

Working Group XI

Working document 5

Working group XI "Social Europe"

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

ASSEMBLEIA DA REPÚBLICA

SUBJECT: Answers to questions 1 to 3 of the WG Social Europe mandate

FROM: MP Maria Eduarda Azevedo (Portugal)

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?

The European Union must develop a social identity in addition to its identity as an economic community. Europe has the responsibility of defending the interests of its citizens and workers in this new globalised and competitive world. The project of the EU's integration nowadays with the new enlargement is more than a single market and a single currency, it is undergoing a transformation into a political and social Union.

Common social values on this subject as part of an emerging definition of the “European Social Model” have already been set out in the Charter of Fundamental Rights. The Charter of Fundamental Rights should be included in the Constitutional Treaty. This inclusion is essential to gain a larger popular support for the project of the European integration. The Charter has a political weight and plays an important role in the European architecture for it is used, for instance, by the Commission to evaluate systematically its proposals. The European Court of Justice refers to the Charter to deal with issues about fundamental rights, and other actors of the European construction equally base themselves on the Charter. The values to be included in the Constitutional Treaty should be a reflection of the ones existing in the Charter.

Therefore, article 2 of the preliminary draft Constitutional Treaty should set out the values of the Union in a very clear and concise manner. The main values that emerge from the Charter and must be included in article 2 are the values of solidarity, equality, social justice and sustainable growth.

The value of equality between men and women is not mentioned in Article 2 nor Article 3 of the draft Constitutional Treaty. It would be advisable to mention this value throughout the Constitutional Treaty, in such a manner as to be implemented in the democratic life of the EU. This equality should be present in the drafting and in the contents of the Treaty: guaranteeing equality in the labour forces and in other policies.

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?

It would be appropriate to set out the detailed objectives for each policy in the second part of the preliminary draft Constitutional Treaty, which deals with the policies and contains all the legal bases. This might permit to keep the list in new article 3 shorter and more general than the one in existing article 3 TEC, keeping in mind the draft of a Constitutional Treaty.

The list of article 3 should include the promotion of economic, social and territorial cohesion; the promotion of a high level of employment (and not full employment), social protection and social dialogue; the promotion of a knowledge-based society; the promotion of a high level of environmental protection; the promotion of competition and convergence of the economies; the improvement of the standards of living; and the fight against poverty and social exclusion.

Of the general objectives of the European Union, the creation of employment is one of the most important. Everyone should have the right to employment and this should be in the centre of the macro-economic policies. This objective should include the promotion of employment and stimulation of the economy, investing in the training of the workers. High technology, exchange of information and communication should be at the reach of everyone, especially in the areas of education and work.

3. 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?

The list of social matters where the Community has competences, as set out by the Treaty and the Charter of Fundamental Rights, should be seen in the global framework of all the policies (namely the ones for the development of a knowledge-based society and for the establishment of a sustainable growth economy) and should be maintained in the field of shared competences.

Subjects such as social and fiscal harmonisation, the right to a minimum social level, standard rendering of services, the right to employment, social inclusion and eradication of poverty, social dialogue and the role played by social partners should be included in this field of shared competences.

Member States should have the liberty to chose what manner they wish to apply there social policies in their country, in such a way as not to affect their economic reforms and to be able to create jobs without difficulty. Namely, it should be of the responsibility of each Member State to chose its own system of social security. Nevertheless, the EU should have the right to intervene when necessary or appropriate, to guarantee that a chosen national social security system is complying with the minimum standards of the EU. Even though the Member States are quite free to choose of the system of social security, there should be a coordination between the different systems in such a way as to provide benefits to those that have immigrated within Europe and those legal non-European immigrants. This coordination should be decided by a qualified majority voting.

The set up of an European coordinated employment strategy which Member States take into account in their employment policies has been an important step for dealing with these matters and should be pursuit.

17.12.02

Working Group XI - Social Europe

Comments on Questions 1-3 of the Mandate by Mr. Filadelfio Basile,

- 1) **Article 2 of the preliminary draft Constitutional Treaty sets out to define 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?**

The Union's basic values in the social field are largely included in the Charter of Fundamental Rights, and more specifically under Title IV on solidarity. Should the Charter be integrated as a preamble to the Constitutional Treaty, as the Working Group chaired by Mr. Vitorino suggested, I would not find it necessary to include any further reference to social values in article 2.

Should the Charter be mentioned in the first articles of the Treaty and integrated as a Protocol or an annex, it could be reasonable to extend the formulation of article 2 in order to include basic social values such as solidarity, equality and non-discrimination.

It is however essential to avoid any confusion between basic social values and general social objectives, which have to be determined and singled out under article 3. In my opinion, our December 11 debate has shown that the risk of falling into such a confusion is very concrete.

- 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?**

I think that article 3 should be extended in its formulation to mention a series of fundamental social objectives. The widely debated idea of specifying the current, broad description of a high level of employment in the target of full employment, can generally be accepted, even though physiological unemployment seems to me to be an integral part of the economic model at the beginning of the new millennium.

Article 3 should also be integrated with a specific reference to the concept of sustainability, in its applications to the economic, social and environmental fields. Gender equality (to be pursued through mainstreaming policies) and the highest possible level of child protection should also be mentioned, and in this context, a reference to measures to promote a heightened family legal, economic and social protection (article 33 of the Charter) could usefully be included.

Last but not least, it seems to me that the creation of a common cultural background (to be pursued through the further development of specific programs in the field of education and training) must be considered an integral part of the EU social objectives.

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?

As for the Union's competences in social matters, I think that the current framework is sufficiently balanced, and I'm not convinced by the idea of extending the area of shared competences to matters such as the right of association, the right to strike and the right to impose lock-outs. As far as these matters are concerned, the integration of the Charter of Fundamental Rights, with its explicit mention of the right of collective bargaining and action and, more specifically, of the right to strike (article 28), will already represent the Constitutional framework for Member States' action, whereas any further adoption of minimum requirements by the Community would introduce further and unnecessary limits.

As for Title VIII, it should remain placed within the complementary competence, in order to preserve the Member States' exclusive power to legislate on the matter with the only, almost natural condition that any legislative measure adopted might contribute to the achievement of a high level of employment (or a full level, if article 2 is going to be modified) in the EU. The Community's powers must therefore remain limited to the encouragement of cooperation between Member States and to the possible setting up of a coordinated employment strategy which Member States take into account in their employment policies.

Contribution by Hans Martin Bury on questions 1 - 3 of the mandate of Working Group XI on Social Europe (CONV 421/02)

Question 1: What basic values should Article 2 of the preliminary draft contain in the social field, taking into account those already present in the Charter of Fundamental Rights of the EU?

Germany is in favour of incorporating the entire Charter of Fundamental Rights into the Treaty. We must not put the success of the Constitutional Convention at risk by allowing the Charter to become unravelled in debates on the individual fundamental rights. In addition to the values named in the preliminary draft, the values of equal opportunities, solidarity and sustainability should also be mentioned. Equal opportunities and solidarity are not only individual rights, but basic principles of our common values. The basic value of sustainability is currently mentioned both as a separate fundamental right (Article 3 of the Charter) and in the Titles on Environment and Development Cooperation.

Social cohesion in Europe must be enhanced. On the other hand, we should not overburden the Constitutional Treaty with subjects that could be dealt with in secondary legislation. It is thus, for example, not sensible to try to define the "services of general economic interest" mentioned in Article 16 TEC in the Constitutional Treaty itself.

Question 2: To what extent and in what way should the general objectives in Article 3 of the preliminary draft Constitutional Treaty include social objectives?

We want to realize the Lisbon objective of sustainable growth with more and better jobs. Social policy in this context is an area of fundamental importance.

Strengthening and extending the European model of the social state based on solidarity is an important goal in Germany's opinion. The following objectives should therefore be added to Article 3:

- To promote economic and social progress (Article 2 TEU);
- To promote equality of opportunity;

- To promote equality between men and women in all policy fields (gender mainstreaming; Article 3 (2) TEC).

Question 3: Should the present competences of the Union in social matters be modified?

The different competences in social policy on the one hand (shared competence), and in employment policy on the other (complementary competence) should not be modified. The social and employment policy acquis must be retained.

Beitrag von Hans Martin Bury zu den Fragen 1 – 3 des Mandats der Arbeitsgruppe XI "Soziales Europa" (CONV 421/02)

Frage 1: Welche wesentlichen Werte sollten in Art. 2 des Vorentwurfes unter Berücksichtigung der bereits in der EU-Grundrechtecharta genannten wesentlichen Werte des Verfassungsvertrages für den sozialen Bereich aufgeführt werden?

Deutschland setzt sich für die vollständige Aufnahme der Grundrechtecharta in den Vertrag ein. Ein Aufschnüren der Charta durch Diskussionen über einzelne Grundrechte darf es nicht geben, um den Erfolg des Verfassungskonvents nicht zu gefährden.

Über die bereits im Vorentwurf genannten Werte hinaus sollten die Werte Gleichheit der Chancen, Solidarität und Nachhaltigkeit Erwähnung finden. Chancengleichheit und Solidarität sind nicht nur Rechte der einzelnen Bürgerinnen und Bürger, sondern sind Grundprinzipien unserer gemeinsamen Wertordnung. Der Grundwert Nachhaltigkeit findet seinen Ausdruck sowohl in einzelnen Grundrechten (Art. 3 Grundrechtecharta) als auch in den Titeln Umwelt und Entwicklungszusammenarbeit.

Der soziale Zusammenhalt in Europa muß gestärkt werden. Andererseits sollten wir den Verfassungsvertrag nicht mit Themen überfrachten, die auch auf sekundärrechtlicher Ebene gelöst werden können. So ist es z.B. nicht sinnvoll, den Versuch zu unternehmen, den in Art. 16 EGV enthaltenen Begriff "Dienste von allgemeinem wirtschaftlichen Interesse" im Vertragstext selbst zu definieren.

Zu Frage 2: Inwieweit und in welcher Weise sollten die allgemeinen Ziele in Art. 3 des Vorentwurfs des Verfassungsvertrags soziale Ziele umfassen?

Wir wollen die Ziele von Lissabon, nachhaltiges und beschäftigungsintensives Wirtschaftswachstum, verwirklichen. Hierbei kommt der Sozialpolitik eine grundlegende Bedeutung zu.

Die Stärkung und der Ausbau des solidarischen europäischen Sozialstaatsmodells ist für Deutschland ein wichtiges Ziel. Art. 3 sollte deshalb um folgende Ziele ergänzt werden:

- Förderung des wirtschaftlichen und sozialen Fortschritts (Art. 2 EUV);
- Förderung der Chancengleichheit;
- Förderung der Gleichstellung von Frauen und Männern in allen Politikbereichen (gender mainstreaming; Art. 3 Abs. 2 EGV).

Zu Frage 3: Sollten die Zuständigkeiten der Union im sozialen Bereich geändert werden?

Die unterschiedlichen Zuständigkeiten in der Sozialpolitik einerseits (geteilte Zuständigkeit) und der Beschäftigungspolitik andererseits (ergänzende Zuständigkeit) sollten nicht verändert werden. Der Acquis im Hinblick auf die Sozial- und Beschäftigungspolitik muss erhalten bleiben.

SOCIAL EUROPE WORKING GROUP

Comments by Emilio GABAGLIO (2)

The key purpose of the Working Group on Social Europe should be to ensure that the distinctive elements of the “European Social model” are clearly reflect in the Constitutional Treaty (in part 1 as well as in part 2).

Having this in mind and in the light of the discussion which took place in the Working Group on 11 December I wish to add the following comments/proposals to my initial response.

1. The Union’s basic values (part one of the Constitutional Treaty)

If this provision intends to refer to the general accepted values in our societies and be of inspiration for EU and member states policies, social justice, solidarity and equality need to be included.

2. The Union’s general objectives

In part one of the Constitutional Treaty where the language needs to be short and focused, we should state that the EU promotes

- A competitive social market economy conducive to full employment
- An inclusive society free from all sort of discriminations.
- Qualitative and efficient services of general interest
- Sustainable development and economic and social cohesion.

In the second part of the Constitutional Treaty these objectives should be more detailed in describing EU policies.

3. The Union's competences

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, quality of jobs, education and training. Reference to social inclusion and to the eradication of poverty should be stressed.

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

Employment and social policy provisions should be put on the same footing with those related to economic and monetary policies.

QMV and codecision should be generally applied.

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

Finally the exclusions of EC Treaty art 137 (5) need to be removed because inconsistent, at this stage, with EU developments.

The right of association as well as the right to collective bargaining and the right to strike are recognised by the Fundamental Rights Charter (to be an integral part of the Constitutional Treaty). Moreover the existing exclusions, including pay, may create legal uncertainty in the area of industrial relations and framework agreements between European Social partners.

European Convention

Working Group XI “Social Europe”

Subject: responses to questions 1-3

**Mr. Esko Helle, alternate member of the Convention
member of the Finnish Parliament**

Question 1

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

Question 2

Social market economy and full employment should be clearly expressed in the general objectives of the Union.

Question 3

The competencies of the Union in the social field should be clarified by deleting the present (Nice) Article 137(5) EC. ¹ I set forth brief grounds for this.

A simple - but striking – ground is that making the Charter of the Fundamental Rights of the European Union binding includes guaranteeing the right to strike. The present Article 137(5) EC would not make sense at strike.

But a bit more is worth noting.

¹ Article 137(5): The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

The EC Treaties of Amsterdam and Nice reproduced Article 2(6) of the Maastricht Agreement on Social Policy of 1992 in the form of Article 137(6) EC (in the Nice Treaty Article 137(5)). This provision has created a lot of interpretations, each of them being subject to uncertainty. A majority view might be that in order to prevent discrimination it is possible to stipulate in the areas covered by Article 137(5) EC. This interpretation would e.g. keep the core provisions of non-discrimination of Directives on Part Time Work and Fixed-Term Contracts upright, thus outlawing discrimination of these workers within *pay*. On the other hand, a ‘constitutional’ interpretation would exclude any binding EC law in the area covered by Article 137(5), even making an agreement of the social partners binding by an EC directive/decision. A third interpretation means that with another legal basis in the EC Treaty, such as Articles 94 and 308 EC, binding EC law in this area would be possible.

However, especially in the light of the enlarged internal market and the needs to establish viable and effective European industrial relations, trade union rights included, the uncertainty created by Article 137(5) EC is no longer tolerable. *Certainty* is needed both to management and labour, as well as for the EC itself as a legislator. This implies changes also in the horizontal provisions of the Charter of Fundamental Rights (Articles 51-54).

Given the interpretation problems it is not sustainable to solve the problems by splitting Article 137(5), thus e.g. by deleting just the references to the right of association and to the right to strike.

I do emphasise the responsibility of the politically responsible organs of the Union to settle these competence problems, so as to avoid leaving them to the European Court of Justice.

Comments on Questions 1-3 of the Mandate by Mr. Georges Jacobs

CONVENTION WORKING GROUP ON SOCIAL EUROPE

VALUES, OBJECTIVES, COMPETENCES

UNICE-Position

The working group should aim at suggesting short, sharp, simple and balanced proposals

As agreed during the meeting of the working group on 11 December 2002, the text on values and objectives of the EU in the constitutional treaty should be short, sharp and simple. It should also be balanced (i.e. fully reflect the fact that there can be no social progress without a sound economic basis).

UNICE believes that the constitutional treaty should spell out

- the common values on which the EU is built,
- the objectives it pursues, and
- the competences the EU has to adopt policies in order to reach these objectives.

The treaty should not include social aspirations without giving all the necessary attention to economic considerations. Failing that, the EU would end in a position where it is unable to reach its objectives.

Article 2 should stick to a limited number of values

As far as values are concerned, UNICE broadly supports the proposals made in article 2 of the draft constitutional treaty. In order to be sharp and simple, article 2 should stick to a limited number of common values on which the European Union is founded. Notions such as democracy and rule of law, respect of human dignity (or dignity of the person), tolerance, solidarity and liberty would belong in such an article.

Objectives should be addressed in a separate article (see remarks below).

Fundamental rights: discussions on the Charter should not be re-opened

The draft constitutional treaty contains a specific section on fundamental rights. An appropriate formula will have to be found for article 6 when referring to the integration of the Charter so as to clearly convey the remit of the Charter (addressed to EU institutions and Member States when implementing European law). Having noted the recommendations of the working group on the Charter, UNICE believes that the discussions on the Charter now belong in the Praesidium and the plenary of the Convention. The working group on Social Europe should not seek to re-open them.

Objectives: the working group should regroup texts scattered in the present treaties

UNICE agrees with those who stressed that, with regard to objectives, the working group should essentially regroup texts scattered in different parts of current treaties, rewording them into constitutional language if necessary.

Striking the right balance between social aspirations and economic considerations is of particular importance when defining objectives.

UNICE believes that the objectives defined in the current treaties

- strike the right balance between social, economic and environmental aspects, and
- express logical links between objectives and powers to act at EU level.

It therefore agrees that the notions like “sustainable development” and “economic and social cohesion” should be taken over in a new article on EU objectives. However, it has strong doubts about a number of other proposals made during the meeting on 11 December.

Firstly, it was suggested replacing existing references to a “high level of employment” by “full employment” and to introduce references to a “competitive social market economy”. UNICE does not believe that introducing new notions that can be interpreted in very different ways will help clarify the EU objectives.

The formulations of Article 2 of the Treaty on the European Union and Article 2 of the treaty on the European Community are clearer and more balanced. UNICE therefore recommends regrouping objectives in one article, which would refer to the promotion of

- a high level of employment and of social protection,
- equality between women and men,
- sustainable and non-inflationary growth,
- a high degree of competitiveness,
- convergence of economic performance,
- a high quality of the environment,
- raising standards of living and quality of life

and link these objectives to

- the establishment of a common market, an economic and monetary union, and
- the implementation of common policies or activities in accordance with the EU competences.

Secondly, it was suggested by some members that a specific reference to services of general interest should be included in the EU objectives. In UNICE’s view, the existence of efficient services of general interest is a means towards achieving the EU objectives of economic and social cohesion. Since, article 16 of the TEC recognises their place in promoting territorial and social cohesion, its content should be taken over at an appropriate place in the new constitutional treaty but it should not be an objective in itself.

Thirdly, some members suggested that, in addition to values and objectives, the constitutional treaty should also include principles to be mainstreamed in all policies. UNICE is not in favour of such a proposal. It would unnecessarily complicate the treaty. Moreover, defining principles to be mainstreamed amounts to entering into discussions on the content of policies (whereas the working group remit is focused on constitutional matters).

EU competences with regard to social policy do not need to be extended

As recalled on 11 December 2002, all EU competences in the social field were either shared or supplementary. The dividing line was usually the following:

- shared competences for legislative competences (article 137 of the Treaty),
- complementary competences for employment (article 128) or education and training (articles 139 and 140).

The EU can act through various channels (legislation, support for or coordination of Member States' policies, financial support through the European Social Fund or other structural funds, etc.). Today's social Europe encompasses 230 legally binding texts at EU level and highly developed national systems for social protection, labour law, industrial relations, etc.

UNICE agrees that in an enlarged Europe, QMV should be the rule for issues relating to free movement of people (i.e. article 42 of the Treaty).

However, the reasons why unanimity is required in the Council for some areas such as social security continue to be valid after enlargement. These areas are characterised by important national specificities. UNICE does not believe that the double objectives of promoting a high level of employment and a high level of social protection can be met by allowing the EU to intervene in the definition of national social security systems. The very delicate nature of these issues, notably in terms of financial equilibrium, requires particular caution when they are addressed at EU level. Unanimity ensures that this caution is exercised.

Similarly, the reasons why it is provided that the EU may not legislate on remuneration, strikes and lockouts remain valid after enlargement. UNICE is therefore strongly opposed to the suggestion to delete article 137 paragraph 6 of the TEC.

THE ROLE OF SOCIAL PARTNERS SHOULD BE RECOGNISED

Articles 138 and 139 of the treaty define the rules applicable to consultation of the social partners on issues of social policy, negotiations between them at EU level and implementation of the agreements they conclude. These articles have been conceived to:

- protect the autonomy of the social dialogue, and
- allow the development of a negotiated area at EU level while respecting the diversity of national industrial relations systems and the division of tasks between social partners and the legislator in Member States.

Articles 138 and 139 should be taken over as they stand in the new treaty. Lastly, the preliminary draft constitutional treaty contains an article on participative democracy (article 34). It would be useful for this article to recognise the particular role of the social partners, for instance through addition of an explicit reference to articles 138 and 139 of the treaty.

Dr. Sylvia-Yvonne Kaufmann, MEP
Beitrag zur AG "Soziales Europa"
Kommentare zu den Punkten 1-3

1. Gemäß dem Vorentwurf des Verfassungsvertrags 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?

Der europäische Integrationsprozess basiert auf den gemeinsamen Werten der Mitgliedstaaten der Europäischen Union, die die allgemeinen und grundlegenden Orientierungsmaßstäbe für jegliches Handeln **sowohl der Mitgliedstaaten wie auch der Europäischen Union** bilden. Aus diesen gemeinsamen Werten leiten sich auch jene gemeinsamen Zielvorstellungen ab, deren Verfolgung die Aufgabe der Europäischen Union ist.

Diese Werte finden sich zum Teil im derzeitigen **Art. 6 Abs. 1 EUV** wieder, der darauf verweist, dass die Europäische Union auf den Grundsätzen der Freiheit, der Demokratie, der Achtung der Menschenrechte und Grundfreiheiten sowie der Rechtsstaatlichkeit beruht. Die **Charta der Grundrechte der Europäischen Union** greift die Idee, die gemeinsamen Werte der Europäischen Union ausdrücklich zu benennen, auf. In ihrer Präambel verweist sie darauf, dass sich die Union auf die unteilbaren und universellen Werte der Würde des Menschen, der Freiheit, der Gleichheit und der Solidarität gründet und auf den Grundsätzen der Demokratie und der Rechtsstaatlichkeit beruht. Der **Vorentwurf** geht auf diesem Weg insofern einen Schritt weiter, als er ebenfalls vorschlägt, die gemeinsamen Werte wie in Art. 6 Abs. 1 EUV ausdrücklich in die Verfassung aufzunehmen, sie wie in der Grundrechtecharta an einer exponierteren Stelle als dem derzeitigen Art. 6 Abs. 1 EUV aufzuführen, sie aber anders als in der Grundrechtecharta im verbindlichen Teil, in Art. 2, zu verankern. Dabei benennt der Vorentwurf folgende Werte der Union: Menschenwürde, Grundrechte, Demokratie, Rechtsstaat, Toleranz, Einhaltung eingegangener Verpflichtungen und des Völkerrechts.

Die **Unantastbarkeit der Würde des Menschen**, ihr Schutz und ihre Achtung sind in allen Mitgliedstaaten die grundlegendste Verpflichtung aller staatlichen Gewalt. Ebenso sind den Mitgliedstaaten die Werte der **Demokratie** und **Rechtsstaatlichkeit** gemeinsam, einschließlich eines umfassenden **Grundrechtsschutzes**, für den die der französischen Revolution entlehnte Formel der Freiheit, Gleichheit und Solidarität steht. Darüber hinaus ist allen Mitgliedstaaten aber auch das Prinzip der **Sozialstaatlichkeit** gemeinsam und somit in einen ausdrücklichen Kanon gemeinsamer Werte der Europäischen Union aufzunehmen. Das gleiche gilt für den **Schutz der natürlichen Lebensgrundlagen**, der seit einigen Jahrzehnten in den Mitgliedstaaten an Bedeutung gewonnen hat. Die Europäische Union ist geprägt durch eine kulturelle und soziale Vielfalt, die nicht nur in Unterschieden zwischen den Mitgliedstaaten, sondern auch in einer großen Vielfältigkeit innerhalb der Gesellschaften der Mitgliedstaaten besteht; dem Vorentwurf ist deshalb zuzustimmen, dass auch **Toleranz** in der Gesellschaft zu den gemeinsamen Werten der Europäischen Union zu zählen ist.

Deshalb schlage ich vor, folgende Werte in Art. 2 der Verfassung aufzuführen:

- die Unantastbarkeit der Würde des Menschen;
- Freiheit, Gleichheit und Solidarität;

- Demokratie, Rechtsstaatlichkeit und Sozialstaatlichkeit;
- Schutz der natürlichen Lebensgrundlagen;
- Toleranz in der Gesellschaft.

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

Der Verfassungsvorentwurf formuliert folgende soziale Ziele: Wahrung der gemeinsamen Werte, Förderung des wirtschaftlichen und sozialen Zusammenhalts, Förderung eines hohen Beschäftigungsniveaus, Förderung eines hohen Maßes an sozialem Schutz, ein hohes Maß an Umweltschutz.

Er bleibt damit hinter dem bereits bestehenden sozialen Besitzstand der Europäischen Union zurück. Dieser umfasst im Hinblick auf soziale Zielbestimmungen (Art. 2 EGV) zusätzlich zum Verfassungsvorentwurf auch die Ziele der Förderung einer harmonischen, ausgewogenen, nachhaltigen Entwicklung des Wirtschaftslebens, der Gleichstellung von Männern und Frauen, eines hohen Maßes an Umweltschutz und Verbesserung der Umweltqualität, der Hebung der Lebenshaltung und der Lebensqualität und der Solidarität zwischen den Mitgliedstaaten. Der Verfassungsvorentwurf kann somit nicht die Grundlage der Diskussion bilden. Diese ist vielmehr beim *acquis communautaire* zu suchen. Um den *acquis* den gesellschaftlichen Gegebenheiten anzupassen und die soziale Dimension der Europäischen Union zu stärken, ist es allerdings notwendig, einige Ziele zu ergänzen bzw. anzupassen.

Einen wesentlichen Grundpfeiler der europäischen Gesellschaften bildet das Europäische Sozialmodell. Dabei handelt es sich um Grundsätze und Zielbestimmungen, die der Wirtschafts- und Sozialpolitik aller Mitgliedstaaten gemeinsam sind und sich deshalb auch in der Wirtschafts- und Sozialverfassung der Europäischen Union mit ebendiesem Stellenwert wiederfinden müssen. Das Europäische Sozialmodell garantiert ein hohes Maß an Verteilungsgerechtigkeit, sozialem Schutz und sozialer Sicherheit in einer auf Integration und Chancengleichheit statt auf Armut und sozialer Ausgrenzung basierenden Gesellschaft.

Als Hauptsäulen sind folgende Elemente zu nennen:

- der Grundsatz einer starken Sozial- und Wohlfahrtstaatlichkeit und solidarisch umverteilende soziale Sicherungssysteme
- das Ziel der Vollbeschäftigung mit hoher Qualität der Arbeit und existenzsichernden Einkommen
- Schutz der öffentlichen Güter und der Daseinsvorsorge sowie Garantie eines diskriminierungsfreien Zugangs zu und einer hohen Qualität von Leistungen von allgemeinem Interesse
- der Grundsatz der Chancengleichheit zwischen Männern und Frauen
- das Prinzip des Sozialen Dialogs

Das Europäische Sozialmodell ist zahlreichen Bedrohungen und Einschränkungen ausgesetzt, auch auf europäischer Ebene. So haben die Notwendigkeiten zum Abbau öffentlicher Defizite, die sich aus Art. 104 EGV und dem darauf beruhenden Stabilitäts- und Wachstumspakt ergeben, in vielen Ländern Kürzungen bei den Sozialleistungen zur Folge gehabt. Als anderes Beispiel kann das Wettbewerbsrecht angeführt werden, welches oftmals im Konflikt zu den Erfordernissen im Bereich der öffentlichen Daseinsvorsorge steht. Es ist notwendig, die Grundpfeiler des Europäischen Sozialmodells in den Verfassungsvertrag zu integrieren, um es so künftig zu ermöglichen, dass

Zielkonflikte europäischer Politik nicht mehr stets einseitig zu Lasten sozialer Belange aufgelöst werden.

Ich schlage vor, den Artikel mit den Zielbestimmungen der Europäischen Union folgendermaßen zu formulieren:

Die Europäische Union beruht auf dem Grundsatz der sozialen Marktwirtschaft und auf dem Europäischen Sozialmodell. Sie hat die Aufgabe, in der gesamten Union eine harmonische, ausgewogene und nachhaltige Entwicklung des Sozial- und Wirtschaftslebens zu fördern. Dies umfaßt ein hohes Niveau an sozialem Schutz und sozialer Sicherheit, Vollbeschäftigung mit hoher Qualität der Arbeit und existenzsichernden Einkommen, den Schutz der öffentlichen Güter und der Daseinsvorsorge sowie den diskriminierungsfreien Zugang zu qualitativ hochwertigen Leistungen von allgemeinem Interesse, die Überwindung von Armut und sozialer Ausgrenzung und die Gewährleistung des sozialen Dialogs. Weiterhin fördert die Europäische Union die Gleichstellung von Männern und Frauen, die Hebung der Lebenshaltung und der Lebensqualität und die Solidarität zwischen den Mitgliedstaaten.

Bei der Einbeziehung der übrigen Ziele ist darauf zu achten, dass die sozialen Ziele gleichrangig zu den wirtschaftlichen und ökologischen Ziele gewichtet werden.

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?

a) Die Kompetenzen zum Erlass sozialpolitischer Mindestvorschriften

Art. 137 EGV ermächtigt die Europäische Gemeinschaft durch Richtlinien sozialpolitische Mindestvorschriften zu erlassen, um so die Tätigkeit der Mitgliedstaaten auf diesem Gebiet zu unterstützen und zu ergänzen; dies sollte auch im Verfassungsvertrag als Rahmengesetzgebungskompetenz erhalten bleiben. Die Gebiete, in denen die Europäische Gemeinschaft insoweit tätig werden darf, sind in Art. 137 Abs. 1 EGV genannt und sollten in diesem Umfang auch im Verfassungsvertrag verankert werden. Sie sollten aufgrund der in Lissabon festgestellten besonderen Bedeutung des Kampfes gegen Armut und soziale Ausgrenzung um diesen Bereich ergänzt werden. Wie bisher in Art. 137 Abs. 2 EGV vorgesehen, sollten auch künftig diese Mindestvorschriften im Mitentscheidungsverfahren nach Anhörung des WSA sowie des AdR erlassen werden. Die abweichende Regelung des Art. 137 Abs. 3 EGV, der für bestimmte Bereiche ein anderes Rechtsetzungsverfahren vorsieht, sollte künftig jedoch entfallen. Die Möglichkeit, die Sozialpartner mit der Durchführung der Mindestvorschriften zu beauftragen, wie sie in Art. 137 Abs. 4 EGV vorgesehen ist, sollte dagegen erhalten bleiben. Das gleiche gilt für die Ermächtigung an die Mitgliedstaaten, strengere Schutzmaßnahmen beizubehalten oder zu treffen, wie dies derzeit durch Art. 137 Abs. 5 EGV erfolgt.

Ein Ausschluss der Kompetenz für den Erlass sozialpolitischer Mindestvorschriften für das Arbeitsentgelt sowie für das Koalitions- und das Streikrecht, wie dies derzeit durch Art. 137 Abs. 6 EGV erfolgt, sollte im Verfassungsvertrag nicht mehr vorgesehen werden. Dieser Ausschluss ist beim jetzigen Integrationsstand nicht mehr nachvollziehbar.

Die Errichtung des Binnenmarktes und vor allem die Währungsunion haben den Druck auf die nationale Lohnentwicklung stark erhöht. Zum einen wird durch den erhöhten Wettbewerbsdruck Arbeit immer mehr nur noch als Kostenfaktor wahrgenommen, zum anderen haben die gemeinsame Währung und die strikten Vorgaben bei der Fiskalpolitik die Lohnentwicklung dadurch strengen Restriktionen unterworfen, dass konjunkturelle Schwankungen national im Grunde nur noch über die Lohnentwicklung ausgeglichen werden können. Die Lohnentwicklung spielt aber sowohl im Zusammenhang mit dem Bereich Armut und soziale Ausgrenzung wie auch - als wesentlicher Faktor der Binnennachfrage - für die gesamtwirtschaftliche Entwicklung eine wichtige Rolle. Daher ist es an der Zeit, der Union die Möglichkeit der Festsetzung von Mindestlöhnen auf europäischer Ebene zu eröffnen. Ferner sollte den Tarifparteien in diesem Zusammenhang die Möglichkeit eingeräumt werden, auch auf europäischer Ebene Tarifvereinbarungen einzugehen.

Das Recht auf Kollektivverhandlungen und Kollektivmaßnahmen, unter ausdrücklicher Einschließung des Rechts auf Streiks ist in Artikel 28 der Grundrechtecharta niedergelegt. Daher wäre es nur folgerichtig, der EU auch eine Kompetenz zur Angleichung des Koalitions- sowie des Streikrechts in der Europäischen Union zu eröffnen.

Die Richtlinienermächtigung des Art. 137 EGV ist ihrem Wesen nach eine konkurrierende Kompetenz¹. Die Mitgliedstaaten dürfen nur solange und soweit eigene Regelungen in diesem Bereich erlassen, als die Europäische Gemeinschaft von ihrer Ermächtigung keinen Gebrauch gemacht hat. Hat die Europäische Gemeinschaft jedoch eine Richtlinie rechtmäßig auf der Grundlage des Art. 137 EGV (in Ergänzung und Unterstützung der Tätigkeit der Mitgliedstaaten) erlassen, so sind diese grundsätzlich nicht mehr befugt, ihrerseits eigene Mindestvorschriften zu erlassen. Durch Art. 137 Abs. 5 EGV müssen die Mitgliedstaaten deshalb ausdrücklich ermächtigt werden, strengere Schutzmaßnahmen vorzusehen oder beizubehalten. Der Charakter der europäischen Kompetenz als konkurrierende Zuständigkeit sollte auch bei der Zuweisung an die Europäische Union im künftigen Verfassungsvertrag gewahrt bleiben².

Weitere Rechtsgrundlagen für sozialpolitische Regelungen sind in Art. 40 und 42 EGV in Bezug auf die Arbeitnehmerfreizügigkeit sowie in Art. 95 EGV sowie Art. 308 EGV im Hinblick auf den gemeinsamen Markt zu finden. Diese Rechtsgrundlagen werden auch in Zukunft notwendig sein, um die soziale Dimension der Europäischen Union gewährleisten zu können. Art. 137 EGV sollte dementsprechend wie bisher auch künftig dahin verstanden werden, dass diese Bestimmung sozialpolitische Maßnahmen auf Grundlage anderer Vertragsbestimmungen nicht ausschließt³.

¹ Die konkurrierende Zuständigkeit umfasst solche Bereiche, in denen die Union handeln kann, die Mitgliedstaaten jedoch tätig sein können, solange die Union ihre Befugnis nicht ausgeübt hat.

² Art. 137 EGV ist zugleich ausweislich seines ausdrücklichen Wortlauts eine ergänzende Kompetenz. Der Terminologie des Schlussberichts der Arbeitsgruppe 5 zufolge, erstreckt sich die ergänzende Zuständigkeit auf solche Bereiche, in denen die Gesetzgebungsbefugnis bei den Mitgliedstaaten liegt und die Union deren Maßnahmen unterstützt, koordiniert oder ergänzt. Definition der ergänzenden Kompetenz greift somit auf völlig andere Kriterien zurück als die Definition der konkurrierenden Kompetenz; diese Kriterien schließen sich nicht gegenseitig aus (anders als zum Beispiel die Abgrenzung der ausschließlichen von der konkurrierenden Kompetenz). Dadurch kann es - wie eben bei Art. 137 EGV - passieren, dass eine Kompetenz die Kriterien sowohl der konkurrierenden als auch der ergänzenden Kompetenz erfüllt.

³ Nach allgemeinem Verständnis weist der derzeitige Art. 137 EGV eine solche Sperrwirkung nicht auf. Anderenfalls wäre zum Beispiel der Ausschluss in Art. 95 Abs. 2 EGV überflüssig gewesen. Zudem hätte anderenfalls der Europäische Gerichtshof die Gleichbehandlungsrichtlinie 76/207, die sich auf Art. 308 EGV stützt, inzwischen für ungültig erklären müssen.

b) Die Koordination der Sozialpolitiken

Neben der Festlegung von Mindeststandards sollte im Verfassungsvertrag auch die Notwendigkeit der Koordination der Sozialpolitik der Mitgliedstaaten festgeschrieben werden.

Analog zur Wirtschafts- und Beschäftigungspolitik sollte in einem solchen Artikel die Sozialpolitik als Angelegenheit von gemeinsamem Interesse aufgeführt werden. Im Rahmen dieser Koordination soll die EU künftig quantitative und qualitative Vorgaben setzen, z. B. zur Verbesserung des Gesundheitsschutzes, zum Mindestniveau einer sozialen Grundsicherung (als Anteil des BIP pro Kopf), zu einem europäischen Mindestlohnstandard (als Anteil des nationalen Durchschnittslohns), zur Überwindung von Armut, speziell Kinderarmut, von Wohnungslosigkeit und Analphabetismus. Die Mitgliedstaaten müssen im Rahmen dieses Verfahrens zu konkreten Maßnahmenprogrammen verpflichtet werden können. Eine genauere Beschreibung dieses Koordinationsverfahrens erfolgt unter Punkt 5.

c) Gleichstellungspolitik

Gleichstellung von Frauen und Männern

Die Gleichstellung von Frauen und Männern sollte als neuer, eigenständiger Politikbereich der Europäischen Union in den Verfassungsvertrag aufgenommen werden (vergleiche Titel A3 des Zweiten Teils des Verfassungsvorentwurfs). Er sollte folgende Bestimmungen enthalten:

"Artikel X-1

Unbeschadet besonderer Bestimmungen dieses Vertrags ist in seinem Anwendungsbereich jede Diskriminierung aus Gründen des Geschlechts verboten. Dieses Verbot steht Maßnahmen zur Förderung der Chancengleichheit für Frauen und Männer, insbesondere durch Beseitigung der tatsächlich bestehenden Ungleichheiten, nicht entgegen.

Artikel X-2

Das Europäische Parlament und der Rat können im Mitentscheidungsverfahren Maßnahmen erlassen, um im Anwendungsbereich des Vertrages die Gleichstellung von Frauen und Männern zu fördern.

Artikel X-3

Die Erfordernisse der Gleichstellung von Frauen und Männern müssen bei der Festlegung und Durchführung aller anderen Politiken und Maßnahmen der Union insbesondere zur Beseitigung der Ungleichheiten und zur Förderung der Chancengleichheit von Frauen und Männern einbezogen werden."

Innere Sicherheit

Die Politik im Bereich Innere Sicherheit sollte sich ausdrücklich auch auf die sexuelle Ausbeutung und die Gewalt gegen Frauen beziehen (vergleiche Titel A.4 des Zweiten Teils des Verfassungsvorentwurfs und Art. 29 EUV):

Die Union verfolgt das Ziel, den Bürgern in einem Raum der Freiheit, der Sicherheit und des Rechts ein hohes Maß an Sicherheit zu bieten...

Dieses Ziel wird erreicht durch die Verhütung und Bekämpfung der - organisierten und nichtorganisierten - Kriminalität, insbesondere ...**die sexuelle Ausbeutung und Gewalt gegen Frauen**

Das demokratische Leben der Union

Die Förderung der gleichberechtigten Teilhabe von Frauen und Männern an den Entscheidungsprozessen soll ausdrücklich als Grundsatz des demokratischen Lebens der EU aufgeführt werden (vergleiche Titel VI des Ersten teils des Verfassungsvorentwurfs):

"Das demokratische Leben der Union basiert auf dem Grundsatz der gleichberechtigten Teilhabe von Frauen und Männern am Entscheidungsprozeß. Hierzu fördert die Union insbesondere eine ausgeglichene Vertretung von Frauen und Männern in den Institutionen der Union."

Social Europe

Comments of Mr Jan KOHOUT, Member of the WGXI on the questions of the mandate

1. The Union's basic values: Article 2 of the preliminary draft Constitutional Treaty

- X There should be also included "the solidarity" meaning the mutual loyalty among the member states in order to fulfil the defined objectives.

2. The Union's general objectives: Article 3 of the preliminary draft Constitutional Treaty

- X In the development of the economic and social cohesion there should be added the following words: "Emphasizing the removal of the cross-border obstacles and differences".
- X The objective related to the "high level of employment and social protection" can be modified and divided into two parts:
 1. "support of full employment with the accent on non-discrimination, human dignity (Article 25 and 26 of the Charter) and social dialogue (Article 34 of the Charter)"
 2. "support of quality of social protection with respect to the sustainable economic development combined with social solidarity and accessibility"
- X There should be newly added "the tendency for social convergence should not be mistaken for being social dumping"

3. The Union's competences

- X Our proposal is to approximate the policy of economic competition and the policy of employment. In regard to this the chapter "Employment" should be transferred from the part A5 to the part A3 of the draft Constitutional Treaty, in order to follow immediately the "Policy of the economic competition". Additionally, "social policy" should be transferred from the part A3 to the beginning of the part A5. This proposal should enable the surveillance of the policy of the economic competition to be used as a tool against the social dumping and social protectionism, which can be negatively spread over the more socially heterogeneous EU.
- X There is a necessity in the whole EU to solve the problems of banking and financial oversight not only in order to enable to develop the system of capital pension insurance but also to prevent from uncontrolled spreading of "Enronitis" in Europe, respectively to soften such negative impacts on the social security system.

4. The open method of coordination and

5. Economic and social policy coordination

- X Our proposal is to join the Luxembourg process (adaptability of employees), the Cardiff process (the structural economic reforms) and Cologne process (the macroeconomic dialogue) into one organic entity mainly for the parameters of coordination of economic and social policies to complement each other instead of pitting one against the other.
- X The open method of coordination could be included in the system of legal acts of the EU e.g. in form of the recommendation, which might be basis for the latter legislative initiative of the European Commission. This proposal should have a positive impact on clarity and control of the degree of involvement of the social partners in the implementation of the social dialogue (see Art. 137 and 139 TEC).

6. Procedures of decision making concerning the social policy

- X The decision making should be based on the fact that there is a necessity to remove the cross-border obstacles, not to create them, in the field of providing of social services and in the social policy in general. In an enlarged EU, this is an overriding principle coming into play when assessing a possibility for QMV in Art 42 TEC.

7. Democratic life in the EU

- X There are suggestions that the Title VI. of the preliminary draft Constitutional Treaty, called "Democratic life in the EU" should also refer to the participation of social partners in the decision making procedures and to take in account the "social summits" etc.
- X The Cologne process is focussed on the participation of social partners in the implementation of economic and social policy; in the Treaty this participation is mentioned in Article 137 and 139 (social dialogue and collective bargaining).
- X If the Title VI should refer to social values, this should be done in form of principles of social policy, not exceeding the extent of rights of the EU Charter and present Treaties because these documents represent the basic constitutional sources of community law and the framework for its compatibility and coherence.

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

Comments on questions 1-3 of the mandate of the working group

by Henrik Dam KRISTENSEN

member of Working Group XI and of the Convention, appointed by the Danish Parliament

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

It is important that the citizens of the Union can identify themselves with the basic values in Article 2. The statement of values should therefore be clear, concise and resounding.

The Charter on the Fundamental Rights of the EU already contains a number of values in the social field. Instead of repeating the content of the Charter, I would like to focus on four basic values that also cover the content of the Charter: equality, equal opportunities, social justice and solidarity among Member States.

Article 3 of the preliminary draft of a 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?

The starting point for the answer to question number two should be the conclusions made in Lisbon which set the agenda for a more socially responsible Union. According to paragraph 5, the European Union has set itself the new strategic goal *to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion*.

The Union's general objectives could include:

- social market economy
- full employment
- sustainable development
- a well-functioning and organised labour market
- promotion of good and sound working conditions at a continuously higher level within the European Union
- an inclusive labour market
- gender equality
- ethnic equality and diversity
- promoting social security and protection of employees
- social cohesion

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

In answering this question it is important not to confuse the question of the competence of the European Union with the question of powers of the Union and to what extent co-decision and qualified majority voting should be extended.

As the Working Group noted at its meeting on 11 December, the European Union already enjoys wide powers in the area of social policy. But the possibility to exploit these powers varies. This issue will be addressed at the meeting on 10 January 2003.

I would therefore like to concentrate on the question of competence.

When speaking of paragraph 6 of Article 6 - i.e. pay, the right of association, the right to strike and the right to impose lockouts - the Union has no competence.

The labour markets in the Member States build on different traditions. And the lack of Union competence in paragraph 6 of Article 137 should be considered in this light. The European Union should respect the basic national structures in the field of collective bargaining.

The Charter on the Fundamental Rights of the European Union does indeed recognise that workers have a right to strike. But this does not imply that the Union should define and implement the specific content of this right by abolishing the exceptions to Community competence laid down in paragraph 6 of Article 137.

I would like to make clear that the competence in relation to the elements of paragraph 6 of Article 137 should be subject to the exclusive competence of the Member States.

18 December 2002

Mr. Sören Lekberg

Stockholm 18 December 2002

Please find below my comments on points 1 – 3 in the mandate for the Group.

Question 1 on EU's values

To begin with, I would like to point out that the question of how to incorporate the EU Charter of Fundamental Rights - entirely or as an annex to the treaty – has large consequences for how comprehensive the text on social issues will have to be elsewhere in the Treaty. My opinion is that the Charter should stand on its own and be included as an Annex to the draft Constitutional Treaty, taking due regards to the principle of subsidiarity and the fact that the incorporation of the Charter will in no way modify the allocation of competences between the Union and the Member States. It is not, however, within the remit of this working group to discuss or find solutions to the legal status of the Charter.

Secondly, I advocate a concentrated and limited list of values in Article 2 of the draft Constitutional Treaty. In the social field there are two essential values enshrined in Charter, which deserve to be singled out and added to the present ones, i.e.

- Solidarity
- Equality

Solidarity and equality in a broad sense represent two core aspects of our common European value heritage and are indispensable fundamental principles for the Community. Today the TEC stipulates a more limited concept of solidarity between member states and equality between men and women respectively.

Thirdly, there is not always an easy task to establish a clear line between values and objectives. Important over-arching goals such as full commitment to policies for employment, welfare and equal opportunities, a sustainable growth and development, fight against racism, equality between men and women and the promotion of an inclusive society are examples of desired states of affairs that are closely interlinked to values.

This difficulty to distinguish between values and objectives, partly due to shifts in meaning taking place over time, should be taken into account when finalising the Treaty.

Question 2 on EU's objectives

Employment and welfare policies are inherent parts of the single market. Although social policy primarily lies within the competence of the Member States, the Union should support their efforts to enhance employment and welfare of their citizens.

The social objectives as formulated in Article 2 in the TEU and the principles and activities in Articles 2 and 3 of the TEC constitute a good foundation for redrafting. The already existing social objectives and principles have functioned well and should continue to have a clear place in the future Treaty. Perhaps most important is that our objectives are met and that our commitments are fulfilled and turned into reality.

Still, I believe that there is a need to modernise and update the social objectives. For example, a modern Treaty should reflect the essence of the Lisbon-strategy. In our ambition to modernise the future Treaty we should not forget to take advantage of the synergetic effects of various policy areas. Having said this, I suggest the following additions/amendments to the proposals enumerated in article 3:

- promoting sustainable development (the balance between economic, employment, social and environmental policies)
- promoting full employment and quality in work
- promoting social integration
- promoting equality between men and women
- promoting equal treatment of all regardless of sex, age, sexual orientation, disability, ethnic, cultural and religious background
- protecting children's rights
- recognizing a balanced and active participation of the social partners
- promoting regional and global cohesion
- promoting a social market-economy (an umbrella concept which might capture several aspects of the so-called European social model)

I have not as yet taken a definitive stand on the issue under which articles the new social objectives are to be included in the new Treaty. In order to indicate the exact location in the Treaty of the new draft text there is a need for an over-all picture of how the proposed social objectives will be brought in line and integrated with already existing provisions.

Question 3 on EU's competencies

I am not in favour of transferring new competences to the Union in social matters. The present division of competencies is sufficient.

The main responsibility for welfare policies should remain with the Members States. It is true that the welfare policies and the social protection systems to a high extent rest on shared values and objectives, but they have developed differently and have been adapted to the Member States' specific traditions and circumstances. An increased harmonisation in the social field is undesirable. We do not achieve a social Europe by trying to shape a common European welfare policy. Instead we need to co-operate on the European level in order to assist the Member States in building sustainable welfare systems.

Some of the existing instruments, such as the use of the open method of co-ordination and the social dialogue should however be reinforced. The open method of coordination is applied differently in different social policy areas, which has proved to be efficient and appropriate. Having this flexibility in mind, I favour the idea that the open method of co-ordination is enshrined in the Treaty.

With regard to recent EJC decisions concerning internal market regulation having consequences for health care I see the necessity to address this issue in the new Treaty in order to clarify the competencies between the Union and the Member States. In Article 152 we must develop more precisely the content of the responsibilities of the Member States. We have to agree on the issue of what factors the Member States need to control in order to manage their health systems, factors such as prioritisations among different patient needs, distribution of resources or cost containment.

The autonomy of the social partners should be respected as well as their right to collective bargaining and their status as co-regulators at the European level. Their right to incorporate Community directives by means of collective agreements should remain. The right of trade unions to take sympathy action across the national borders should be guaranteed by the Constitutional Treaty.

Sören Lekberg

Propositions et commentaires de Madame NAGY, membre suppléante, au Groupe de travail sur "l'Europe sociale"

Final.18.12.02

Suite à la demande du Président relative aux trois premiers points du mandat et en fonction des premières conclusions de la discussion du 11 décembre, voici quelques propositions et commentaires.

"Valeurs"

Dans un des premiers articles sur les fondements de l'Union, il devrait être spécifié que :
"l'Union européenne est constituée par les Etats et les peuples européens qui partagent une même communauté de valeurs : Paix, liberté, égalité, soutenabilité, solidarité, justice sociale".

La valeur de soutenabilité est importante car elle (seule) comprend la dimension des générations futures.

Objectifs

Il est important de faire une distinction entre le terme générique de "modèle européen de société" qui s'applique à l'ensemble du Traité et des politiques de l'Union et la notion de modèle social européen qui s'applique principalement aux politiques économique, sociale et d'emploi et se caractérise aussi par la place et le rôle des partenaires sociaux.

Proposition de formulation des objectifs généraux pour le modèle social qui pourrait faire l'objet d'un article spécifique dans la première partie du Traité :

" L'Union s'attache à promouvoir un modèle social européen par un développement durable des activités économiques et sociales, en recherchant la compétitivité, l'efficacité écologique et l'amélioration de l'environnement, la cohésion économique et sociale et le plein emploi dans l'économie européenne; par le développement de services d'intérêt général, l'égalité

entre les femmes et les hommes, un niveau élevé de protection sociale et par le développement des solidarités entre les régions et les Etats.

La concurrence en vigueur sur le marché unique s'accompagne d'un ensemble de règles édictées par les autorités publiques ou négociées entre partenaires sociaux. La réalisation du marché unique, de la monnaie unique et la mise en œuvre de politiques de régulation du marché contribuent aux objectifs de l'Union".

Principes d'action

Outre la définition d'objectifs, il est crucial de notre point de vue d' expliciter des principes d'actions qui orientent la conduite de l'ensemble des politiques de l'Union. Les principes de subsidiarité et de proportionnalité sont les plus souvent mentionnés. Il convient à notre sens d'y ajouter un principe de cohérence pour l'action de l'Union dans l'élaboration et la mise en œuvre des politiques.

Ce principe existe déjà de façon partielle dans les Traités actuels comme dans le cas de l'article 6 TCE . Il conviendrait de généraliser ce principe par le biais d'une clause transversale. A cet égard, l'étude de faisabilité de la Commission comprend des suggestions intéressantes qui peuvent nous inspirer.⁴

Proposition :

"Dans la définition et la mise en œuvre de ses politiques et actions, l'Union s'assure de leur compatibilité et de leur cohérence entre elles et vis à vis de l'ensemble des objectifs de l' Union."

⁴ Nous nous référons en particulier aux articles III,1 et III,2, p 45 et 46 de "l'étude de faisabilité".

18th December 2002

**Contribution by Mr. Antti Peltomäki, Alternate Member of the Convention
and Riitta Korhonen, Alternate Member of the Convention**

To the Working Group on Social Europe

**Answer to questions 1-3 presented by the Secretariat of the Convention Working Group
XI on "Social Europe" (CONV 450/02)**

Question 1. The Union's basic values to be included in Article 2 of the Constitutional Treaty

(The first question is about Article 2 of the preliminary draft Constitutional Treaty that 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?)

Article 2 should refer to the respect of the basic values that are internationally recognised and present in the Charter of Fundamental Rights in all Union activities. In relation to basic rights, this is preferable to the inclusion of certain selected basic rights in the Article.

We approve the listing of the Union's basic values as defined in Article 2 of the preliminary draft of the Constitutional Treaty provided that equality is included in the Article as defined in the Charter of Fundamental Rights.

Question 2. The Union's general objectives to be included in Article 3 of the Constitutional Treaty

(The second question is on Article 3 of the preliminary draft Constitutional Treaty that sets out to define the Union's general objectives, the Group is asked to examine to what extent and in what way should these general objectives include social objectives?)

Full employment was also discussed in relation to the drafting of the employment Title and Article 2 of the present Treaty. At that time, the agreed objective was to reach a high level of employment. The definition itself will not have great practical level influence. The objective of full employment is

generally not considered to cover, e.g., the obligation for authorities to provide employment.

We approve the listing of the Union's general objectives as defined in Article 3 of the preliminary draft of the Constitutional Treaty provided that health promotion is mentioned in connection to high level of employment and of social protection. Hence, the Article would read as follows: promotion of a high level of employment, social protection and health.

Article 2 of the Treaty establishing the European Community, concerning promotion of gender equality, should be included in the new Treaty as well.

Question 3. Improvement of the Community competence in the field of social policy and employment

(The third question regards the Union's competences: does the Group 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?)

There is no need to amend the present competence provisions on social policy and social protection concurrent with the reform of the Treaty (Art. 42, 136-137/TEC).

The provisions on social policy, social protection and public health should be particularly clear as regards competence.

Competence categories and social provisions. Referring to the proposed system of "basic delimitation" in the report of the Group V it is not possible to place entire sectors of Union policy under one and single category of competence along the lines suggested in the report. Public health would obviously fall partly within the category of shared competence and partly within assisting measures. Social policy would arguably fall within the category of shared competence in some respects (Art. 42 and Art.137 TEC) and within assisting measures in other respects (Art. 140 TEC and 137.4 as revised in the Treaty of Nice). We should go through all the power-conferring Treaty provisions regarding the social field to check if they, in their present form, are fit with the general provisions and principles of the constitutional part of the Treaty, and only then come back to the idea of the "basic delimitation of competencies".

Provision on services. The legal basis governing the freedom to provide services is provided in Article 52 TEC. The recent rulings of the EC Court of Justice have initiated the need to clarify the position of public social and health services within the Treaty. The Court of Justice has adopted the view according

to which the freedom to provide services is partly applicable to publicly financed health services, too. The Treaty could be made more accurate by delimiting public social and health services outside the provisions governing the free movement of services. The relevant provisions could be included in the present Article 51 and in sector-specific Articles. Composing exact Treaty provisions presents an extremely complex task that requires expert-level preparation and separate examination within the Convention Working Group.

Provisions on tobacco and alcohol. The ways to provide a sufficient legal basis for health oriented tobacco and alcohol legislation should be considered.

Provisions on work permits. The Council Legal Service has in its recent opinion assessed the relation between Articles 63 and 137 on immigration policy and stated that the rights of the third country nationals to engage in paid employment and the conditions of their employment should be provided on the basis of Article 137 and not of Article 63. The flexibility required by the employment market could be best achieved, in a manner safeguarding the legal position of the person seeking a work permit, by provisions on minimum requirements. Therefore, it seems sensible to include the provisions on work permits in Article 137 (or in a corresponding new Article) in the future, too. We do not, in this phase, consider adequate the possibility to give provisions on EU-level work permits.

Articles on employment. The memorandum by the Secretariat also contains a question regarding the objectives of the employment Articles. Employment should remain in Member States' exclusive competence. We agree with the present provisions of the Title on employment.

Working Group XI – Social Europe
Comments on Questions 1-3 of the Working Group’s Mandate by
Mr Dick Roche, Member of the Convention

I very much welcome the creation of this Working Group on Social Europe, and I wish to express my thanks to the Chairman of the Group, Giorgos Katiforis, for the opportunity to set out my preliminary views on Questions 1-3 of the Working Group’s mandate. I may put forward some more detailed views after our discussion of these questions on 11 December.

Question 1

Article 2 of the preliminary draft Constitutional Treaty sets out to define 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?

In relation to both question 1 and question 2, there is in general a potential tension in drafting terms between simplicity and economy of language on the one hand and comprehensiveness on the one hand. However, I am open to the views of others on whether there might be some reference to the concept of social solidarity. I would be happy to leave to the Secretariat the question of drafting, although I note that the preambles of both the TEU and TEC refer to seeking to ensure “social progress”. I would wish to note in passing that until a final decision is taken on the Charter of Fundamental Rights, its status remains open, but I would argue strongly that this matter, and the substance of the Charter, should not be reopened in this Working Group.

Question 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?

I would be pleased to see a reference to the objective of social inclusion, alongside that of competitiveness: the two are together at the heart of the Lisbon process, and I would like to see that reflected in the Union’s objectives. If it were decided to include a larger number of objectives, I would wish to see a reference to the protection and promotion of health.

Question 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 would tend to the view that debate in the Convention to date has not reflected any significant desire to extend Union or Community competence. I will listen carefully to the debate in the Working Group and may make further comments on this question in the light of that debate.

10 December 2002

Contribution of Mr Johannes Voggenhuber

Working group Social Europe

Mandate: Question 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?

The basic values should contain

The Charter of Fundamental rights of the European Union shall constitute Article I of the Constitution

Social Security, Justice and Solidarity

A decent quality of live

Question 2:

Article 2 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?

A fundamental objective is to institutionalise the procedure of the EU sustainable development strategy, i.e. the balance between economic, employment and social policies, and environmental policy.

A second objective is a European Union founded upon the principles of the European Social Model, services of general interest and a social market economy

The European Social Model is based

on solidarity among Member states and solidarity among the citizens of the Unions and

equality between men and women in all areas of life

full employment with quality jobs in a healthy and safe work environment

fair remuneration and a decent living income

fundamental principles of social protection via a high level of social protection based on

solidarity financed social security systems

a high quality of social protection and a fair distribution of wealth

welfare and prosperity

combating poverty and social exclusion; promoting social inclusion

raising standard of living and quality of life

a general and non-discriminatory access to universal services of general interest

solidarity between the generations

promotion of healthy living conditions

sustainable environmental development

the right to information, consultation and co-decision of employees in all issues that concern

employees

promotion of a qualitatively high level of education and training

equal opportunities

The European economic governance should be established in the Constitution with a view to making it possible to pursue the objectives of a social market economy.

The principle of Services of general interest should be anchored in the 'common objectives' as laid down in the draft Constitutional treaty and be recognised as Common Objectives of the European Union. It should read as follows: "To secure and promote, within its competence and in its activities, services of general interest of high quality and based upon the principles of universality, equal access, neutrality of ownership, fair pricing, the quality of work, quality employment, safety and social justice. The Union shall ensure in particular that the aims referred to in this Article are also respected in all its external activities".

Gender mainstreaming shall be incorporated into the Constitution and shall be the task of all community policies

Question 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?

The social and employment Union will placed on an equal footing with the monetary union,

Article 308 of the TEU shall remain in force and shall apply to all requirements of an ecologically and socially sustainable development of the common market.

The Union shall adopt general legal provisions for a sphere of social security, justice and solidarity. The social systems of the Members States shall be respected. Common social minimum standards on a high level shall be created to avoid any distortions of competition on the internal market, as well as the erosion of national social systems caused thereby

The objectives of European monetary policy shall be expanded to include growth and employment as criteria of equal value. The accountability of the European Central Bank and the European Investment Bank vis-a vis the European Parliament shall be reinforced. The European Investment Bank shall observe the principle of ecological and social sustainability in all its activities.

The Pact for Stability, Employment and Growth shall replace the previous Stability and Growth Pact.

An ongoing Social Dialogue between employers and employees, on the one hand, and Council, Commission and the Parliament on the other shall become firmly established, as well as the right of the social partners to reach cross-border agreements and to enter into cross-border contracts

A social stability pact including a common European Social Security System on a voluntary basis especially for migrant workers will be created.

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.

=====