

Working Group XI

Working Document 11

## **Working Group XI “Social Europe”**

**Subject:**   **Replies to questions 4-7 of the Mandate  
by Mr Esko Helle**

Members of Working Group XI on “Social Europe” will find hereafter a paper by Mr Esko Helle, alternate member of the Convention.

# **European Convention**

## **Working Group XI SocialEurope**

**Subject: Responses of Mr. Esko Helle to questions 4-7**

### **Question 4 (open method of coordination)**

**A general provision would be enough about the role of open coordination.**

### **Question 5(link between economic and social policy coordination)**

**The proposals at Articles 2, 3 and 4 TEC of the Florio report (ESC, 17.12.2002; see pages 11-12) could serve as the basis, so as to lead to a workable link between economic and social policy coordination.**

### **Question 6 (co-decision and qualified majority voting)**

**At this question, I endorse, in principal, rendering social affairs under QMV decisions. However, this should not concern work permit issues that, as nationally elementary for some Member States, still necessitate unanimity. Also methods in arranging social security systems should be kept under unanimity.**

### **Question 7 (role of the social partners)**

**As a basic anchor and guide for any interpretation, the Constitutional Treaty should expressly recognise the autonomy of the Social Partners.**

**In elaborating the role of social partners I first refer to my comments on Question 3. The deletion of Article 137(5) of the (Nice) Treaty is an essential but not sufficient means of the incorporation of the Charter of Fundamental Rights in the Constitutional Treaty. Further on, fundamental rights, the right to strike in particular, such as they are recognised by the Member States in their legal order should be sheltered from any over-weighting interpretation and application, let alone abuse, of economic freedoms. In this regard, the exemption clause in Article 2 of the so called Strawberry Regulation No 2679/98 of 7 December 1998 should be transferred to the Constitutional Treaty and extended to cover all economic freedoms, not only freedom of movement of goods (hence, also provision of services**

and movement of capital). The protection granted to social partners in the Constitutional Treaty should cover also their principal sheltering, as well as that of their agreements, in relation to competition rules (the *Albany* principle; C-67/96) – public procurement included.

Thereby, with the incorporation of the Charter of Fundamental Rights of 2000 into the Constitutional Treaty the right to organise, the right to collective bargaining and the right to strike would become positive fundamental rights under Union law, binding on the Union institutions and the Member States. Further on, in the Constitutional Treaty the Union should commit itself to recognise and apply also the ILO and UN basic conventions and the core articles of the revised European Social Charter. Finally, the “labour exemption“ clause modelled on the basis of Article 2 of the Strawberry Regulation would protect those national systems where trade union rights are recognised at a higher level than provided for by the Community law and International Standards.

Finally, to protect national trade union rights within the internal market, as described above, would foresee necessary clarifications, e.g. via references to the Constitutional Treaty in the relevant secondary EC law, such as the Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. This would e.g. prevent the national right to strike from being judged as having the legal order of *another* Member State as the basis. The Rome Convention of 19 June 1980 on the law applicable to contractual obligations, as well as its possible successors in EC law, should be amended/construed on the same line.