representative of the European Parliament
within the Convention
23 August 2002

Working towards Social Union
(1) Macro-economic policy and full employment

A. The Convention on the Future of Europe has provided the opportunity to take the European Union one step further, after fifty successful years as a key factor in peace and stability throughout our continent, to become a European Union of the citizens. For this, it will require on the one hand to adopt a clear basis that places European citizens in the centre and must on the other hand develop corresponding policies and strengths that will help to make it evident that the European Union is an effective political body that is capable of finding real solutions to the challenges and problems faced by the people of today in the same way as their nation states.

B. In order to gain the trust and respect of the citizens of Europe, the EU will need to begin by ensuring that the most basic interests and concerns of these same citizens, i.e., essentially employment and social security, are suitably dealt within its policies. This initial proposal aims to deal above all with two essential issues: laying the bases for an economic policy aiming to achieve full employment and adapting correspondingly the provisions relating to the independent European Central Bank which is intended to support such a policy.

C. This proposal is the first in a series of related proposals. It is based on the Treaty on European Union (TEU) and on the Treaty establishing the European Community (EC Treaty). Nevertheless, it contains suggestions for a new order of the different topics dealt with in view of a new future constitutional structure.

Essentially, the Constitutional Treaty would begin with the basic principles and undertakings, i.e., the values on which the Union is based, as well as the provisions governing citizenship of the Union. At this stage the Charter of Basic Rights would also be included. It would seem logical to provide for further sections on the issues of “Competencies” and “Instruments”. Any further provisions applicable to its actual content would follow the Constitutional Treaty per se. The order of the chapters would indicate the shift of focus towards the citizens of the EU.

D. Suggested texts referring to the principles and undertakings of the Union

The first basic provision related to the objectives, tasks, and instruments of the Communities can be found in Article 2 of the EC Treaty.

1. We would propose making the following amendments to Article 2 of the EC Treaty so as to ensure that the objectives are oriented towards the interests of the citizens and not based essentially on the methods used to reach these objectives. Furthermore, the systematic separation of objectives, tasks, and instruments would appear sensible so as to improve the ease of understanding of the text.

The text could read as follows, for example:

“PRINCIPLES

I. Article 2

(1) The Community shall have as its objective to guarantee for the citizens of the Union a life of freedom, safety, security, and prosperity free from economic and social need and poverty.

(2) For these purposes it shall establish and guarantee an economic, monetary and social union and shall guarantee throughout the Community and through the implementation of the common policies and measures outlined in Articles 3 and 4

- *a harmonious, balanced, [...] sustainable and ecologically sound development of economic activities,*
- ***full employment based on good quality of work and providing a minimum living income,***
- *a high level of social protection and security,*
- *equality between men and women in all areas of life,*
- ***smooth relations between the generations,***
- *sustainable and non-inflationary growth,*
- *a high degree of competitiveness and convergence of economic performance,*
- ***sustainable environmental development, and***
- *a high level of protection [...] of the environment and*
- *improvement of the quality of the environment,*
- *the raising of the standard of living and quality of life,*
- *economic and social cohesion, and*
- *solidarity among Member States and*
- ***solidarity among the citizens of the Union.”***

On the one hand, these changes clearly shift the emphasis of the basic provisions placing the citizens at the fore. However, they also expand on and clarify the individual objectives. The aim is no longer a to achieve “a high level of employment”, rather “full employment”, which furthermore should not be deemed to be solely an issue of quantity, rather should go hand in hand with adequate quality of the work on offer. Quality in this sense does not refer exclusively to the protection of the employee, rather also to ensuring that each job guarantees the employee a minimum living income.

Recent experiences of capitalisation pension systems and the discussions on pension reform above all with the aim of achieving stability would suggest the logic and necessity of a basic provision covering smooth relations between the generations. This provision could be expanded upon in further proposals on the issue of social union.

A further aspect that should not be omitted is that of reinforcing the sustainability of our economy and of environmental development. Sustainable economic development here means not only that growth should be constant, rather also that it should be ecologically sound.

Towards the end of the provisions it should be made clear through an additional statement that the Union is no longer a simple community of states, rather increasing is a community of citizens. Finally, in order to highlight the clout of the provisions, the term “promote”, used thus far in relation to the objectives, is to be replaced by “guarantee”.

2. We would also suggest adapting Article 2 of the TEU accordingly. The first sub-point of Article 2 of the TEU would read as follows:

“Article 2

The Union shall set itself the following objectives:

- *to promote economic and social progress, **to achieve full employment** and to achieve balanced and sustainable development..”“.*
[further as before]

3. Amendments would also be required to Article 3 of the EC Treaty. Paragraph (1) would read as follows:

“(1) For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

...

...

- i) *a common macro-economic policy with the aim of achieving full employment,*
- ii) *ensuring the high quality of the work on offer and that it provides a minimum living income,*
- iii) *the development of a European employment strategy;*
- j) *a policy in the social sphere based on full employment ensuring the high quality of the work on offer together with a high degree of social protection and security, all of which supported by a European Social Fund;”*

These changes adapt this Article to the new provisions of Article 2 whilst at the same time taking employment policy, which is currently simply co-ordinated, further to create an effective “European employment strategy” supported by a common macro-economic policy aiming to achieve full employment and supported by the ECB. In order to highlight that this employment aim is not based solely on the quantity of work available, the quality of the jobs on offer together with the aim of ensuring that these jobs ensure a minimum living income is also set down in writing here.

4. Article 4(1) of the EC Treaty would read:

“(1) For the purposes set out in Article 2, the activities of the Member States and the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein, the adoption of an economic, **social, and employment** policy, which is based on the definition of common objectives and on close coordination of these policies of the Member States, **a common macro-economic policy with the aim of achieving full employment,** **institutional dialogue between the social partners at Community level** and on the internal

*market and conducted in accordance with the principles of an open market economy with free competition, of **social welfare and the absence of discrimination.***”

By adding the above text to Article 4(1) the aim is to set down some of the essential aspects of the European social model. Other such statements shall follow in future proposals. Most importantly, social dialogue, which was thus far outlined in Article 139 and referred only to social policy, is now a basic facet of economic, employment, and social policy. Please see also the proposal for amendments to Article 99(2).

Referring only to the principle of “an open market economy with free competition” does not go far enough. We would therefore suggest adding a further principle to the notion of the open market economy, i.e., that of “social welfare”.

Article 4(2), which deals essentially with monetary policy, would read as follows after the phrase “exchange-rate policy”:

*“the primary objective of both of which shall be **overall economic stability, i.e., growth, full employment and price stability** and, without prejudice to this objective, to support the general economic, **social and employment** policies in the Community, in accordance with the principles of an open market economy with free competition **and of social welfare.**”*

Paragraph 3 would read as follows:

*„(3) These activities of the Member States and the Community shall entail compliance with the following guiding principles: **economic growth, full employment**, stable prices, sound public finances and monetary conditions and a sustainable balance of payments.“*

Articles of principle 2, 3, and 4 would also set down the essential fundamentals of the policy governing the ESCB.

E. Suggested texts for Community (Union) Policies

In this text to be attached to the actual constitutional text itself, and which corresponds to the current Part Three of the EC Treaty, the individual areas of policy (thus far Titles I to XX) would be placed in a different order.

The following are proposed as the new Title I:

“Title I Economic and Social Union

- **Economic Policy**
- **Employment Policy**
- **Social Policy**
- **Monetary Policy**
- *Institutional Provisions*
- *Transitional Provisions*”

That Title containing the most essential tasks of the Union shall be incorporated into the new treaty structure as Title I.

This Title would then contain those provisions governing the common economic, employment, social and monetary policies thus stressing that a new dimension has been added to the Union, i.e., that of economic and social union.

5. Chapter 1 would read:
“**ECONOMIC POLICY**” [as before]

The second sentence of Article 98 would read as follows

“The Member States and the Community shall act in accordance with

- the principle of an open market economy with free competition, favouring an efficient allocation of resources **and***
- **the principle of social welfare***

and in compliance with the principles set out in Article 4.”

6. Article 99(2) of the EC Treaty would read:

*“(2) **The Commission shall draw up a proposal in cooperation with the social partners which the Council shall take as the basis following consultation with the European Parliament** for the broad guidelines of the economic policies of the Member States and of the Community, and shall report its findings to the European Council.*

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Community.

*On the basis of this conclusion, the Council shall, acting by a qualified majority **and with the assent of the European Parliament**, adopt a recommendation setting out these broad guidelines. [...]”*

On the one hand, this new wording intends to guarantee the involvement of the European Parliament as the directly elected representatives of the citizens in this essential policy area. On the other hand, it involves the European social partners in the development of the common economic policy at an early stage by further promoting social dialogue at European level. Lastly, the substitution of the term “recommendation” by the term “proposal” helps to strengthen the role played by the Commission.

7. Article 99(3) would read:

*“(3) **In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Commission shall [...] monitor economic developments in each of the Member States...**”* [as before]

With the aim of clearly separating the executive tasks to be carried out by the Commission and issues of a legislative nature, we would suggest transferring the job of monitoring here to the Commission, which was always responsible for this task in any case, but was required to submit a corresponding report to the Council.

8. The requirement outlined in Article 100(1) for the Council to take a decision unanimously should be replaced by the qualified majority system involving co-decision with the European Parliament.

This co-decision procedure involving the European Parliament should also be written into the second sentence of Paragraph (2). The third sentence could then be removed.

9. The second sub-point of Article 104 (2) (a) would read as follows:

“- or, alternatively, the excess over the reference value is only exceptional and temporary, i.e., it is brought back down through the use of automatic stabilising factors, and the ratio remains close to the reference value;”

In accordance with the proposals for economic and social union (see below), the ECB would be made responsible for employment, growth and price stability, and finance policy would be responsible for ensuring a stable employment market (automatic stabilising factors) and creating an infrastructure that promotes growth. Finally, pricing policy, in social dialogue with the ECB, would contribute to ensuring the absence of inflationary impulses.

10. The following sentence would be added to Article 104(2) after letter (b):

“Public investments in infrastructures financed by loans shall not be taken into account for the examination.”

Explanation under 9.

11. Chapter 2 would read

“EMPLOYMENT” [as before]

12. Article 125 would read:

“The Community shall follow a common macro-economic policy with the aim of achieving full employment in accordance with Article 3(1)(i)(ii) and (iii) of this Treaty. In addition to this policy, the Member States and the Community shall, in accordance with this Chapter, work towards developing a coordinated European strategy for employment that would in particular promote a skilled and trained workforce empowered to meet the challenges of economic change, with a view to achieving the objectives defined in Article 2 of the Treaty on European Union and in Article 2 of this Treaty.”

The current text of this Article of Title VIII does not make it clear whether reference is being made to employment policy in terms of labour market policy or in terms of macro-economic policy based on a high level of employment (thus far). This issue would be clarified through the reference to Article 3(1)(i) in both instances.

The second change made to the text aims to make it clear that employees shall be empowered and shall not simply be trained to deal with almost naturally occurring developments resulting from “economic change”.

13. Article 127 would read:

*“The Community shall contribute **through its macro-economic policy aiming to achieve full employment in the sense meant by Article 3(1)(i)(ii) and (iii) of this Treaty** to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action.”*

The current paragraph 2 would be removed and replaced by the following text:

*“(2) **Following a proposal made by the Commission, the Council shall be entitled, without prejudice to any other procedures outlined in this Treaty, to decide unanimously on appropriate labour market measures in particular in cases of serious problems such as high unemployment or a lack of manpower in specific sectors of the labour market.**”*

A high level of employment, or rather full employment, cannot be achieved through labour market policy alone. Employment policy measures such as offering training and reintegration assistance require for their success a corresponding macro-economic policy working towards growth and full employment. It is for this reason that clear reference to Article 3(1)(i) is made both in Article 125 and here.

Paragraph 2 covers the corresponding provisions of Article 100(1), instituting the right of the Council to intervene during severe labour market policy crises, whereby it must act unanimously.

14. Article 128 would be amended as follows:

*“(1) **To coincide with the discussions on the report drawn up by the Council proposing the broad guidelines for the economic policy of the Member States in accordance with Article 99(2) of this Treaty** the European Council shall each year consider the employment situation in the Community and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.*

*(2) **On the basis of the conclusions of the European Council adopted at the same time in accordance with Article 99(2) and this Article**, the Council, acting on a proposal from the Commission and with the **assent of the European Parliament and after consulting the Economic and Social Committee...**” [further as before]*

Complaints have often been made regarding the fact that the broad guidelines for the economic policy of the Member States are not adopted at the same time as the guidelines for employment policy and that the link between their content is one-sided. This new wording should remedy both problems.

15. Chapter 3 would read:

“SOCIAL POLICY”

Proposals to follow.

16. Chapter 4 would read:

“MONETARY POLICY” [as before]

17. The definitions of the objectives of the monetary policy of the ESCB would be extended as follows:

Article 105(1) of the EC Treaty would be amended as follows:

*“(1) The primary objective of the ESCB shall be to **support the overall economic policy of the Community so as to contribute to the realisation of the objectives laid down in Article 2, to maintain price stability and to contribute to ensuring the stability of the financial system.** The ESCB shall act in accordance with the principle of an open market economy with free competition **as well as the principle of social welfare and shall promote an efficient, sustainable** allocation of resources in compliance with the principles set out in Article 4.”*

The monetary policy of the ESCB is not an end in itself, rather is a step along the road to the much greater objective of maintaining and improving a just distribution of wealth amongst the citizens of Europe. Guaranteeing price stability can contribute to this aim, but is too little on its own, neglecting other essential and related economic aspects.

It would therefore make sense to place other monetary policy aims on the same level. This is achieved through the reference to the newly worded Article 2. Furthermore, explicit reference is made to the responsibility of the ESCB to guarantee the stability of the financial system in view of the fact that one of the greatest risks to the progress of national economies today, and with that of the individual wealth of their citizens, lies in sudden disturbances on the financial markets which can have serious economic consequences. This responsibility could also lead to measures for managing short-term capital transfers (Tobin Tax).

18. The notion of price stability, i.e., the target inflation, shall be defined by democratically legitimate bodies, here the Finance Ministers within ECOFIN and the EP.

Article 105(6) would read as follows:

“(6) The Council shall determine the rate of inflation valid in the medium term in relation to the objective of price stability, after consulting the ECB and having received the assent of the European parliament, and may, acting unanimously on a proposal from the Commission and after consulting the ECB and after receiving the assent of the European Parliament, confer upon the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.”

Compare Hickel (1994): Against the dangers of monetary policy abuse of power: autonomy and/or democratisation of the German Bundesbank: a change of direction, special booklet 11a: “Who decides in the classic case of conflict between inflation and unemployment? The Bundesbank recently contested the existence of a conflict of aims, explaining that combating inflation is a political task that must be subordinated to price and employment policy. However, the decision on the conflict of aims within economic policy goes beyond the area of competency of the Bundesbank. It does not have the necessary constitutional legitimacy in this respect.” In other

words, a central bank must be entirely independent in terms of the measures it uses rather than simply in terms of its objectives.

The complete independence of the ESCB and the transfer of all monetary policy competencies to the euro system confront the ESCB with the dilemma of being both principal and agent at the same time. In its role as principal it outlines the objectives, whilst in its role as agent it is responsible for meeting these. In order to best achieve the aim of price stability, the ESCB has set itself an inflation target of less than 2% for the medium term. This is a level that thus far has only been seen in times of recession or poor economic years.

Experiences in monetary policy this year and last have shown that supply shocks, such as petrol price crises, render this objective unfeasible. The ECB therefore reached the logical conclusion that this level would have to be exceeded, but that rates should nevertheless not be raised.

Were it down to the political sphere, or more precisely ECOFIN and the EP, to determine the target level of inflation, the ECB could not then be criticised for changing its objectives whenever they cannot be met, thus avoiding problems related to its credibility. Furthermore, the absurd situation of having to explain the absence of rates rises in spite of a weak economy (in order solely to bring the rate of inflation back down below the 2% target level) would also be avoided.

19. Article 109 would be adapted accordingly.

20. Article 111 would be amended as follows:

In Paragraph (1) after the first and second sentences and following the words “in an endeavour”, the following would be added:

*“to reach a consensus consistent with the **objectives of Article 105(1)**...”*

The last sentence of the second paragraph would read:

*“These general orientations **shall be consistent with the aims of Article 105(1)**.”*

21. The ESCB would be required to account for its monetary policy, thus ensuring its democratic legitimacy.

Article 113(3) of the EC Treaty would be amended as follows:

“(3) The ECB shall address an annual report on the activities of the ESBC and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission. The President of the ECB shall furthermore present to the European Parliament following a lapse of two weeks the minutes of the meetings held by the ECB Council to discuss monetary policy decisions such that a relevant general debate may be held on that basis within the competent Committees on the framework for decisions related to monetary policy. The President of the ECB and, at the request of the President of the European Parliament, the remaining Members of the Board of Directors shall submit an oral report every six months to the relevant Committees within the European Parliament in this respect.

Should the relevant Committee deem the information and/or explanations provided as to monetary policy in view of the objectives of the ESCB to be insufficient, then the Chair of that Committee shall be entitled to participate in the next meeting of the ECB Council and inform it of the position of the European Parliament. Should the relationship of trust be altered for the reasons outlined above, the Parliament may pass a vote of no confidence against the President of the ECB in accordance with Article 201 of this Treaty. Such votes of no confidence shall serve to relieve the President of the ECB of his or her post with immediate effect. Until such time as a new President is appointed, the Vice-President shall take on this role.”

Monetary policy is presented today as a complicated science accessible only to a handful of experts and that is certainly too complex to be understood by parliamentarians or other political actors. Furthermore, it is claimed that it works best when it is based only on the achievement of a specific rate of inflation and remains unhampered by trivial ex ante attempts at coordination with fiscal and revenue policy and is left entirely independent (from all obligations to prove accountability?).

In reality the situation is quite different. Monetary policy depends, in the same way as other areas of politics, on the judgements of individuals in terms of a specific economic situation and on their individual view of what reaction is appropriate to what situation. And indeed, it is impossible for politics to function otherwise.

The problem of the present structures within the European Union is that the current understanding of the terms “independent”, i.e., no ex ante coordination, and “accountability”, i.e., the ECB President addresses the European Parliament once every six months, presenting a clichéd overview, render impossible the opportunity for in-depth discussion on the right direction for monetary policy outside the closed circle of the ECB Council. Even the head economists within the Central Banks are sometimes astounded at the rates decisions taken by the 17 men and one lady who make up the ECB Council.

The danger here is that it is objectively no longer possible to tell whether valid arguments have preceded a rates decision or whether a handful of dominant individuals have pushed the body into a specific decision, or again whether the official Council meeting is simply a formality serving to render official informally agreed decisions.

The political conclusion of the above must be the creation of structures in which monetary policy decision-makers are required to discuss relevant issues in greater depth and on a broader plane and in which the European Parliament has greater opportunity to exercise control, and even impose sanctions in exceptional cases.

22. After Article 114 a new Article 114a would be introduced using the same structure as Article 114 to outline the obligation of the ECB to enter into institutionalised social dialogue with the social partners at European level with the aim of involving them in creating policy oriented towards overall economic stability.
23. It would make sense to introduce a separate new transitional provision similar to Article 116 of the EC Treaty and which would outline from what time the “Economic, Monetary, and Social Union” would come into effect.

Brussels, 23 October 2002
(Orig. DE)

THE EUROPEAN CONVENTION

THE SECRETARIAT

CONV 364/02

CONTRIB 126

COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr. Caspar Einem, member and Ms Maria Berger, alternate member of the Convention:
	"Working towards Social Union (2) Social Security, Social Policy, Subsistence"

The Secretary-General of the Convention has received the contribution annexed hereto from Mr. Caspar Einem, member and Ms. Maria Berger, alternate member of the Convention.

**Contribution
By**

Caspar Einem, Representative of the Austrian National Assembly within the Convention

Maria Berger, Deputy Representative of the European Parliament within the Convention

**Working towards Social Union
(2) Social Security, Social Policy, Subsistence**

A. The Convention on the Future of Europe has provided the opportunity to take the European Union one step further, after fifty successful years as a key factor in peace and stability throughout our continent, to become a European Union of the citizens. For this, it will require on the one hand to adopt a clear basis that places European citizens in the centre and must on the other hand develop corresponding policies and strengths that will help to make it evident that the European Union is an effective political body that is capable of finding real solutions to the challenges and problems faced by the people of today in the same way as their nation states.

B. In order to gain the trust and respect of the citizens of Europe, the EU will need to begin by ensuring that the most basic interests and concerns of these same citizens, i.e., essentially employment and social security, are suitably dealt with in its policies. This second proposal aims to deal above all with the following essential issues: protecting collective contracts against the laws of competition, protecting services that are of general economic or social interest from the laws of competition, further reinforcing the content of the basic principles of social union and strengthening the dialogue between management and labour at a European level.

C. This proposal is the second in a series of related proposals. It is based on the Treaty on European Union (TEU) and on the Treaty establishing the European Community (EC Treaty) as well as proposals made by a host of institutions and experts. It also contains suggestions for a new order of the different topics dealt with in view of a new future constitutional structure. But of course, the fusion of the previous three treaties into one single treaty would in any case require an entirely new order of the individual articles and a brand new layout. Our proposal therefore does not deal with the form of the treaty, rather its content. For example, should Article 2 of the EC Treaty require to be rewritten for the new Constitutional Treaty in a more succinct manner, then this should be done on the basis of the amendments and additions to its content proposed here and modified to that extent allowed by the time needed to draw up new legislative texts.

D. Essentially, the Constitutional Treaty would begin with the basic principles and undertakings, i.e., the values on which the Union is based, as well as the provisions governing citizenship of the Union. At this stage the legally binding and fully applicable Charter of Fundamental Rights would also be included. It would seem logical to provide for further sections on the issues of “Competencies” and “Instruments”. Any further provisions applicable to its actual content would follow the Constitutional Treaty per se. The order of the chapters would indicate the shift of focus towards the citizens of the Union.

E. Suggested texts ¹ referring to the principles and undertakings of the Union

1. Article 2 of the Treaty establishing the European Community (EC Treaty) should be rewritten in accordance with proposal CONV 232 and the following text should be added to the second and fourteenth sub-points of paragraph 2:

“PRINCIPLES

Article 2

(1) The Community shall have as its objective to guarantee for the citizens of the Union a life of freedom, safety, security and prosperity free from economic and social need and poverty.

(2) For these purposes it shall establish and guarantee an economic, monetary and social union and shall guarantee throughout the Community and through the implementation of the common policies and measures outlined in Articles 3 and 4

- *a harmonious, balanced, [...] sustainable and ecologically sound development of economic activities,*
- **general and non-discriminatory access to services that are of general interest,**
- *full employment based on good quality of work and providing a minimum living income,*
- *a high level of social protection and security,*
- *equality between men and women in all areas of life,*
- *smooth relations between the generations,*
- *sustainable and non-inflationary growth,*
- *a high degree of competitiveness and convergence of economic performance,*
- *sustainable environmental development and*
- *a high level of protection [...] of the environment and*
- *improvement of the quality of the environment,*
- *the raising of the standard of living and quality of life,*
- *economic and social cohesion,*
- **the right to information, consultation and co-decision of employees in all issues that concern them,**
- *solidarity among Member States and*
- *solidarity among the citizens of the Union.”*

Services that are of general economic or social interest and equal access to these is a common value shared by all European societies. This should also be clearly stated as one of the objectives of the European Union.

2. Article 2 of the Treaty on European Union (TEU) should be amended as follows, over and above the suggestions outlined in the initial proposal:

¹ Amendments made to the texts of the applicable Treaties, i.e., the EC Treaty and the TEU, are written in bold with the exception of those amendments already outlined in the initial proposal (CONV 232).

“Article 2

The Union shall set itself the following objectives:

- *to promote economic and social progress, to achieve full employment **and a high level of social protection and social security** and to achieve balanced and sustainable development...”*
[further as before]

This proposal intends to make it clear as early on as in the basic principles that the EU is to and indeed wishes to become both an economic and social union.

3. Over and above the amendments to Article 3 EC Treaty outlined in proposal CONV 232 and making reference to an employment and social union, the following text should be added as point jj):

“1) For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

...

...

- iv) *a common macro-economic policy with the aim of achieving full employment,*
- ii) *ensuring the high quality of the work on offer and that it provides a minimum living income,*
- iii) *development of a European employment strategy;*
- j) *a policy in the social sphere based on full employment ensuring the high quality of the work on offer together with a high degree of social protection and security, all of which supported by a European Social Fund;*
- jj) *a policy of equality that is effective in eliminating all discrimination **on the basis of the reasons given in Article 13 of the EC Treat.**”*

Furthermore, the following text should be added to paragraph 2:

“For all of the activities outlined in this Article, the Community shall ensure that all inequalities are eliminated, shall promote equality of men and women and shall take into account the requirements of social protection and social security, in particular in terms of promoting generally accessible and financially sustainable services of a high quality and based on the principle of solidarity.”

4. Article 6 of the EC Treaty should be inserted as the third paragraph of Article 3 of the EC Treaty for reasons of consistency.

5. The following text should be added to the principles on which the Union is founded and that are outlined in Article 6 of the TEU:

“1) The Union is founded on the principles of liberty, democracy, **social security**, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

Contrary to the proposal made by the leading German social insurance associations, we believe that the basic principle outlined should not be “social justice”, rather the much more easily understandable and feasible principle of “social security”.

6. The following text should be added as a new Article 6:

“Article 6

(1) The Union and the Member States shall ensure within the framework of their individual areas of competence, that the citizens of the European Union are provided with services that are of general and in particular economic, social, and cultural interest.

(2) In view of the value of these services as outlined in the European Union Charter of Fundamental Rights and in order to promote social and territorial cohesion, the Union and the Member States shall take all of the necessary measures within their individual areas of competence to ensure that the following principles and requirements are upheld with reference to these services: general and non-discriminatory access, transparency, proportionality, quality, security, durability, assessment, and further development based on need.

(3) The Union shall uphold, above all when applying Articles 73, 81, and 83 to 97, the right of the Member States and of their individual territorial units to either provide services of general interest themselves in accordance with general economic principles or to commission public-sector bodies or other establishments to provide these services and finance them. The Union shall issue a European Law or Framework Act for this purpose.”

In this way the content of Article 16 EC Treaty is amended and the emphasis is placed more clearly on the basic overall aims. The previous Article 16 would be removed. The demands of EPSU, ETF, ETUCE and UNI Europa should be taken into account when introducing this new wording and new provision.

Detailed provisions governing specific exemptions from competition or financial assistance law should be outlined in an executory act referring to this (future) constitutional provision.

F. Suggested texts for Community (Union) Policies

Proposed changes to:

Title VI: Competition

7. A fourth paragraph should be added to Article 81 EC Treaty as follows:

“(4) Paragraph 1 does not apply to agreements reached as part of collective bargaining negotiations between management and labour and concerning issues related to social policy.”

This additional text should ensure that (national) collective agreements are not later made subject to competition law by the ECJ.

8. After letter a) in the list of incidents of abuse given in Article 82(2) a new letter b) should be introduced as follows, and the remaining points should be labelled c) to e):

“b) directly or indirectly imposing inadequate salary or social conditions on employees;”

This makes it clear that not only consumers and competitors are exposed to the risk of unfair behaviour, rather that employees are also.

9. The following text should be added to Article 86(2):

“(2) Undertakings that provide services in the sense meant by Article 6 EC Treaty or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules of competition in accordance with Article 6, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them...” [further as before]

10. After Article 86(2) the following new paragraph 3 should be introduced and the current paragraph 3 would then become paragraph 4:

“(3) The Commission shall ensure the application of the provisions of this Article and shall, where necessary, propose legal provisions and shall address decisions based thereon to the Member States.”

11. In Article 87(2) EC Treaty, the following text should be added after letter c):

“d) aid granted to businesses or establishments by local communities where these local communities own said businesses or establishments, insofar as the services they provide are of general economic interest.”

The aim of these new provisions is to entitle local communities to subsidies for their services without the need to provide notification thereof and in such a manner that this does not infringe competition provisions.

Within the framework of the new order of the financial and legal provisions outlined in CONV 232, the following changes should be made under

Title I Economic and Social Union

- Institutional Provisions

12. The following changes should be made to Article 114: paragraph 3 should be removed entirely, paragraph 4 should then be renumbered as paragraph 3 and the third sentence of paragraph 2 should read:

“The Member States, the Commission and the ECB shall each appoint at most two members of the Committee, whereby the ECB shall also represent the central banks within the ESCB that are part of EMU. Those Member States that are not part of EMU may appoint representatives of their national central banks as members of the Committee.”

Article 114(3) leaves the composition of the most important economic and political committee to a qualified majority decision by the Council acting on a proposal from the Commission. Since 1998, before the start of the 3rd phase of EMU, all of the central banks of the Member States have been represented within the Economic and Financial Committee alongside the ECB, even though as of 1 January 1999 they ceased to operate any monetary policies of their own. This has led to an imbalance of power in the hands of the central bank representatives and to the detriment of the government representatives. It is for this reason that we would propose a provision under primary law such as the above.

Continuing in the same vein as the new organisation concept proposed in CONV 232 and in addition to the modifications already suggested therein, the following changes should also be made:

Title I Economic and Social Union

-
- **Employment policy**

13. The provisions of Article 129 should be strengthened as follows:

“The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, **management and labour representatives** and the Committee of the Regions, shall decide on incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.”

The aim of this proposed change is to ensure that the Council is involved in every case and consults management and labour representatives when drawing up concepts.

14. So as to strengthen the position of both the European Parliament and management and labour representatives within the Employment Committee, the second sub-point of Article 130 should be amended as follows:

“- without prejudice to Article 207, to formulate opinions at the request of either the Council, the Commission or **the European Parliament** or on its own initiative **after consulting management and labour representatives**, and to contribute to the preparation of the Council proceedings referred to in Article 128.”

Under the current

Title IX Commercial policy

the following changes are proposed:

15. As even existing commercial policy is required to take into account any possible consequences in terms of employment or social policy, we would suggest making the following modifications to Article 133:

*“(1) The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies, **as well as in regard to anchoring world trade and investment arrangements in internationally recognised social and environment standards. The Member States and the Community shall act in all matters of commercial policy in compliance with the principles set down in Article 2 of this Treaty and shall promote the efficient and sustainable use of resources.**”²*

*“(2) The Commission shall submit proposals to the Council, **after consulting the European Parliament, the Economic and Social Committee and management and labour representatives**, for implementing the common commercial policy.*

*“(3) **Where agreements with one or more States or international organisations need to be negotiated, the Commission shall, after consulting the European Parliament, the Economic and Social Committee and management and labour representatives, make recommendations to the Council, which shall authorise the Commission in co-decision with the European Parliament to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council and the European Parliament to assist the Commission in this task and within the framework of such directives as the Council and European Parliament may issue to it.**”*

These proposed changes to Article 133 are based overwhelmingly on suggestions made by the *Deutscher Gewerkschaftsbund* Federal Board. These modifications would on the one hand overcome the current practice of secret negotiations through the involvement of the European Parliament, thus increasing democratic transparency. On the other hand, they would introduce qualitative criteria into the basic principles of EU commercial policy, such as through the reference to Article 2 intended to protect the principle of services of general economic interest, or the “subsistence” principle in short, from excessive trends towards liberalisation.

² Reference is made here to the principles set down in Article 2 of the Treaty so as to ensure that the Principle of Subsistence, for example, cannot be called into question by international trade agreements.

In line with the new structure suggested in proposal CONV 232, the following changes should be made to:

Title I Economic and Social Union

CHAPTER 3: Social policy

16. The text of Article 136(1) EC Treaty should be amended as follows:

“The Union and the Member States ... shall have as their objectives the achievement of full employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, a high level of social protection and social security, dialogue between management and labour...” *“[further as before]*

In the future, the issue should no longer simply be “proper social protection”, but much more, i.e., a high level of social protection and social security that best protects the interests of those concerned. The amendments proposed above are also intended to make it clear that the focus of EU political efforts is on the citizen.

17. The following paragraph should be added to Article 136:

“The Union recognises and respects existing national differences between social security systems used to protect different societies and that are characterised by the values of solidarity and social justice.”

The system of self-administration of social insurance arrangements has proven itself to be efficient and cost-effective. The involvement of the parties concerned in determining their own arrangements should be continued and indeed upheld by the EU. The wording “recognises and respects” links this text to various parts of the EU Charter of Fundamental Rights.

18. The text of Article 137(2) EC Treaty should be amended as follows so as to strengthen its overall effect:

“To this end, the Council **adopts** by means of directives, minimum requirements for gradual implementation...”

The aim of this provision is to ensure that the Council is involved in every case.

19. Following Article 139(1) a new paragraph 2 should be added as outlined below and the current paragraph 2 should be renamed paragraph 3 and amended as follows.

„(2) Agreements concluded at European level by management and labour associations concerning the remuneration or social framework conditions of their members, e.g., European Collective Agreements, shall, insofar as they are not based solely on the legal relationship between these associations, be legally binding with immediate effect in all of their areas of application, whether in terms of specialisation, area and persons concerned. This legal validity shall also apply to employees whose

employers are part of the collective agreement system, but who have remained outside the agreement. The Council shall issue more detailed provisions in this respect with the assent of the European Parliament and acting on a proposal by the Commission. The Council shall act by qualified majority. Paragraph 3 applies until such time as this paragraph is fully applicable.

*(3) Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, **including remuneration, the right of association, the right to strike and the right to lock-out**, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The Council shall act by qualified majority.*

The aim of this proposal is to enable management and labour associations to decide independently at European level on those areas of responsibility in which they wish to negotiate. The use of the qualified majority decision procedure by the Council serves to strengthen social dialogue at European level.

However, a basis should also be created in primary law for all binding collective agreements reached at European level and with the third type of effect. The paragraph 2 proposed above furthermore requires additional study by both the Council and the EP.

20. The following text should be added to Article 140(2):

“To this end, the Commission shall act in close contact with the Member States and social insurance organisations by making studies, delivering opinions, and arranging consultations both on problems arising at national level and on those of concern to international organisations. With the aim of reaching the objectives outlined in Article 136 the Union shall work in close cooperation with social insurance organisations. Before delivering ...” [further as before]

The process of European unification must uphold the existing social and cultural diversity of individual state systems of social protection and develop these further in a cautious manner as part of a common European future. Direct dialogue between national players in the social insurance sector and the EU bodies is a condition for this.

21. An Article 144a should be added after Article 144 as follows:

“For those matters governed by Article 137(1)(j) and (k), the Council shall, in line with the consensus of the Member States, on the basis of a proposal by the Commission that takes into account the opinions of the Committee for Social Protection and following consultation with the European Parliament and management and labour representatives

- produce jointly established objectives and indicators and***
- where necessary provide guidelines to be followed by the Member States in their policy-making and***
- issue reports on the implementation of a cooperation procedure.***

The results of this procedure shall be included in the basic characteristics of the economic policy of the Member States in accordance with Article 99 of this Treaty.”

The aim of this new provision is twofold. On the one hand, it clearly states the methods for open coordination as part of the Treaty. On the other hand, it also makes known that these methods are to be used for two quite specific policy areas only, namely the modernisation of social protection and the fight against social exclusion. Such open coordination is not intended to replace hard EU law and shall bring obligations of its own, essentially through the reference to Article 99 and its albeit somewhat weak system of sanctions.

EUROPEAN CONVENTION

Working Group X1: Social Europe

Responses to Questions 1-3 of Mandate

from Proinsias De Rossa, Member of the Convention

Basic Values of the Union

Reference to "Fundamental Social Rights" in the recitals of the Treaty should be maintained.

The Charter of Fundamental Rights should be incorporated in the constitutional Treaty.

Article 2 should include reference to "Social Solidarity".

General Objectives of the Union

Article 3 should include:

an amended second indent

- promotion of economic and social cohesion within a social market economy

an amended fourth indent

- promotion of a model of social progress aiming at the achievement of full employment, the ending of social exclusion and a high degree of social protection

an additional indent

- measures to secure and promote services of general interest

Competences of the Union

The present European Union competences in the field of social policy should be maintained without any reduction, and those areas at present explicitly excluded from European Union action - pay, the right of association, the right to strike and the right to impose lock-outs - should be brought within the shared competences of the Union.

Answers to questions 1-3 from the mandate of the Working Group "Social Europe" from MEP, Lone Dybkjaer

With this Convention we have been given the chance to draft something "new". Have a new beginning. Our goal should be ambitious. We aim to create a society where everyone, no matter her or his social background, will feel that it is a good place to be born, live and work.

In drafting this new beginning, we should constantly be aware to do it in a gender sensitive language.

I will be focusing on especially two issues in answering the three questions: gender and disability.

1.

It is important, that the starting point of the European constitutional treaty is to state what the EU does, not what the Union is. The aim should not be to secure "an ever closer union", but rather to secure essential benefits for the population. The EU needs a sound bite that people can quote when asked what the EU is for. It needs to explain the added value of the EU to nation states and regions in dealing with a complex world.

Thus the mission statement of the constitutional treaty could be that "The European Union exists to enable the peoples of Europe to achieve greater prosperity, security and democracy than any can achieve alone."³

It is of crucial importance that the Union establishes and confirms that it aims to be a socially inclusive and socially accessible Europe, free of discrimination and based upon the guarantee of fundamental rights for all. A union focusing on the fight against poverty, and founded on economic and social sustainability. The Union should solidly establish non-discrimination and diversity as its basic values.

³ See article by Heather Grabbe, Centre for European Reform:
http://europa.eu.int/futurum/forum_convention/documents/contrib/acad/0077_c_en.pdf

Gender equality must be included on its own among the basic values of the Union.

The commitment of the EU to the respect of fundamental rights should be made clearer by incorporating the EU Charter of Fundamental rights into the constitutional treaty and by giving the EU the legal personality and the competence to ratify human rights instruments.

2

If the Union is to be truly inclusive further attention has to be given and new measures introduced which allows all citizens to participate in social life. Thus the Union should aim not only to secure non-discrimination but also to improve accessibility to all public fora. The Union should put into action the principle of participatory democracy by securing accessibility for disabled people to public infrastructure and in public life in general.

A balanced representation of women and men should be ensured in all the EU institutions' bodies and committees.

The Union should have as an objective to give further attention to combating all forms of discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

- For concrete suggestions regarding gender equality in the constitutional treaty see **annex 1** "Copenhagen Declaration: Building a democratic union for women and men".

3.

No new competencies should be conferred to the Union other than those following by achieving a legal personality, but the existing ones should be clarified and simplified. The open method of co-ordination should be institutionalised and defined in the treaty.

Annual Conference of the Network of Parliamentary Committees for Equal Opportunities for Women and Men in the Parliaments of the EU Member States and the European Parliament, NCEO, Copenhagen 22-23 November 2002

Building a democratic Europe for Women and Men

We, delegates in the meeting of the Network of Parliamentary Committees for Equal Opportunities for Women and Men in the Parliaments of the EU Member States and the European Parliament, delegates from the Candidate Countries and the Parliamentary Assembly of the Council of Europe

Welcome the ongoing work undertaken by the Convention in shaping a future democratic Europe, which is of utmost importance for women and men, citizens of Europe;

Take note of the preliminary draft Constitutional Treaty published on 28 October;

Welcome the proposal to incorporate in the draft Constitutional Treaty the European Charter of Fundamental Rights, also because gender equality is above all a matter of fundamental rights;

Note, however, with deep concern, that until now there is a lack of attention given to gender equality issues in the preliminary draft Constitutional Treaty, which:

- does not include gender equality among the values of the Union,
- does not include among its objectives the elimination of inequalities and the promotion of equality between women and men;

Urge, therefore, that the "*acquis communautaire*" in the field of gender equality, which has been achieved so far in the Union, should be maintained and further strengthened;

Present the following minimum requirements on a future European Constitutional Treaty:

Part one: Constitutional Structure

- The Charter of Fundamental Rights should be incorporated in the Constitutional Treaty;
- Gender equality should be included among the basic values of the Union;
- Elimination of inequalities and promotion of equality between women and men should be one of the objectives and tasks of the Union;

Part two: Union policies and their implementation

- The issue of gender equality and the particular situation of each sex should be incorporated in all policy areas, at all levels, at all stages and by all participants in political activity (so called "*gender mainstreaming*");
- The Union's and the Member States competence in criminal justice should also take account of all forms of violence against women including trafficking;
- Subject to the principle of democratic representation, a balanced representation of women and men should be a fundamental principle in the decision making bodies in the European Union, and it should be supported by positive actions aiming at improving the situation of women as the underrepresented sex;
- A specific title "Gender Equality" should be created in the Treaty, in order to ensure a strong and clear basis for all matters related to equality between women and men;
- Matters concerning gender equality should also fall within the mandate given to the new working group of the Convention on social policies;
- The Treaty should be drafted in a gender neutral language;

Instruct its President to forward this declaration to all Members of the Convention.

COMMENTS BY MR HANNES FARNLEITNER

- 1. Article 2 of the preliminary draft Constitutional Treaty sets out to define briefly the Union's basic values. What basic values should this provision contain in the social field, taking into account those already present in the Charter of Fundamental Rights of the EU?**

Social peace should be mentioned as a basic value.

- 2. Article 3 of the preliminary draft Constitutional Treaty sets out to define the Union's general objectives. To what extent and in what way should these general objectives include social objectives?**

In Article 3 of the preliminary draft Constitutional Treaty the promotion of a high level of employment and a high degree of social protection as well as the promotion of economic and social cohesion are enumerated as objectives of the European Union.

We propose

- Instead of “a high level of employment” an explicit commitment to full employment should be made in the Treaty. Restoring full employment to the place it held as an item of economic policy par excellence is the first step towards an economy capable of attracting the support of Europe's citizens..
- a more comprehensive definition of the term “high degree of social protection” should be made. The European Social Model, characterised in particular by systems that offer a high level of social protection and health service based on solidarity of citizens and generations, by the importance of the social dialogue and by services of general interest covering activities vital for social cohesion, is based, beyond the diversity of the Member States social systems, on a common core of values. Hence the European Social Model should be laid down in Article 3 of the preliminary draft Constitutional Treaty.

3. As regards the Union's competences, do you consider that the present competences of the Union/Community in social matters should be modified? If so, what new competences should be conferred on the Union/Community in social matters, and in which category of competences should they be placed?

I am against the delegation of new competences in social matters to the European Union. In this context I would like to refer to the Final report of Working Group V "Complementary Competencies", where areas of core national responsibilities are mentioned. One of those areas concerns "basic public policy choices and social values" of a Member State and enumerates as examples the system of social welfare benefits and the public health care system.

It could be considered to open the area of social matters for supporting measures of the European Union in the sense of the Final report of Working Group V (CON 375/1/02 Rev 1).

However there are areas such as the field of free movement of workers where legislative competences of the European Union in social security matters are necessary.

The European Convention **Working Group on Social Europe**

Initial response from Emilio Gabaglio

Question 1

The Constitutional Treaty should include **Social Justice** and **Equality** among the basic values upheld by the European Union.

Question 2

The Constitutional Treaty should indicate that in the Union, economic and social goals go hand in hand and are mutually reinforcing.

The following general objectives should be referred to:

- Social Market Economy
- Full Employment
- Sustainable Development
- A high level of Social Protection
- Services of General Interest

Question 3

The existing employment and social policy competences should be retained although streamlined and updated in their formulation. In the Labour Market / Employment areas, emphasis should be put on employability and quality of jobs. Reference to social inclusion and to the eradication of poverty should be stressed.

These will continue to be **shared competences** with the Union acting through legislation establishing minimum requirements or, as appropriate, through the open method of coordination.

Contractual arrangements (framework agreements) between the Social Partners should also continue to be envisaged.

Note à l'attention de Monsieur KATIFORIS
Président du groupe de travail XI "Europe Sociale"

Objet : Propositions sur les points 1,2 et 3 du mandat

Point 1 - Article 2 de l'avant-projet de Traité Constitutionnel

On ne peut pas rouvrir les débats sur la Charte des Droits Fondamentaux qui comporte de nombreux articles sur les droits sociaux des citoyens européens. Dès lors qu'elle figure en tête du Traité Constitutionnel, l'article 2 n'a pas à les mentionner. Tout au plus pourrait-on rappeler "tels qu'ils sont inscrits dans la Charte des Droits Fondamentaux".

Point 2 - Article 3 de l'avant-projet de Traité Constitutionnel

Cet article doit reprendre l'article 2 du TCE qui prévoit :

- au plan social un niveau d'emploi et de protection sociale élevé,
- l'égalité entre les hommes et les femmes,
- la cohésion économique et sociale et la solidarité entre les Etats-membres

pourraient être ajoutés :

- après environnement "et de santé publique",
- la cohésion économique et sociale entre les Etats membres et **les Régions**,
- le développement de l'Union européenne comme un espace de liberté, de sécurité et de justice dans lequel la mobilité des personnes est assurée en coordination avec les mesures appropriées de contrôle des frontières extérieures, du droit d'asile et de la prévention d'actes criminels (GT X°
- les mesures appropriées de lutte contre l'insécurité économique et l'exclusion

Article 3 - Par rapport au compétence de l'Union

Reprise des dispositions suivantes :

1 -

- i/ la promotion d'une coordination entre les politiques de l'emploi des Etats-membres en vue de renforcer leur efficacité par l'élaboration d'une stratégie coordonnée pour l'emploi,
- j/ une politique dans le domaine social comprenant un Fonds social européen,
- k/ le renforcement de la cohésion économique et sociale,
- p/ une contribution à la réalisation d'un niveau élevé de protection de la santé,
- q/une contribution à une éducation et à une formation de qualité ainsi qu'à l'épanouissement des cultures des Etats-membres,
- t/une contribution au renforcement de la protection des consommateurs,

2 - Pour toutes les actions visées au présent article, la Communauté cherche à éliminer les inégalités, et à promouvoir l'égalité, entre les hommes et les femmes de l'article 3 du TCE éventuellement avec des compléments.

Ajouts

- une politique intégrée pour la protection des citoyens contre les accidents et les catastrophes naturelles et pour la réparation des dommages ainsi causés.

Claude du GRANRUT

Convention on the Future of Europe: the Social Europe Working Group

Comments by Peter Hain on paragraphs 1 to 3 of the mandate of the working group

I am grateful for the opportunity to comment on the questions of the mandate. Inevitably, these comments are somewhat preliminary in nature, and I will want to return to some of these themes as our debate develops.

The key challenge for those of us who believe in social justice in Europe is social exclusion. The number of people living below the poverty line and in social exclusion in the Union is unacceptable. 13 million unemployed European citizens is an affront to the social values that we all share. Creating more and better jobs is vital if we are to address social exclusion. This working group should consider the extent to which the Constitutional Treaty can assist that process and should avoid creating new obstacles to job creation.

So, taking the first three points in our mandate one by one:

1. The Union's basic values

The European employment and social agenda goes far wider than rights and values. Take for example the extensive work on the European Employment Strategy and collaboration on social exclusion and pensions. Work on a new Constitutional Treaty should base itself on existing processes rather than starting from fundamental rights.

I could nevertheless consider adding some clear and unambiguous values to the Treaty, for example on social inclusion and equality, which would underline the importance of jobs in a strategy against social exclusion. But I see little value in repeating the content of the Charter of Fundamental Rights.

2. The Union's general objectives

Art 2 TEU already contains objectives on employment and social cohesion. These are vitally important, and should be strengthened. I would like to explore your idea of changing the reference in Art 2 to a high level of employment, to full employment. As regards social cohesion, the Lisbon Agenda (and the conclusions of the Lisbon European Council) provide useful language upon which we could draw. For example, to tackle social exclusion the Union should work to improve skills and promote access to knowledge and opportunities. Further, I could consider including some general social objectives in the Treaty (such as the promotion of economic and social progress). I might also consider suitable Treaty objectives on Union co-ordination in the fight against cross-border threats to public health.

Art 137 sets out areas of Community support for Member States in various domains of social policy. Social exclusion and the modernisation of social security systems (without prejudice to social security and social protection of workers) should be added to the list.

Article 36 of the Charter of Fundamental Rights recognises the importance of the EU institutions' respecting access to Services of General Interest. But I cannot agree to these services being treated as a special case in Community policies such as state aid. Separate policy for these services risks running contrary to the internal market. Therefore I do not support a reference to Services of General Interest in the Union's general objectives.

3. The Union's competences

I believe that the Union should respect the diversity of traditions and practices in Member States which have developed to meet the specific demands of national labour markets. As I have said in the Convention plenary, I think the balance of competences is about right at present and I am therefore not convinced of the need for the Union or Community to acquire new competences in the social policy field. The challenge is rather for the Union and Community to take more effective and coherent action in respect of its existing competences. In this regard it would be helpful to insert a reference in the Treaty to Community efforts to ensure full implementation of the Lisbon Agenda.

The UK Government is against removing the exclusions from Community action in Art 137(6). I do not think that we should look again at the rights contained in the Charter of Fundamental Rights such as those found in the Solidarity Chapter. I believe that control of setting minimum wages should rest with Member States. The UK national minimum wage is successful because it is set according to national economic conditions. Giving up the exclusion on pay would introduce unnecessary inflexibility for Member States. I support the other existing exclusions listed for similar reasons.

I would also oppose further extension of QMV for areas listed in Arts 42 and 137(3) beyond what was agreed at Nice. I believe that extending QMV in the social policy field could hinder economic reform and make it more difficult to create new jobs. Extending QMV in the social policy field would therefore risk running counter to the Lisbon Agenda.

Article 128 sets out a strategy for Community work in the field of employment. The UK supports the existing arrangements under this Article, and believes they should continue. Efforts to streamline reporting under this Article should also continue.

I am pleased that the Chairman of the Social Europe working group has agreed not to re-open the conclusions of other working groups, including the Charter working group. The conclusions of the Social Europe working group, in particular those on Community competences, must be in harmony with those of other working groups.

Working Group on Social Europe

Comments by Ms Riitta Korhonen, Member of the Finnish Parliament to questions 1 - 3 in the WG Mandate, CONV 421/02

The first three questions concern issues already discussed in the WG on Economic Governance. My comments - and the logic behind them - remain fundamentally the same.

We should show restraint in adding new elements to the objectives and general goals of the Union. The objectives of the Union should be in line with the attribution of competences and reflect the principle of subsidiarity. We should not at Union level adopt objectives in areas in which the Member States have the authority to decide. The extension of community competence for example in social policy is not justified because social protection systems have no effects across borders. I very much doubt that anyone would be willing to increase the Community Budget to create or finance a European Social Protection System.

We should bear in mind that the employment in itself is not an objective but a tool, a method to create economic growth and prosperity. For this reason it makes no difference whether we talk about "full employment" or "high level of employment". The decisions on how to get there - how to create prosperity and economic growth - belong to the Member States. Only Member States can effect the necessary reforms. Therefore social policies of the Member States should remain in the hands of the national Governments and Parliaments and to be discussed and agreed with the Social Partners according to respective national traditions and arrangements.

1. Article 2 of the preliminary draft Constitutional Treaty sets out to define briefly the Union's basic values. What basic values should this provision contain in the social field, taking into account those already present in the Charter of Fundamental Rights of the EU?

Comment:

It is important that the economic and social objectives reflect the Community competences and the principle of subsidiarity. The Working Group on Economic Governance agreed that this is an issue to be debated in the plenary debate of the Convention and refrained to involve itself with the subject. This should concern also the Social Europe Working Group.

2. Article 3 of the preliminary draft Constitutional Treaty sets out to define the Union's general objectives. To what extent and in what way should these general objectives include social objectives?

Comment:

"High level of employment" and "full employment" are both important strategic goals in order to deliver growth and ensure sustainable financing of welfare systems. There is no major difference from the strategic point of view whether the goal is "high level of employment" or "full employment". According the existing division of competences the economic and employment policies are in the hands of the Member State Parliaments and Governments. The same applies also to the social objectives which at end of the day are defined by the Parliaments and Governments of each of the Member States and reflect available resources, national circumstances and traditions.

3. As regards the Union's competences, do you consider that the present competences of the Union/Community in social matters should be modified? If so, what new competences should be conferred on the Union/Community in social matters, and in which category of competences should they be placed?

Comment:

The final responsibility for social security systems and their financing is in the Member State Parliaments and Governments. These systems reflect different national traditions and circumstances. There is no need for harmonising these systems and transfer competences from national level to the EU-level. The open method of coordination has proved to be an efficient and fruitful way to organise the co-operation between the Member States in these issues.

„Soziales Europa“

Beitrag von Prof. Dr. Jürgen Meyer

1. Solidarität als Wert der Union

Europa ist eine Wertegemeinschaft. Dies gilt in besonderer Weise für den Grundwert der Solidarität. Der Deutsche Bundestag hat sich ausdrücklich dafür ausgesprochen, neben einer demokratischen und handlungsfähigen auch eine solidarische Europäische Union zu schaffen. Die Charta der Grundrechte der Europäischen Union stellt den hohen Rang des Grundwerts der Solidarität heraus und konkretisiert ihn durch soziale Grundrechte als unverzichtbare Wesenselemente der europäischen Wertegemeinschaft und des Sozialmodells der Europäischen Union. Bereits in der Präambel wird betont, dass sich die Union auf den universellen Wert der Solidarität gründet. Außerdem bekräftigt die Charta ausweislich der Präambel die Rechte, die sich aus den von der Gemeinschaft und dem Europarat beschlossenen Sozialchartas ergeben. In ihrem IV. Kapitel mit dem Titel „Solidarität“ enthält die Grundrechtecharta 12 Artikel mit sozialen Gewährleistungen; weitere soziale Rechte und Gemeinschaftszielbestimmungen sind außerhalb des Solidaritätskapitels formuliert. Die sozialen Rechte nehmen damit einen herausragenden Platz in der Grundrechtecharta ein und spiegeln das Selbstverständnis der EU als eine schon längst über die bloße Wirtschaftsgemeinschaft hinausgehende Wertegemeinschaft wider.

Die Charta der Grundrechte der Europäischen Union sollte den ersten Teil einer Europäischen Verfassung bilden und ihre Präambel als Präambel der Verfassung übernommen werden. Zur Verstärkung sollte in Artikel 2 des Vorentwurfes des Verfassungsvertrages der Wert der **Solidarität** enthalten sein. Hierdurch würde der Solidaritätsgedanke für alle Unionsbürger noch sichtbarer.

2. Vollbeschäftigung als Ziel der Union und Verankerung der sozialen Marktwirtschaft

Die Europäische Union muss weiter an den in Lissabon vereinbarten Zielen zur Erhöhung der Beschäftigungsquote bis hin zur Vollbeschäftigung festhalten. Artikel 3

des Vorentwurfes des Verfassungsvertrages sollte daher in seinem vierten Spiegelstrich das Ziel der **Vollbeschäftigung** vorsehen.

Ich trete für die Förderung und die Verteidigung unseres Sozialmodells ein, das eine enge Verbindung zwischen wirtschaftlicher und sozialer Koordinierung bedingt.

Nur so können wir das wirtschaftliche Potenzial der Union zum Erreichen von Vollbeschäftigung, einem hohen Niveau des Sozialschutzes und der annähernd gleichen hohen Lebensqualität in allen Regionen der Union erreichen. Binnenmarkt und soziale Ziele sollten im Sinne einer europäischen Solidarunion als untrennbar miteinander verbundene Elemente des europäischen Gesellschaftsmodells betrachtet werden. Europa muss sein einzigartiges Sozialmodell als wesentliches Element einer europäischen Identität bewahren, ausbauen und sich gerade auch als soziale Wertegemeinschaft in der Welt behaupten.

Die Wirtschaftspolitik der Europäischen Union sollte nach den Kriterien einer sozialen, offenen und wettbewerbsfähigen Marktwirtschaft ausgerichtet sein. Ein soziales Europa sollte den Grundsatz der **sozialen Marktwirtschaft** in seiner Verfassung verankern und die soziale Dimension bei der Definition des Binnenmarktes berücksichtigen.

3. **Zuständigkeiten im sozialen Bereich**

Gemäß Artikel 51 Abs. 2 der Grundrechtecharta der Europäischen Union begründet diese – auch im Bereich sozialer Rechte - weder neue Zuständigkeiten noch neue Aufgaben für die Gemeinschaft und für die Union, noch ändert sie die in den Verträgen festgelegten Zuständigkeiten und Aufgaben. Diese bereits nach der jetzigen Textfassung geltende Rechtslage wurde durch die im Abschlussbericht der Arbeitsgruppe „Einbeziehung der Charta/Beitritt zur EMRK“ enthaltenen Vorschläge für redaktionelle Anpassungen der horizontalen Artikel der Charta bestätigt und nochmals klargestellt, ohne inhaltliche Änderungen herbeizuführen. Die Frage der Änderung von **Zuständigkeiten** der Union im sozialen Bereich bedarf daher noch einer erheblichen Prüfung und Diskussion.

“Social Europe”

Contribution by Prof. Jürgen Meyer

1. Solidarity as a value enshrined in the Union

Europe is a community of values. This is particularly true of the fundamental value of solidarity. The German Bundestag has explicitly advocated creating a European Union that, as well as being democratic and capable of taking effective action, is also founded on the principle of solidarity. The Charter of Fundamental Rights of the European Union emphasizes solidarity as a fundamental value and gives it concrete form through fundamental social rights as indispensable defining elements of the European community of values and of the social model on which the European Union is based. The Preamble itself emphasizes that the European Union is founded on the universal value of solidarity. The Charter also, as set out in the Preamble, reaffirms the rights that are enshrined in the Social Charter adopted by the Community and the Council of Europe. Chapter IV of the Charter of Fundamental Rights, entitled “Solidarity”, contains 12 articles which relate to the safeguarding of social rights; further social rights and definitions of Community goals are formulated outside the chapter on solidarity. Social rights do occupy a prominent place in the Charter and reflect the EU’s understanding of itself as a community of values that has long since transcended a mere economic community.

The Charter of Fundamental Rights of the European Union should form the first part of a European constitution and its Preamble be adopted as the preamble of the constitution. For the purposes of reinforcement, **solidarity** should be included as a value in Article 2 of the Preliminary Draft Constitutional Treaty. This would make the concept of solidarity even more visible for all EU citizens.

2. Full employment as a goal of the EU and anchoring of the principle of the social market economy

The European Union must continue to adhere to the goals of increasing the employment rate up to full employment, as agreed in Lisbon. Article 3 of the Preliminary Draft Constitutional Treaty should therefore include the goal of **full employment** in the fourth indent.

It is my firm belief that we should promote and defend our social model, which requires a close link between economic and social coordination. This is the only way we can use the EU's economic potential to secure full employment, a high standard of social protection and approximately the same high quality of life in all regions of the EU. The internal market and social goals should be regarded as insolubly linked elements of the European model of society in a European Union founded on the principle of solidarity. Europe must retain and build on its unique social model as a defining element of a European identity and assert itself in the world as a community of social values in particular.

EU economic policy should be based on the criteria of a social, open and competitive market economy. A social Europe should anchor the principle of the **social market economy** in its constitution and take into account the social dimension in the definition of the internal market.

3. Powers in the area of social rights

Article 51(2) of the Charter of Fundamental Rights of the European Union states that the Charter does not establish any new powers or tasks for the Community or Union, or modify powers and tasks defined by the Treaties. This includes the area of social rights. This legal position, as defined by the current version of the text, was confirmed by the proposals for drafting adjustments in the horizontal articles of the Charter contained in the final report of the Working Group "Incorporation of the Charter/accession to the ECHR", and reiterated without substantive changes being suggested. The question of changes to EU **powers** in the area of social rights therefore still requires considerable examination and discussion.

"L'Europe sociale"

Contribution du Prof. Jürgen Meyer

1. La solidarité, valeur de l'Union

L'Europe est une communauté de valeurs. Cette notion prend une dimension particulière quand il s'agit de la valeur fondamentale de la solidarité. Le Bundestag allemand s'est déjà exprimé avec insistance pour que, à côté d'une Union européenne démocratique et capable d'agir, l'on crée également une Union européenne solidaire. La Charte des droits fondamentaux de l'Union européenne met en avant la place importante de la solidarité comme valeur fondamentale, et elle la concrétise en faisant des droits sociaux fondamentaux des éléments essentiels indispensables de la communauté de valeurs européenne et du modèle social de l'Union européenne. Déjà dans son préambule, il est souligné que l'Union se fonde sur la valeur universelle de la solidarité. En outre, ce même préambule de la Charte réaffirme les droits qui résultent des Chartes sociales adoptées par la Communauté et le Conseil de l'Europe. En son chapitre IV, intitulé "Solidarité", la Charte des droits fondamentaux contient 12 articles reprenant les garanties sociales ; d'autres droits sociaux et objectifs communautaires en la matière sont formulés en dehors du chapitre "Solidarité". Les droits sociaux occupent ainsi une place exceptionnelle dans la Charte des droits fondamentaux, reflétant par là la conception que l'UE a d'elle-même, celle d'une communauté de valeurs qui dépasse déjà de loin la simple communauté économique.

La Charte des droits fondamentaux de l'Union européenne devrait constituer la première partie de la constitution européenne, et son préambule devrait être repris comme préambule de la constitution. Afin de réaffirmer son importance, la valeur de la solidarité devrait être contenue dans l'article 2 de l'avant-projet du traité constitutionnel. Le principe de la solidarité n'en serait que plus visible encore pour tous les citoyens de l'Union.

2. Le plein emploi comme objectif de l'Union et l'ancrage de l'économie sociale de marché

L'Union européenne doit continuer de s'en tenir aux objectifs convenus à Lisbonne en matière de relèvement du nombre d'emplois, pour arriver finalement au plein emploi. L'article 3 de l'avant-projet du traité constitutionnel devrait donc prévoir, au quatrième tiret, l'objectif du **plein emploi**.

Je suis favorable à la promotion et à la défense de notre modèle social, lequel suppose une association étroite des coordinations économique et sociale.

Ce n'est que de cette manière que nous pouvons arriver au potentiel économique de l'Union qui permettra d'atteindre le plein emploi, un niveau élevé de protection sociale et un niveau de qualité de vie élevé et tendant à s'uniformiser dans toutes les régions de l'Union. Le marché intérieur et les objectifs sociaux devraient être pris en considération dans l'optique d'une Union européenne solidaire, en tant qu'éléments indissolublement liés du modèle européen de société. L'Europe doit garantir et développer son modèle social, qui est unique, comme élément essentiel d'une identité européenne, et elle doit aussi s'affirmer dans le monde comme une communauté de valeurs sociales.

La politique économique de l'Union européenne doit être orientée sur des critères d'une économie de marché sociale, ouverte et compétitive. Une Europe sociale doit ancrer le principe de l'**économie sociale de marché** dans sa constitution et considérer la dimension sociale dans la définition du marché intérieur.

3. **Compétences dans le domaine social**

Conformément à l'article 51, paragraphe 2, de la Charte des droits fondamentaux de l'Union européenne, celle-ci ne crée aucune compétence ni aucune tâche nouvelles - y compris dans le domaine des droits sociaux - pour la Communauté et pour l'Union et ne modifie pas les compétences et tâches définies par les Traités. Cette base juridique, déjà en vigueur suivant la version actuelle du texte, a été confirmée et une nouvelle fois précisée, sans que des modifications soient apportées à son contenu, dans les propositions d'adaptations rédactionnelles des dispositions horizontales de la Charte contenues dans le rapport final du groupe de travail "Intégration de la Charte/adhésion à la CEDH". Il convient donc d'examiner encore de manière approfondie et de débattre de la question de la modification des **compétences** de l'Union dans le domaine social.

**CONTRIBUTION PRELIMINAIRE DES OBSERVATEURS REPRESENTANT
LE COMITE ECONOMIQUE ET SOCIAL EUROPEEN AUX QUESTIONS 1 ET 2
DU MANDAT DU GROUPE DE TRAVAIL "EUROPE SOCIALE"
DE LA CONVENTION EUROPEENNE
(CONV 421/02)**

A. Considérations générales concernant les valeurs et les objectifs essentiels

La constitution de l'Union européenne doit consolider les bases d'une union de plus en plus étroite entre les peuples européens et montrer clairement l'importance de l'Union en tant que communauté de droit mais aussi de valeurs. C'est pourquoi son contenu doit marquer une avancée claire dans la direction indiquée et non pas un recul par rapport aux résultats déjà atteints.

Le Comité s'est exprimé, notamment dans son avis sur "la Charte des droits fondamentaux de l'Union européenne", en faveur d'une Europe plus engagée et solidaire:

"Une Charte des droits fondamentaux qui repose sur les concepts d'éthique, de morale et de solidarité ne se contente pas de formuler des droits et des devoirs, mais représente également un système de valeurs commun. Elle soutient ainsi la progression de l'Union européenne d'une communauté de droit vers une communauté de valeurs dans laquelle peut se développer une identité européenne. Par conséquent, elle peut contribuer à ce que la citoyenneté de l'Union ne soit plus perçue de manière abstraite en tant que somme de toutes les nationalités, mais en tant que valeur ajoutée concrète. Elle implique aussi que chaque citoyen exerce ses droits dans un esprit de responsabilité, dans le cadre d'une société civile organisée fondée sur le dialogue et sur le respect.

...

"Avec une Charte des droits fondamentaux contraignante et en tant qu'"espace de liberté, de sécurité et de droit", l'Union européenne prend une dimension supplémentaire dans l'esprit d'une communauté de valeurs clairement définie et formellement reconnue. Une telle reconnaissance formelle donne à l'Union une importance supplémentaire, tant dans le contexte du prochain élargissement que dans celui de la mondialisation".

Il est évident que ces affirmations valent aussi pour la Constitution de l'Union qui constituera un véritable engagement politique, social et civique.

Le Comité estime qu'il faut intégrer la Charte des droits fondamentaux dans la Constitution, en maintenant la différenciation entre les droits directement applicables et les droits programmatiques. Le Comité propose l'adoption de mesures d'application et d'une procédure ouverte de révision.

B. Concernant la question 1 relative à l'article 2 de l'avant-projet de traité constitutionnel

La formulation suivante devrait être reprise du préambule de la Charte des droits fondamentaux:

"Consciente de son patrimoine spirituel et moral, l'Union se fonde sur les valeurs indivisibles et universelles de dignité humaine, de liberté, d'égalité et de solidarité; elle repose sur le principe de la démocratie et le principe de l'État de droit".

Exposé des motifs

Cette énumération est complète et cohérente; elle répond aux traditions constitutionnelles de la plupart des États membres de l'Union et reflète le consensus en vigueur tant au sein des États membres qu'entre eux.

C. Concernant la question 2 relative à l'article 3 de l'avant-projet de traité constitutionnel:

Les objectifs suivants devraient être repris:

- *le renforcement de la cohésion économique et sociale;*
- *une croissance économique durable comme condition de la compétitivité, du plein emploi et de la garantie durable des systèmes sociaux;*
- *la prise en compte systématique de l'impératif de durabilité, en principe dans tous les domaines politiques, notamment la politique économique, sociale et environnementale;*
- *l'obtention d'un haut degré de protection de l'environnement et l'amélioration de la qualité de l'environnement;*
- *la mise en oeuvre du principe de l'égalité de traitement;*
- *l'élévation du niveau de vie et de la qualité de la vie.*

[Les observateurs représentant le Comité économique et social européen se réservent la possibilité d'apporter des compléments ultérieurs à cette première contribution.]



EUROPEAN COMMISSION

Brussels, December 9, 2002

Contribution to the Working Group XI of the European Convention

Social Europe

**Comments by David O’Sullivan on the first three questions of
the Working Group’s mandate**

Working Group Social Europe

Comments by David O'Sullivan on the first three questions of the Working Group's mandate

Question 1

Article 2 of the Preliminary draft Constitutional Treaty presented by the Praesidium on 28 October seeks to set out the values of the Union. Regarding the social field, a particular mention to equality between men and women could usefully be included. Gender equality is a core feature of the European social model, and in spite of the fact that it will already come within the Treaty as part of the Charter of Fundamental Rights, it nevertheless deserves a specific mention amongst essential values.

Question 2

The balance between economic, employment and social policies, and environmental policy central to the Lisbon strategy should be enshrined in the future Constitution, and more particularly in the article defining the objectives of the Union. This means that, as well as economic growth and prosperity, sustainable development, the promotion of full employment and a high degree of social protection should be mentioned amongst the objectives of the Union, which should be brought into line with Article 2 TEC. This is already largely the case in article 3 of the Preliminary draft Constitutional Treaty.

In addition, the objectives should also include a general reference to the removal of inequalities and the promotion of equality between men and women when pursuing the objectives of the Union. Such a provision already exists (Article 2 TEC). Such a provision would help to promote the dual approach in the field of equality between men and women, with a combination of specific action with *gender mainstreaming*.

Question 3

The current division of competences in the social field is broadly satisfactory. Through a variety of instruments (open method of coordination, legislation, social dialogue, the European Social Fund, programmes and mainstreaming), it has allowed the Union to make progress, in particular towards:

realising Europe's full employment potential by creating more and better jobs, anticipating and managing change and adapting to new working environments, exploiting the potential of the knowledge-based economy and promoting mobility; and

modernising and improving social protection, promoting social inclusion, strengthening gender equality, reinforcing fundamental rights and combating discrimination.

The impact on social policy objectives of the instruments of economic policy coordination should also be recalled.

Nevertheless, the current Treaties do not entirely reflect the effective status quo. In particular, the Constitutional Treaty should acknowledge the existing coordination of policies in the social protection field at Union level. Following the entry into force of the Nice Treaty, the recently established Social Protection Committee will be anchored in the Treaty. This committee was established *in order to promote cooperation on social protection policies between Member States and with the Commission*.

Different Community policies affect the sphere of social protection. Thus, internal market rules have consequences both in the field of health care (see for instance ECJ judgements C- 158/96 *Koll* or C-157/99 *Smits and Perebooms*) and in the field of complementary pensions. Provision of social protection is also looked at from the angle of competition law (see for instance ECJ judgements C- 159/91 and 160/91 *Poucet and Pistre*). Finally, public expenditure on social protection is of direct relevance to the coordination of economic policies.

Thus an article in the Constitutional Treaty, setting out how coordination at European level in this area should work, would contribute to a more consistent and integrated approach.

However, it is clear that the management and financing of social protection systems remains a national competence.

In conclusion, this would not mean new competences for the Union in the area of social policy, but a clarification of the existing situation.

What do national and European Parliamentarians think about the Social Security dimension of the European Union?

COMMENTS BY MR DANNY PIETERS

1. The Poll

It is only natural and self-evident that the social and the social security dimension of the European Union are at the focal point of the European Convention on the Future of Europe. As a substitute member of this Convention and a member of National Parliament I sent all my colleagues of the national Parliaments as well as the members of European Parliament a questionnaire in order to obtain their vision on the future of the social security aspects of the European Union. We indeed need to find out what it is exactly that we want before we can start to inquire into the legal means we have at our disposal to achieve our goals.

Of the approximately 8000 questionnaires that were sent out, always in the mother tongue of the recipient, only some hundred thirty were returned to us. That is certainly a low percentage. Yet, we find we can still draw a number of conclusions from these answers.

Of course, the answers do not determine our stance where the questions of the questionnaire are concerned. A study of the answers received can however be used to find out which proposals will have the highest chance of success and which ones would probably be rejected by a large majority of the European peoples and their representatives.

The questionnaire consisted of one complex and one simple question.

The first question inquired into who should be responsible for a number of aspects of social security: the member states and/or the European Union? If the European Union had a role to play, we also asked for the way in which this responsibility ought to be implemented, while suggesting a large number of ways of intervention:

- a) Formulating general principles/setting a general framework
- b) Formulating fundamental social rights
- c) Formulating minimum standards
- d) Formulating bench marks/points of reference
- e) Creating financial incentives
- f) Setting standard terminology
- g) Setting common goals for the member states
- h) Granting the European Union full and exclusive authority for this matter
- I) Granting the European Union full and competing authority in addition to the full and secondary authority of the member states
- j) Granting the European Union the authority, subject to the primary authority of the member states
- k) The European Union joins existing international bodies for these matters.

Our second question concerned the way in which European policy-making processes should be organised for social security matters. Which role should the different European institutions play? Should the Commission, the Council of Ministers, the European Parliament and the social partners be more or less involved than they are today? Should the regions or the national parliaments play a more important role in the creation of a European social security area?

The questionnaire was anonymous, yet we asked the respondents to give some more information about their country of origin, the assembly and the political family they belong to.

2. The Results

In view of the relatively limited number of answers, we must be very careful with figures; still we have noticed a number of quite interesting trends which we would like to discuss below.

A first and very noticeable trend is that the members of the European Parliament – and more so than their national colleagues - clearly want the affirmation of the exclusive authority of the member states for social security. The Members of Parliament of the candidate member states are most in favour of a shared responsibility. When asked about the level on which social security financing is set, nearly all EP respondents replied that it should be exclusively the member state whereas still a third of the members of national parliaments of member states and of candidate member states are in favour of a shared way of financing. More than half of the EP members finds that the safeguarding of legal social security rights should be guaranteed exclusively on a national level whereas that point of view is less apparent among the members of national parliaments of the member states (less than half of them) and of the candidate member states (less than a third).

A clear majority of all groups of respondents considers the co-ordination of the social security systems as an exclusive matter for the EC and not only for the benefit of migrating employees but also in favour of all people who legally move throughout the European Union. Surprisingly though, a clear majority of all national members of parliaments of member states and candidate member states are in favour of the creation by the European Union of a specific social security system for persons working throughout the European Union.

Approximately two thirds of the European and National members of Parliament find that the decisions public/private mix relating to protection against social risks is the responsibility of each member state.

When asked for the level on which social protection should be organised for the different social risks, a large majority is in favour of the national level; often the EP members are more in favour thereof than the members of the national parliaments. This trend is seen for all risks, except for the access to and the availability of health care: nearly half of the members of the national parliaments of the member states are in favour of a non-exclusive national competence. The members of other parliaments follow the described pattern they also show for the other social risks.

Concerning the promotion of employment opportunities (including professional training etc.) more than half of EP members as well as of members of national parliaments (together or exclusively) see a role for the Union.

Where the protection of the income of employees in case of insolvency of their employers is at stake – for which the Community has already issued a directive- only the members of the national parliament of the member states show a slight majority to make this matter not an exclusive competence for the member states.

Two thirds of the EP members put the competence for the prevention of social risks exclusively with the member states; nearly half of the members of national parliaments would also be in favour of a concurrent or exclusive competence of the EU where prevention is concerned. The members of national parliaments adopt a similar attitude concerning the competence for safety and health at work, surprisingly enough a majority of the EP members would favour shared competence and a quarter is in favour of exclusive community competence!

When we look at the political families of the respondents, we find that usually social-democratic members of the national parliaments of the member states situate the competencies for social policies more at the level of the EU or conceive them as a shared competence. Their EP colleagues are more in favour of an exclusive authority of the member states.

Respondents from candidate member states follow the trends of their party colleagues in the member states, but they show a little more sympathy for EU competence or shared competence than their colleagues from the member states.

Striking is that the social democratic respondents in the European Parliament are less prepared than their colleagues in the national parliaments to take social policies away from the exclusive competence of the member states. Members of national parliaments seem to be more pro-European than their EP colleagues. That leads us to the following paradox: usually, members of national parliaments fear the limitation of their competence by the EU yet they are the most willing to give exclusive or shared competence to the EU. The EP members of corresponding political groups systematically prefer making certain social policy aspects an exclusive responsibility of the member states.

It would be dangerous to immediately try and find a reason for this paradox. Still, we will attempt to give a possible explanation. As a consequence of the economic integration and the influence thereof on traditional social policy aspects, the members of national parliaments increasingly sense their powerlessness in social matters. It is their experience that when social security remains a national

matter and economics a European one, a conflict between 'social' and 'economic' will immediately create a conflict between 'national' and 'European'. The European, hence the economic aspect, usually takes precedence. The members of national parliaments realise that this vicious circle can only be broken by making Europe show its colours also in social policy. On the other hand, the members of the European Parliament feel powerless as well where social matters are concerned. They fear it will be very difficult to obtain in Europe a wide consensus regarding social policy matters. Their experience with colleagues from different member states shows them that the divides concerning social policy collide far more often with national boundaries than with European political families. The conclusion we could come to, should this analysis prove to be correct, is that we must at least transcend this general powerlessness on a social level. The real opposition will not be Europe or the member states, but the European Union should have more authority to allow the member states to implement their authority in a more efficient way.

The second question concerned the importance of the different institutions in the decision-making process for future social security policies. More specifically, we asked which bodies should have more and which ones should have less power when deciding about social policy compared to their current contribution. Especially the respondents from the European Parliament would like to increase the role of the Commission, the Members of Parliament from candidate member states are satisfied with the current importance of the European Union whereas members of national parliaments would prefer to reduce the significance of the Commission. Remarkably though, members of the national parliaments of the member states want to limit the role of the Council of Ministers in the future whereas other groups of respondents are quite satisfied with the current role of the Council in the social decision-making process. All respondents would like to increase the role of the European Parliament. The members of the European Parliament as well as members of the parliaments of the member states prefer a status quo where the role of the social partners is concerned; most in favour of a larger responsibility of the social partners are the respondents from the candidate member states. We see an analogue pattern for the role of the regions in decision-making processes. Surprisingly, especially the members of European Parliament and to a lesser extent (yet still more than half of them) the respondents from the candidate member states would like to see the role of the national parliaments in European social decision-making increased. A slight majority of the respondents from the national parliaments of the member states are in favour of a status quo instead of giving them more competence.

When we look at the political orientation of the respondents the answers given to the second question, we can only find one main divergence, i.e. for the role of the social partners. Whereas social democrats and members of the European People's Party want more important role for the social partners, the liberals largely prefer a status quo or a reduction of importance of the social partners. That result is probably less surprising.

The main conclusion for the answers to the second question seems to be that there is wide support for a larger role of the European Parliament in social matters than it has today.

Opinions on the social dimension of the Union coming from Belgium.

COMMENTS BY MR DANNY PIETERS

In this paper I discuss the vision on the social dimension of the Union developed by Belgium's Minister of social affairs and I present my own views on the matter.

1. The Vision of the Belgian Minister of Social Affairs

In a paper he presented at the Max-Planck-Institut für Gesellschaftsforschung in Cologne, the Belgian Minister of Social Affairs Frank Vandenbroucke gave his point of view of what the Convention should do for social protection and the European Union.

It is rather difficult to give a short summary of the opinions and suggestions of the minister because we are very likely to unwillingly wrong the ideas of the Minister of Social Affairs. I will give it a try anyway. I will mainly use the summary conclusion at the end of the paper and the press release given by the minister. I shall not discuss parts of the exposé that are exclusively related to aspects of social protection that are not linked to social security in a wider sense.

In his paper at the German Max Planck Institute Minister of Social Affairs Frank Vandenbroucke presented a vision of Europe's social policy to which he linked five specific proposals for a social adjustment of the current European Treaty. In doing so, he wanted to point out:

- (1) To point out that the Convention is a unique (and presumably the last) occasion to give social protection policies a fixed place on the agenda of the European Union;
- (2) To formulate specific textual proposals concerning the future European Treaty, which he considers having priority and that are feasible provided there is sufficient political pressure;
- (3) To plead for a coherent vision of the role of the Union where social protection is concerned.

Vandenbroucke says he will use the paper to insist with his colleagues of the government, the members of the Convention and colleagues in other member states that those who think Europe should also have a social dimension must now clearly make their choices and jointly support a number of priority points of action. The minister did not want to stress the details of his suggestions; the legal texts he proposes are merely a practical illustration of how things could be formulated.

Vandenbroucke's vision is based on two facts:

- The de facto loss of grip of the national authorities on social matters because of the integration of the European Market without an equivalent on a European (social) policy level. The problem will continue to grow because of the expansion of the EU, which will make it increasingly difficult to take the hurdle of unanimity during the decision-making process;

- The entering the European principles of free movement and fair competition in areas that have been exclusively controlled by (national) social security. This could also lead to a more intrusive attitude of the (unified) insurance market.

Of course, we can argue about nuances. Yet our earlier investigations confirm these phenomena: the undermining of the national competence, without an expansion of European powers, the deadly effect of the required unanimity and the invasion of social matters by economic free movement and competition principles.

Vandenbroucke does not find the answer in increasing the powers of the European Union and especially not in harmonisation for the sake of it. For him, the diversity of social protection systems should be maintained, yet member states should be encouraged to try to achieve a number of goals to shape the European social model.

This brings the minister to five more specific proposals:

- The incorporation of the Charter of Fundamental Rights in a constitutional treaty;
- The incorporation of article 3 of the current Treaty on the overall objectives of the Community, social protection, especially in view of the promotion of a high quality, accessible and financially feasible social protection system that is based on solidarity.
- The creation of a legal basis in the Treaty for the open co-ordination method that should be used also in social matters. The results of the open co-ordination process should be incorporated into the Broad Economic Policy Guidelines;
- The replacement of the required unanimity by a qualified majority, at least where the co-ordination of national social security systems for the benefit of migrating workers is concerned;
- The exclusion of collective labour agreements aiming at social policy objectives that are related to European laws on restrictive practices as well as the equal treatment of companies that deliver socially important services or general economic services. As such, the jurisdiction would already have been incorporated into the text of the Treaty itself.

2. Comments on the views of the Belgian Minister

It is not our intention to give an elaborate analysis of each of these proposals. Just some comments.

The first two proposals are of a more symbolic nature; we can agree with them yet their legal vagueness could lead to a number of jurisprudential surprises. The minister says the citizens will not derive legal claims or “subjective rights” from the social basic principles and rights, yet what will they mean to the citizen? Is the minister sure the European Court of Justice does not have a different opinion? Many years ago, the highest Irish courts started to interpret provisions of the Irish constitution in a completely different way than was explicitly intended.

The same can be said for the overall social objective of the Union. The minister refers to the problems encountered to incorporate social arguments in the cases Kohll and Decker and Smits-Peerebooms. But will the general description of a social goal remedy that? And if so, which are the implications thereof? It is all very beautiful and social but we should speak openly, otherwise many authors and politicians, citizens and organisations will be very indignant again when the European Court of Justice gives an interpretation to the open terms that they don't like.

The third proposal intends to incorporate the "open co-ordination method" into the Treaty. After the Commission stopped discussing possible ways of harmonisation and left the concept of "convergence" alone, they started to suggest "open co-ordination" as the manner par excellence to deal with tensions between the diversity of the social protection systems on the one hand and the continuous economic, monetary and political integration on the other hand. At least the Commission managed in this way to keep the debate on social security alive on a European level. Confronted with a lack of unanimity on social policy issues and with a lack of a solid legal basis to intervene on a European level, it was necessary to switch to a 'softer', lighter version of member state collaboration. They exchange information, assess each other's plans and experiences and sometimes they give out recommendations. Now, Minister Vandenbroucke suggests incorporating this open co-ordination method into the Treaty. I tend to somehow find that useless because that method was nothing but an Ersatz solution faute de mieux. If it makes any sense to transform the current extra-treaty practice of the open co-ordination method into a recognised instrument of the treaty, then it would be to clearly define this method of open co-ordination and to provide the necessary guarantees of transparency and participation.

We should however have the ambition to ask the true questions and to provide means in the Treaty to find answers for them:

- Which minimum of social protection do we want to guarantee for all citizens of the European Union?
- Which principles do we want to implement in all member states in social affairs? In other words, what is the content of the often mentioned, but seldom defined 'European social model'?
- What do we do when a member state wants to live up to its social obligations but claims to be unable to do so? Should we implement a special mechanism of solidarity?
- What do we do when a member state does not comply with one of the established social principles (minimum rights and content of the 'European Social Model') because that member state supports a different policy?

The Convention probably does not intend to provide answers to all these questions but to create channels through which answers can be found. I do not believe that the open co-ordination method can be seen as a serious approach of real-life problems. Should the open co-ordination method, which is very fashionable nowadays, be incorporated into the treaty, that could hinder a more solid approach. It could also increase the tension between the publicly proclaimed higher visions of a "European social model" and what people see in their daily lives. An enlargement of the discrepancy between theory and practice, European discourse and national reality, politics and citizens will probably be the result thereof. For Vandenbroucke, the open co-ordination method is a

chance for the Union to tell a different story about social protection in the candidate member states than that of the World Bank and the International Monetary Fund. Those who follow the reality of these countries closely will know that this story will be shouted down by international financiers and that the only way to keep these countries on the social track is to link their membership of the Union to compliance with certain 'hard' social standards. These should be given a clear, not a soft definition and should be maintained in old and new member states.

The fourth proposal of Vandenbroucke is aimed at the replacement of the required unanimity by a qualified majority, at least for the co-ordination of national social security systems for the benefit of people who use their right of free movement throughout the Union. We do agree with his proposal, yet we would like to use this opportunity to adjust article 42 of the EC Treaty to the evolutions that have occurred since 1958: we no longer need a Treaty for the co-ordination of social insurance systems for the benefit of migrating workers (subjects of a member state) and their families, but a treaty basis for the co-ordination of the social security of all people who move throughout the Union.

The fifth proposal was inspired by a number of jurisprudential problems caused by collective agreements providing for supplementary retirement schemes or supplementary health insurance, which upset private suppliers of such products. The suggested equivalence of services implying a general social mission with the general economic missions seems fine with me. The exclusion of 'agreements made within the framework of collective negotiations and aimed at a social policy goal' of the domain of EU law on restrictive practices seems to be less exact since we cannot approach agreements made between employers (organisations) and organisations of employees as agreements between companies. But should we allow them to just disregard all laws on restrictive practices in their agreement as well? More specific: it should be possible for a Collective Labour Agreement to make a supplementary retirement scheme compulsory for all employers and employees involved. The Collective Labour Agreement partners are free to develop their own schemes. When they use a private insurer, an insurance company or firm, for the implementation of the retirement scheme or health insurance plan, they will have to respect the rules for fair competition when selecting the insurance company or companies that will execute the arrangement. The suggested text seems to give a green light yet that seems to be exaggerated for us.

3. Which social security ambitions for the future activities of the Convention?

Which accents do we need and do we want for social security during the future activities of the Convention, taking into account the trends we concluded from our poll?

Before answering that question, in all fairness, we have to remark that it is still not clear whether there will be room for the discussion of content-related aspects of texts and to adopt proposals. Although that may seem evident, the *modus operandi* of the Convention may show otherwise. We

still need to find out how the Convention can function optimally where social matters are concerned. We will also need to form a wide front with all members of the Convention as well as of the Union because, in order to make true what former Commission president Delors said: “Europe must be social or shall not be Europe”.

Allow me to formulate a number of provisional conclusions:

- The legal basis for the co-ordination of the social security systems of the member states should be reviewed for the benefit of all those moving within the Union.
- Symbolic interventions, such as the planned incorporation of basic social rights or concerning the objectives of the Union, may have a positive impact yet their legal effect remains uncertain.
- Should the open co-ordination method be transformed into a Treaty instrument, we must define it better. The transparency of the process must be guaranteed. Still, the open method cannot be the ideal answer to the pressing questions caused by the tensions between an integrated economic Europe and a non-integrated social Europe.
- It is of utmost importance to shape, in a legally enforceable way the core elements of a social Europe, of what makes Europe so different from e.g. the United States or Japan. Only then can the entry into the European Union imply efficient support for social protection in the candidate member states at a time in which these countries are threatened by ultraliberal tendencies.
- When we take into account the current political priorities or plain possibilities, we find a wider European competence in the field of health care to be the most evident.

It would not be convincing to discuss the social dimension of the European integration as well as its crucial importance without granting the European Union the competence to go beyond a number of informal principles or an open method of co-ordination. That does not alter the conclusion that for a wide majority of the responsible politicians in Europe as well as for us, the primary responsibility for social security lies with the member states (and their constitutional components). However, when necessary or appropriate the European Union should be able to intervene effectively, to safeguard the national social security area on a European legal level. Often, the choice is not between Europe or the member state. We must decide whether we will give Europe merely an economic dimensions or whether we, member states and the Union together, have the ambition to create a multiform yet characteristic European social model.

de la:	Secretaría
a la:	Convención
Asunto:	Contribución de Josep Borrell, miembro de la Convención, Carlos Carnero y Diego López Garrido miembros suplentes de la Convención: - "Una Constitución para una Europa social y del empleo"

El Secretario general de la Convención ha recibido la contribución adjunta de Josep Borrell, miembro de la Convención, Carlos Carnero y Diego López Garrido miembros suplentes de la Convención.

UNA CONSTITUCION PARA LA EUROPA SOCIAL Y DEL EMPLEO

A nuestro entender, sería ilógico que la propuesta constitucional que debatirá en su momento la Convención no incluyese los elementos básicos de la Europa social, que ya cuenta con una moneda única que funciona, debe enfrentarse a la globalización y se ha embarcado en la más ambiciosa de las ampliaciones proyectadas hasta la fecha: de 15 a 25 miembros en dos años.

Por lo tanto, coincidiendo con la Confederación Europea de Sindicatos (CES) y numerosas organizaciones no gubernamentales, reivindicamos que la Europa social forme parte plenamente de la agenda sobre el futuro de la UE.

Consideramos que hace falta una Constitución Europea para que la UE esté en condiciones de responder a todos los desafíos colectivos que tenemos por delante. Pero a todos, empezando por los que más preocupan a los ciudadanos. Una Constitución, también la europea, no es solo una declaración de grandes principios acompañados de mecanismos institucionales de gestión, sino un instrumento que define derechos, objetivos y políticas para alcanzarlos.

Puede que a quienes siguen día a día la política europea les importe sobremanera, por poner un caso, que el Consejo Europeo tenga en el futuro un Presidente elegido por más de un semestre. Se trata de un punto relevante, que de ninguna forma puede menospreciarse.

Pero lo que dice claramente el eurobarómetro es que la gran mayoría de los europeos esperan algo más que reformas institucionales de la Unión. Desean sobre todo una contribución eficaz para solucionar los principales problemas sociales: así, el 90 % de los encuestados se refieren en ese caso al paro y el 89 % a la pobreza como cuestiones prioritarias a abordar.

Si la Convención no es sensible a las demandas ciudadanas, si no elabora una propuesta constitucional que responda a las preocupaciones de la opinión pública, si no consigue que la Unión sea más útil en el futuro para resolver los problemas de la gente, de los trabajadores, de la sociedad en su conjunto, en alguna medida habrá fracasado.

Nosotros pensamos que la Constitución Europea debe permitir superar la situación actual, en la que los objetivos sociales de la UE están subordinados a la realización del mercado común y la unión económica y monetaria, la política social comunitaria se reduce a garantizar cierta corrección, en su caso, del mercado interior y muchas de sus medidas, en terrenos como el empleo, la formación, los sistemas de seguridad social y los servicios de interés general, terminan siendo tributarias de la pura lógica del mercado.

Al igual que consideramos que, con la existencia del euro y la ampliación -que apoyamos sin reservas-, la futura Constitución de la UE ha de establecer mecanismos de política económica común que eviten, entre otras cosas, el avance del dumping social.

También en el campo económico y social, y quizás mucho más que en otros teniendo en cuenta el muy bajo nivel del que partimos, hace falta *más Europa* como única forma de hacer frente con fuerza al proceso de mundialización, no para negarlo, pero sí para intervenir en él con el ánimo de

democratizarlo, socializarlo y, en primera instancia, impedir que el modelo social europeo termine siendo una de sus víctimas.

¿Cuáles son nuestras propuestas de Europa Social para la Convención y la futura Constitución Europea? Avanzamos cuatro propuestas:

1- la integración de la Carta de Derechos Fundamentales de la UE, proclamada en Niza, en la Constitución, otorgándole, por esa vía, un carácter jurídicamente vinculante.

La Carta de Derechos Fundamentales deberá formar parte de la Constitución europea y no como un protocolo de la misma.

Los derechos en ella contenidos -individuales, sociales, de nueva generación- deben ser considerados como programáticos y, por consiguiente, informadores de las políticas y las decisiones comunitarias. La dimensión transnacional de los derechos sindicales fundamentales - asociación, huelga, negociación colectiva, etc.- tiene que ser expresamente reconocida.

Al mismo tiempo, la Unión debería adherirse a la Convención Europea de Derechos Humanos y a otros instrumentos jurídicos internacionales relevantes.

2- situar los principios y los objetivos sociales en el centro de la Constitución Europea.

En la norma constitucional, la definición de la UE como una economía social de mercado, la defensa y promoción del modelo social europeo, la consecución del pleno empleo, la creación de puestos de trabajo de calidad, alcanzar una alta protección social universal, el desarrollo de los servicios de interés general y público eficaces y de calidad gestionados al margen de las estrictas normas de la competencia en el mercado único y la consecución de la igualdad -empezando por la de género- tienen que ser principios constitucionales básicos y objetivos transversales propios de todas las políticas, las instituciones y los miembros de la Unión.

A alcanzarlos deben orientarse, en primer lugar, el mercado común y la unión económica y monetaria.

Asimismo, a fin de evitar el dumping social, las competencias de la Unión deben extenderse a campos como el fiscal, la política salarial y el derecho de asociación transnacional. Es particularmente importante avanzar hacia la armonización de los impuestos de sociedades, sobre el capital y medioambientales.

3- constitucionalizar un verdadero gobierno económico y social de la UE.

Los pasos dados en el marco de la Estrategia de Lisboa son positivos pero insuficientes. Por ello, es imprescindible poner fin a la actual asimetría entre lo monetario, lo económico y lo social en la actuación comunitaria.

El objetivo consiste en coordinar de manera eficaz y democrática las políticas económicas, presupuestarias, sociales y de empleo de los Estados miembros, situando la moneda única como instrumento al servicio de una auténtica estrategia de desarrollo sostenible y profundización del modelo social europeo.

Para ello, la política social y la política de empleo deben situarse en la Unión al mismo nivel que la política económica, es decir, como de interés común, siendo gestionadas como un conjunto integrado. El euro tropezará si solo se apoya en un pilar monetario.

Así, el Parlamento Europeo y el Consejo, a propuesta de la Comisión y teniendo en cuenta el parecer de los Parlamentos nacionales, adoptarían, con carácter vinculante para los Estados miembros, al comienzo de la legislatura, un programa de política económica, social y de empleo y, en ese marco, cada año, unas grandes orientaciones que lo ajustaran a la coyuntura.

En esa dirección, convendría modificar el Estatuto del Banco Central Europeo, entre cuyas misiones debería incluirse contribuir al crecimiento y el empleo, como ocurre con la Reserva Federal Americana. Su directorio debería ser elegido por el Parlamento Europeo a propuesta del Consejo. Particularmente importante sería plantear la posibilidad de que fueran esas instituciones, junto con el BCE, las encargadas, a propuesta de la Comisión, de fijar el objetivo central de inflación.

Por cierto que los debates más recientes muestran que debería reorientarse el Pacto de Estabilidad y Crecimiento -recordamos este término, demasiadas veces olvidado -, diferenciando entre déficit estructural y cíclico e introduciendo la flexibilidad necesaria para hacer frente a la coyuntura económica, empezando por la variable del empleo.

4- estructurar el diálogo y la concertación social a nivel europeo

Sería preciso desarrollar un papel constitucional para los agentes sociales europeos, implicándoles en la toma de decisiones económicas, sociales y de empleo a nivel comunitario. En esa dirección, podría renovarse y reforzarse el Comité Económico y Social y establecerse un Comité Tripartito sobre el crecimiento, el empleo y la cohesión.

Los agentes sociales también deberían ser consultados en las negociaciones internacionales (como las relativas a la Organización Mundial del Comercio) y sobre cuestiones más amplias como la inmigración, la educación y la formación profesional y la lucha contra la discriminación.

Finalmente, se impone regular la firma de acuerdos colectivos europeos de forma útil y supervisada por parte de las instancias de la UE.

En resumen, más allá de estas propuestas concretas - seguro que podrían plantearse bastantes más -, proponemos que el futuro pacto constitucional europeo esté basado no solo en una unión política de orientación federal, sino también y como parte fundamental de la misma en una unión social.

Estamos planteando un "contrato social" que pueda ser compartido por los europeos y las europeas, por los trabajadores y los empresarios, por los estados miembros, por las fuerzas políticas y sociales, que fomente, desde la profundización del modelo social europeo, el desarrollo sostenible en una UE comprometida con el fin de la pobreza en el Mundo y la gestión progresista de sus consecuencias, como los flujos migratorios.

Nuestro reto se dirige a la Convención Europea, que formulará en 2003 una propuesta constitucional y, en su día, a la Conferencia Intergubernamental que deberá pronunciarse sobre ella.

Josep Borrell, Carlos Carnero y Diego López Garrido (miembros de la Convención Europea)

Working group on Social Europe
Answers by Helle Thorning-Schmidt to questions 1-3
10 December 2002

Question 1 on the EU's values

When it comes to the values of the European Union, there are two essential values that are not mentioned in Article 2 of the current draft constitutional treaty. These are solidarity and equality. Solidarity and equality are two fundamental values on which the European Union should be built together with the already mentioned values such as human dignity, fundamental rights, democracy, human rights, the rule of law, tolerance, and respect for obligations and for international law.

The principle of solidarity should be divided into three categories:

- Solidarity among the European citizens
- Solidarity among the Member States of the Union
- Solidarity towards the developing world

Question 2 on the EU's objectives

In Article 3 of the draft constitutional treaty, I suggest to add the following objectives to the ones which are already mentioned:

- Promotion of a social identity in the EU.
- Promoting sustainable development.
- Equality between men and women.
- Improving living conditions and the quality of life.
- Full employment.
- Protection of children's rights. A reference to protection of children's right in Article 3 of the new constitutional treaty would result in a mainstreaming of children's right like it has been seen already on gender equality. This means that all new EU legislation should take children's rights and needs into consideration. A reference in Article 3 would therefore ensure that the EU commits itself to respect children's rights when passing legislation with direct or indirect bearing on children.

- To secure and promote, within EU's competence and its activities, services of general interest of high quality and based upon the principles of equal access, fair pricing, quality of work, quality of employment, safety and social justice.
- Promotion of a social market economy.
- Recognition of the duties and responsibilities which the EU has to tackle in the developing world.

Question 3 on competencies

The competencies, the European Union has on Social policy today, are in principle sufficient. However, qualified majority voting by the Council should be the general rule. This means that in the social- and employment policy where unanimity is the rule today, Art. 137, 1 litra c), d), f) and g), qualified majority voting should be introduced. However, the exemption in Art. 137,5 should be kept.

Furthermore, it is important to strengthen the use of the open method of co-ordination (OMC) to ensure a better co-ordination between the Member States and the social partners. The OMC should be written into the constitutional Treaty as an instrument which the EU can use on areas where the Union has supplementary competencies.

Note de la part de Anne Van Lancker

9 décembre 2002

Les valeurs, les objectifs et les compétences de l'Union en matière sociale.

Eléments clés dans la discussion au groupe de travail social.

1. Le modèle social européen est fondé sur la reconnaissance des valeurs et des objectifs communs, énoncés non seulement aux articles de base des Traités (articles 2 TCE), 1 et 2 TUE), mais également répandue dans d'autres articles concernant les domaines politiques de l'Union ou des Communautés. Le Sommet de Lisbonne en a ajouté (en les complétant) des nouveaux défis.
2. La nouvelle Constitution doit ancrer et renforcer ces ambitions sociales de l'Union européenne :
 - En formulant clairement les valeurs, les objectifs et les droits, constituant le modèle social européen;
 - En attribuant à l'Union les compétences nécessaires afin de pouvoir réaliser ces objectifs;
 - En prévoyant les instruments et les procédures pour pouvoir exécuter ces compétences;
 - En définissant clairement le rôle des institutions et des acteurs.

Les valeurs, les objectifs et les compétences de l'Union.

I. Les valeurs de l'Union (question 1)

- 1) L'article 2 de l'avant-projet de la Constitution devrait inclure également les valeurs de la solidarité, la justice sociale et l'égalité.

II. Les objectifs de l'Union (question 2)

- 1) L'article 3 de l'avant-projet de la Constitution devrait reprendre les objectifs sociaux de l'actuel article 2 (TCE),
 - En remplaçant "un haut niveau d'emploi" par "le plein emploi"
 - En ajoutant la réalisation d'un niveau élevé de protection de la santé, de l'éducation et de formation de qualité (article 3 TCE), la lutte contre la pauvreté et l'exclusion (article 137 TCE), des services d'intérêt général de qualité, basés sur les principes d'universalité et d'égalité d'accès (sur base de l'article 16 TCE), l'égalisation dans le progrès des conditions de vie et de travail, le dialogue social, le développement des ressources humaines (article 136 TCE).
- 2) Il faut également prévoir que pour la réalisation des objectifs généraux la politique économique se base sur les principes "d'économie sociale de marché" au lieu d'une "économie de marché ouvert à la libre concurrence", (articles 4, 98 et 105 TCE).
- 3) D'une manière analogue aux dispositions existantes concernant l'environnement (article 6 TCE) ou concernant l'égalité entre hommes et femmes (article 3.2 TCE) la Constitution devrait prévoir une clause horizontale et transversale qui doit garantir l'intégration et la promotion des objectifs sociaux dans toutes les politiques de l'Union.
- 4) L'article 5 de l'avant-projet de Constitution doit intégrer les droits individuels et sociaux attachés à la citoyenneté européenne, ce qui implique également la non-discrimination (article 13 TCE), l'accès aux services d'intérêt général (article 16 TCE), l'accès à la protection sociale (article 42 et 137 TCE) et aux soins de santé de qualité (article 152 TCE)

III. les compétences de l'Union (question 3):

Afin de pouvoir mettre en œuvre les objectifs de l'Union, il faut qu'elle dispose des compétences nécessaires. Il faut:

- 1) supprimer l'exclusion des compétences de l'Union en matière de rémunération et du droit d'association et de grève, jusqu'à présent prévu à l'article 137 (TCE). Ces exclusions ne sont

plus justifiées au 21^{ème} siècle. L'intégration européenne par le biais du marché intérieur et de la monnaie unique rendent nécessaire la possibilité de négociations collectives concernant l'évolution des salaires; les droits collectifs sont des droits fondamentaux, qui font parti de la Charte des droits sociaux.

- 2) prévoir une compétence européenne quant aux politiques d'intégration des ressortissants des pays tiers.
- 3) prévoir une base légale pour permettre des mesures pour la promotion de l'égalité entre hommes et femmes dans tous les domaines de l'Union. Le principe de non-discrimination entre hommes et femmes devrait avoir effet direct, par analogie à l'article 12.
- 4) formuler la politique sociale comme une politique d'intérêt commun des Etats-Membres et de l'Union européenne, conformément à ce qui est prévue pour la politique économique (articles actuels 98 et 99 TCE), ainsi que pour la politique de l'emploi (article actuel 126.2 TCE), un nouvel article devrait prévoir que les Etats-Membres coordonnent leurs politiques sociales afin de contribuer à la réalisation des objectifs sociaux communes, sans mettre en cause la sociale la nécessité de mesures législatives contraignantes ou des accords entre partenaires sociaux.
- 5) prévoir une compétence européenne pour assurer et promouvoir les services d'intérêt général.
- 6) élargir et redéfinir les compétences en matière de protection de la santé (article 152 TCE) afin d'affirmer l'enjeu prédominant pour la santé publique des questions actuellement traitées sous le seul angle du marché intérieur.
- 7) prévoir que dans l'application des règles de la concurrence, à l'organisation et à la fourniture de services d'intérêt général, l'accomplissement de la tâche spécifique qui leur est accordée, soit garantie.

Beitrag MdEP Dr. Wuermeling zur Beantwortung der Fragen 1-3 des Mandates der AG „Soziales“ zur Vorbereitung der AG-Sitzung am 11.12.2002

Frage 1: *Gemäß dem Vorentwurf des Verfassungsvertrages soll dessen Artikel 2 eine kurze Definition der wesentlichen Werte der Union enthalten. Welche wesentlichen Werte sollten in dieser Bestimmung für den sozialen Bereich unter Berücksichtigung der bereits in der EU-Grundrechtecharta genannten wesentlichen Werte aufgeführt werden?*

Antwort: Im EU-Verfassungsvertrag sollen die Grundlagen, Ziele und Wertvorstellungen des europäischen Einigungswerkes formuliert werden. Hierzu sollte die Formulierung aus der Präambel der Grundrechtecharta übernommen werden.

Eine zusätzliche Hervorhebung sozialer Werte erscheint an dieser Stelle nicht sinnvoll. Dies würde die Ausgewogenheit des bereits vorhandenen Wertekanons der EU beeinträchtigen.

Frage 2: *Gemäß dem Vorentwurf des Verfassungsvertrages soll dessen Artikel 3 eine Definition der allgemeinen Ziele der Union enthalten. Inwieweit und auf welche Weise sollten diese allgemeinen Ziele soziale Ziele umfassen?*

Antwort: Es wäre wünschenswert, wenn der EU-Vertrag einleitend die Wertebasis, auf der Europa im 21. Jahrhundert aufbaut, mit drei Eckpfeilern beschriebe:

- Personalität: Freiheit, Eigenverantwortung, Eigeninitiative;
- Subsidiarität: Vorrang der kleineren Einheit vor der größeren/so viel dezentrale Entscheidungen wie möglich;
- Solidarität: Vorrangig definiert als Chancengerechtigkeit (= Hilfe zur Selbsthilfe) und weniger als Ergebnisgleichheit.

Eine Ausweitung der wirtschaftspolitischen Ziele wird abgelehnt. Ziele, die eher gesellschaftspolitische Wunschvorstellungen ausdrücken, führen zu großen Unklarheiten und zur Verunsicherung bzw. Beliebigkeit. Zudem ist zu prüfen, ob das jeweilige Ziel unter dem Aspekt der Subsidiarität auf der europäischen Ebene angesiedelt werden muss. Gerade in der Wirtschaftspolitik wird die EG auch nach der Erweiterung keine zentralen wirtschaftspolitischen Kompetenzen und Instrumente haben. Hier sollten daher keine Ziele formuliert werden, die auf der europäischen Ebene nicht realisiert werden können.

Es ist klarzustellen, dass vertragliche Zielbestimmungen keine Kompetenzen der EU begründen. Zuständigkeiten der EU müssen erkennbar, vorhersehbar und begrenzt sein. Diese Voraussetzungen erfüllen allgemeine Vertragsziele, die die Richtung der Integration bezeichnen, nicht.

Frage 3: Was die Zuständigkeiten der Union betrifft, sollten Ihrer Ansicht nach die derzeit der Union/Gemeinschaft im sozialen Bereich übertragenen Zuständigkeiten geändert werden? Wenn ja, welche neuen Zuständigkeiten sollten der Union/Gemeinschaft im sozialen Bereich übertragen werden, und in welche Zuständigkeitskategorie sollten diese fallen?

Antwort mit Vorschlägen zur Änderung der aktuellen sozialpolitischen Zuständigkeiten der EU:

1. Beschäftigungspolitik

Obwohl die EU in der Beschäftigungspolitik derzeit nur unterstützend und ergänzend tätig werden darf, setzt sie den Mitgliedstaaten immer konkreter werdende Vorgaben. Nun kann ein verstärkter Erfahrungs- und Informationsaustausch der Mitgliedstaaten im Bereich der Beschäftigungspolitik dazu beitragen, die Beschäftigungssituation in den Mitgliedstaaten zu verbessern und die europäischen Volkswirtschaften im globalen Wettbewerb zu stärken. Die EU darf jedoch nicht durch zentrale Festlegung von Zielen die beschäftigungspolitische Verantwortung der nationalen Regierungen und Tarifparteien verwischen und den Wettbewerb um die beste Politik behindern. Einförmiges EU-Vorgehen würde zudem den vom Binnenmarkt ausgehenden Wettbewerbsimpuls blockieren.

Reformziele sollte deshalb sein:

- Klarstellung der beschäftigungspolitischen Zuständigkeit der Mitgliedstaaten;
- Beschränkung beschäftigungspolitischer Handlungsbefugnisse der EU auf folgende Bereiche:
 - * Verbesserter Erfahrungs- und Informationsaustausch, insbesondere zu bewährten Verfahren, Bereitstellung vergleichender Analysen und Gutachten und Förderung innovativer Ansätze;
 - * Verbesserung makroökonomischer Rahmenbedingungen (im Rahmen ohnedies auf anderen Gebieten existierender EU-Zuständigkeiten) durch Maßnahmen wie die beschäftigungsfreundliche Gestaltung des Binnenmarktrechts, liberale Außenhandelspolitik, Beitrag zur Stabilisierung des EURO und die Konzeption eines neuen europäischen Unternehmensrechts;
- Verschlinkung des europäischen Leitlinienprozesses (Art. 128 EGV):
 - * Begrenzung der „Europäischen Beschäftigungsstrategie“ auf Grundzüge;
 - * Ausschluss detaillierter Leitlinien, insbesondere quantitativer Vorgaben;
 - * Größere Intervalle bei den Leitlinien und den Nationalen Aktionsplänen (bislang jährlich);
 - * Verzicht auf allgemeine Zielbestimmungen (Art. 125, 126, Art. 2 EGV).

2. Sozialpolitik

a) Arbeitsrecht

Die Befugnis der EU zum Erlass von arbeitsrechtlichen Regelungen unterstützt den freien Personenverkehr durch Bestimmung des Arbeitsschutzes in allen Mitgliedstaaten. Überregulierungen in diesem Bereich belasten jedoch die Wettbewerbsfähigkeit insbesondere schwächerer Mitgliedstaaten und gewähren nur unzureichend Flexibilität, um auf die Ausgangsbedingungen vor Ort oder Änderungen der Rahmenbedingungen differenziert reagieren zu können

Reformziel sollte deshalb sein:

- Konzentration arbeitsrechtlicher EU-Vorgaben auf Mindeststandards und nur in Bereichen mit grundlegender Bedeutung für den Arbeitnehmerschutz (z.B. Arbeitsschutz);

b) Sozialrecht

Gemeinschaftsweite Regelungen sind nötig zur Gewährleistung von Freizügigkeit und Mobilität. Im übrigen können Mindeststandards zur Bewahrung des sozialen Friedens beitragen und daher im gemeinschaftlichen Interesse liegen. Sozialpolitik spiegelt jedoch vor allem die traditionelle Vielfalt der sozialen Sicherungssysteme und die unterschiedlichen Bedingungen in den Mitgliedstaaten wider. Sie muss sich an der jeweiligen nationalen Volkswirtschaft orientieren. Sozialpolitik ist ein wesentliches Element der Wettbewerbsfähigkeit und in der Wirtschafts- und Währungsunion eines der wenig verbliebenen Ventile zum Ausgleich unterschiedlicher wirtschaftlicher Leistungskraft der Mitgliedstaaten. EU-Vorgaben würden zudem in die Eigenverantwortlichkeit der Mitgliedstaaten zur Finanzierung ihrer Sozialstandards eingreifen.

Reformziele sollte deshalb sein:

- Begrenzung der EU-Aufgaben auf die koordinierenden Regelungen zur Gewährleistung von Freizügigkeit und Mobilität sowie auf die Förderung des Informations- und Erfahrungsaustausches und die Bewertung von Erfahrungen.
- Ausdrücklicher Ausschluss von EU-Vorgaben oder Leitlinien insbesondere quantitativer Zielvorgaben sowie Überwachungs- und Kontrollrechte im Bereich des Sozialschutzes;
- Klarstellung der alleinigen Zuständigkeit der Mitgliedstaaten für Organisation, Finanzierung und Leistungen des Sozialschutzes, insbesondere in den Bereichen:
 - * Krankenversicherung,
 - * Rentenversicherung,
 - * Unfallversicherung,
 - * Arbeitslosenversicherung,

- * Pflegeversicherung;
- Klarstellung der alleinigen Zuständigkeit der Mitgliedstaaten für die Bereiche:
 - * Jugendpolitik, insb. Jugendsozialarbeit und Jugendschutz,
 - * Familienpolitik, insb. Familienförderung und Kindergärten,
 - * Seniorenpolitik, Altenpflege;
- Ersetzung der Antidiskriminierung-Querschnittsklausel (Art. 13 EGV) durch Verankerung des allgemeinen Gleichbehandlungsgebotes im Vertrag;
- Klarstellung, dass die Mitgliedstaaten für die Regelung des Zugangs zum Arbeitsmarkt durch Staatsangehörige dritter Länder, die sich rechtmäßig im Gebiet der Gemeinschaft aufhalten, zuständig bleiben.

3. Wettbewerbspolitik

– Kartellrecht

Das gemeinschaftliche Kartellrecht gewährleistet innerhalb der EU und im internationalen Wettbewerb einen fairen Wettbewerb und Rechtssicherheit. Verfehlt sind Erwägungen, die Wettbewerbskontrolle zur Herstellung von Vollbeschäftigung zu nutzen. Dies würde Tendenzen zur Strukturkonservierung wettbewerbsrechtlich fördern. Deshalb sind sowohl Prüfung der Auswirkung von Umstrukturierung und Fusionen auf die Beschäftigung wie auch die Mitwirkung der Sozialpartner an wettbewerbsrechtlichen Entscheidungen abzulehnen. Die Zielvorgabe „Vollbeschäftigung“ suggeriert zudem eine wirtschaftspolitische Handlungsfähigkeit, für die weder der EU noch den Mitgliedstaaten Instrumente zur Verfügung stehen.

– Beihilfenrecht

Nachhaltig zu unterstützen ist das Ziel des EU-Beihilfenrechts, einen fairen Wettbewerb innerhalb der EU durch Verhinderung eines Subventionswettlaufs zu gewährleisten.

Bei Leistungen im Bereich der Daseinsvorsorge sind die hiermit verfolgten Gemeinwohlanforderungen zu berücksichtigen. Bei Leistungen der Daseinsvorsorge sollte deshalb die Zulässigkeit staatlicher Leistungen klargestellt werden, mit denen die Mehrkosten ausgeglichen werden sollen, die einem mit einer Dienstleistung von allgemeinem wirtschaftlichen Interesse betrauten Unternehmen durch die Erfüllung der ihm übertragenen gemeinwohlorientierten Aufgaben entstehen. Hiermit unvereinbar wären Erwägungen, von europäischer Ebene Vorgaben zu machen, um den Leistungen der Daseinsvorsorge Funktionen zur Vorbeugung sozialer Ausgrenzung oder zur Beschäftigungsförderung beizumessen.

Jan Jacob van Dijk

Alternate member of the Convention on behalf of the Dutch Parliament.

Dear Sir,

The working group on Social Europe has received a mandate from the Presidium. As I have understood the task of the working group is to investigate which changes could be made in the EU-Treaty to enshrine the promotion of the European social model. In that respect the questions the Presidium has put forward in the draft mandate are very relevant questions.

I would like to respond to some of the items being raised in the mandate.

[1. Essential values of the Union

The following values, being commonly shared in Europe in the field of social policy, could be written down in an article concerning the values of the European Union: solidarity, social security and social assistance, equality between man and women.

2. Objectives of the Union

The objective of the Union should be to promote a sustainable social market economy.

Social objectives, like social cohesion and a high rate of employment should be reflected in the objectives. In order to obtain a balanced and integrated set of objectives, boosting sustainable growth, environmental issues should find their place among the objectives of the Union.

In article 2 of the Treaty of Amsterdam a list of social objectives has already been mentioned : ...a harmonious, balanced and sustainable development of economic activities, a high level of employment and social protection, equality between men and women the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

3. Competencies

In article 137:6 the EC-treaty states that the Union is not allowed to take any action in the field of strike, exclusion, freedom of association and pay. This article should disappear. It is in contradiction with the contents of the Charter on Fundamental Rights and the European Social Charter of the Council of Europe. This subject should be in the category of shared competencies.

4. Open method of co-ordination

In the recent history of the European integration the open method of co-ordination has been a successful way of co-operating within the European Union. It started with the broad economic policy guidelines, soon followed by the employment guidelines. These guidelines are not a binding instrument, but Member States are obliged to report on the progress of the implementation of these guidelines. The effect is a convergence of the policies of the member states.

In the social policy area especially, this way of European integration has been very successful. The instrument of open co-ordination has recently been extended to the fields of vocational training, pensions, and the fight against poverty and social exclusion. Necessary conditions for a successful convergence of national policies in these fields are:

1. the open method of co-ordination should be mentioned in the Constitutional Treaty, including the instrument of guidelines;
2. a clear set of European indicators should be established so the achievements in the European member states can be compared with each other.

5. Coordination between the economic guidelines and the social guidelines

The precondition for a successful economic performance is a stable social policy and vice versa. Therefore, streamlining the co-ordination of the social guidelines (Lisbon, employment, vocational training and pensions), the broad economic policy guidelines, and also the guidelines which result from the Cardiff process, is of utmost importance.

Complementary social and economic guidelines will add to the coherence of social-economic policy in the EU. These guidelines consist of two major components which are already part and parcel to the Treaty: the broad economic policy guidelines and the employment guidelines.

Member States recently agreed on streamlining the co-ordination of these guidelines and on focussing more on implementation. In order to give social policy a proper place in the policy co-

ordination mechanism, more attention should be paid to including the results of relatively new policy co-ordination in the area of pensions and social inclusion into the broad economic policy guidelines. It is proposed, therefore, that the Union and the Member-States shall work towards developing a strategy for social protection. Guidelines for this strategy should be developed by the Commission, and shall be discussed with all relevant partners, such as the EP, the Council and the social partners. The social partners play an important role in this field. Without their support and commitment the social economic guidelines will not have the result as they might have reached with their support.

Concerning the question on extending co-decision and QMV-voting I would prefer to extend co-decision and QMV-voting to all social policy areas.

In Title VI of the constitutional Treaty the social partners should be mentioned as they are now mentioned in the Treaty of Amsterdam and Nice, which means their role as co-legislator. In the actual treaties no role for the EP has been foreseen. For the democratic legitimacy this can not be maintained, although the EP should bear in mind that the concluded agreements between the social partners can not be modified.

I hope these remarks contribute to your work as President of this important working group. Furthermore I hope them to be the basis for a close co-operation during the coming months.
