

Working Group XI

Working Document 13

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

**Subject: Contribution by the UK, Spanish and Estonian government representatives**

# CONVENTION ON THE FUTURE OF EUROPE: SOCIAL EUROPE WORKING GROUP

## CONTRIBUTION BY THE UK, SPANISH AND ESTONIAN GOVERNMENT REPRESENTATIVES

*European social values...*

We need a European agenda based on social justice and economic efficiency. The remit of the working group distinguishes between **values**, **objectives** and **competences** of the Union. This must be right. EU Member States have worked together on the basis of shared values and common interests for over 40 years. The EU cannot be a credible force for good in the wider world if it is indifferent to questions of social justice in European society or how its citizens are treated at work. Therefore it is important that the values and objectives we all share as Europeans are set out with clarity in the Constitution.

*...and competences should be clearly set out in the Constitution.*

The Constitution needs to set out with equal clarity the respective competences of the Union and Member States in the fulfilment of these shared values and common objectives. Shared values and common objectives do not necessarily imply EU competences or EU legislative action. The Working Group needs to address the practical application of the principles of subsidiarity and proportionality in the social field to ensure that where the EU does act, it adds value.

*The Constitution should recognise the diversity of social systems in the EU...*

We all accept that there are social values that are distinctively European. We often describe these as the “European social model”. However there is huge diversity between how these values are implemented in the social systems of Member States. Collective bargaining arrangements; the role played by trade unions; social insurance schemes; education and training systems; government policies on pensions; health care and unemployment – all these vary enormously.

*...which will be even greater post-enlargement.*

Academic experts have identified several very different variants of the European social model, and there are further differences in practice between and within Member States, even where the model operates on

*National flexibility is needed for competitiveness and high employment.*

the same broad principles and towards shared objectives.

Creating a genuine Single Market has been a huge endeavour for the EU. But to those who want us to be as ambitious in the social field, it has to be said that the creation of a Single Welfare State would be an impossible goal, even if the political consent for such a step existed which it certainly does not.

*The Lisbon Agenda should be our main inspiration...*

We should see the diversity of our social systems as a source of strength, not a weakness. This is particularly so with the coming of the Euro. The adaptability of social systems becomes even more important to enable Member States to maintain competitiveness and high employment, to cope with “shocks” specific to that Member State, and to meet different national or even regional challenges. A crude policy of harmonisation of social standards would constrain that adaptability. In countries with lower productivity, “levelling-up” of benefits and wages could lead to unemployment. In countries with higher productivity, “levelling-down” would unnecessarily diminish social standards. Also in the accession Member States it will be particularly important to maintain a degree of national specificity in social systems. Unnecessary “levelling up” in these countries could harm the competitiveness and economic growth of their converging economies.

*...with its focus on full employment...*

*...and benchmarking and peer review to achieve common aims.*

The Working Group needs also to reflect on the main challenges that the European Union faces in the years ahead, best encapsulated in the **Lisbon European Council Conclusions**. This set a comprehensive economic and social agenda for the Union up to 2010. Lisbon was distinctive because of:

- Its acceptance of the **complementarity** of economic and social objectives. In the Constitutional Treaty we should avoid objectives and decision-making proposals which might lead to conflict between the two, for example more social protection for those in work could make it harder to secure “more and better jobs” for all.

*Employment rights can be beneficial to employers and employees alike...*

- Its advocacy of the **open method of co-ordination**. Benchmarking and peer review are an important means of delivering commonly agreed objectives in certain areas of shared interest where competence rests largely in the hands of national Governments. They have proven to be valuable also in cases where important competences are largely devolved to the regions. The open method of co-ordination enables Member States to fulfil shared values and common objectives through their diverse systems, without giving the EU competences it should not have.

*...but if not carefully considered they can stifle employment growth and hinder competitiveness.*

The Working Group has to approach the question of Treaty change from a clear European perspective about the role of **labour market flexibility, employment rights and core standards** in modern social policy.

Job security and fair employment rights are highly desirable social aims – and well-targeted legislation can support and enhance them without damage to efficiency and jobs. For example, employment rights can reinforce a relationship of mutual high commitment between employer and employee, enabling the best businesses to achieve high levels of productivity and in effect spread best practice through the economy to achieve prosperity for all. Regulation can also force inefficient employers to use labour more efficiently. Fair standards at the workplace can march hand in hand with economic efficiency.

But equally there can be situations where legislation to protect employment can act as a barrier to job creation or puts uncompetitive costs on businesses by imposing:

*So there must be a balance between regulation and labour market*

- Additional personnel administration and costs of litigation;
- Additional costs in making use of either temporary or contract labour to meet temporary increases in demand;
- Restrictions on the use of voluntary part-time workers;
- Limitations on the ability to organise flexible working arrangements which make employers reluctant to create new jobs and take on

*flexibility.*

untried employees;

- Barriers to reshaping a business in response to market pressures and opportunities.

Sometimes additional costs on business can be justified in terms of **legitimate** social protection. We do not accept the view that there is no need for EU legislation in the employment field: that whatever regulation of labour markets is necessary should be left to Member States. We consider that EU laws to facilitate a Single Market require flanking regulations on common consumer, environmental and social standards. The principles of open competition within the EU's borders from being abused through deregulatory free-riding.

However there is a **balance** to be struck between regulation and flexibility. Labour market flexibility plays a crucial role today in achieving our common full employment and social justice objectives:

*Labour market flexibility helps employees, employers and those out of work.*

- Recessions will be deeper and the swings in the economic cycle more disruptive if wages and employment levels cannot adjust quickly and flexibly to changes in market conditions: it is no good legislating against redundancies in the short term if the economic consequence is higher unemployment in the longer term.
- Strengthening the advantage of labour market “insiders” over “outsiders” will result in higher long term unemployment and can make re-integration of those without work into the labour market more difficult, particularly affecting vulnerable groups such as lone parents, older workers and those with disabilities.
- Economic growth will be slower if firms cannot adapt to change: we cannot raise Europe's long term growth potential without a faster pace of industrial restructuring and economic change.
- Fostering new enterprise is the dynamo of new private sector jobs. We must minimise regulations that put obstacles in the path of new enterprise, especially in areas of high unemployment.

*The EU should set priorities for action on workers' rights...  
...but Member States should work up the detail.*

*The principles above should be reflected in the Constitution as follows:*

*High level of social protection, equality, tolerance, respect for all and solidarity among Member States.*

Labour market flexibility extends employment opportunity for millions. Part-time and other forms of flexible working enable people who might otherwise be unable to work (such as people with family responsibilities) to participate in the labour market. A flexible labour market enables employers to cope with growing employee demands for parental leave and training. **Rights and standards must therefore be employment friendly, and should encourage the unemployed to join the labour market.**

*Objectives based on Lisbon language.*

We see the EU's role in the field of employment rights as establishing an adequate core framework, not prescribing detailed standards. This is inevitable given the diversity of the EU. Enlargement is bound to reinforce it.

*Importance of equality between women and men, and of gender mainstreaming.*

So "Social Europe" has to find a "raison d'être" that fits with the context of the EU competing in the global market, with our values of social justice, and opportunities for all. This must be reflected in the new Constitution. What follows is a response to each of the questions in the Working Group remit.

*Important role of public services, as long as protectionist...  
...language is avoided.*

**Values**

The Union is constantly becoming more diverse. Enlargement will mean that the diversity of traditions in the Union will be further enriched. It is crucial that the Treaty reflects and nurtures a diverse Europe.

*Competences which respect conclusions of the Competences Working Group.*

In addition to democracy, religious and political freedom, and the rule of law, the Treaty must embrace fundamental values such as a high level of social protection, equality between women and men, tolerance, respect for all and solidarity among Member States.

**Objectives**

These could include "promoting all three dimensions of the Lisbon

*Competences should mostly be defined as supporting measures.*

*Shared competences should remain as now: a core framework of employment and non-discrimination standards; and 'Single Market' related issues.*

*EU legislation must follow principles of proportionality and subsidiarity. The status of SMEs should be respected. We need to recognise the diversity of social models in different Member States.*

*The role of the open method of co-ordination*

agenda – economic and social renewal and sustainable development, so as to create a competitive, dynamic and knowledge-based economy characterised by social cohesion and more and better jobs”.

Equality of women and men is recognised as a fundamental principle of the existing Treaty and one of the objectives and tasks of the Community. The future Constitutional Treaty must reaffirm the objective of equality between women and men. The Treaty should state explicitly that the aim of the Community in all areas of its competence should be to eliminate inequalities and to promote equality between women and men (gender mainstreaming).

The important role of public services in economic and social development should be recognised in the Treaty objectives. However protectionist language relating to public services must be avoided, as there is no good reason for the exclusion of public services from European laws on restrictive practices. Such a move would only damage progress in achieving Lisbon objectives. As under the existing Treaty, Member States should remain responsible for determining both the means and delivery of their public services. If “public services” and “Services of General Economic Interest” are referred to in the Treaty, these should be clearly defined.

### **Competences**

EU competences in the social field need to be defined carefully, and should take fully into account the conclusions of the Convention Working Group on Competences.

The central issue of competence in the social policy and employment field is to what extent these should be defined as shared competences or as supporting measures. Our view is that most competences in this field fall into the latter category and that harmonising legislation is not always appropriate and could undermine the very objectives we are keen to see

*could be stressed in the Treaty.*

*The ESPHCA Council should discuss and share best practice on challenges such as increasing employment participation; reforming welfare systems and pensions; promoting employability; catering...  
...for an equal and multi-ethnic society; and tackling social exclusion.*

*National Action Plans and open peer review would form part of this process.*

*Objectives*

the EU set.

The shared competences should comprise, as now:

- A core framework of employment and non-discrimination standards. This should specifically preclude any measure that attempts to set common standards for pay. It should also specifically exclude questions of the right of association, the right to take industrial action or the right to impose lock-outs across the EU which should be determined nationally, in view of the divergence of national laws, traditions and practice.
- Competence arising from the horizontal ‘Single Market’ articles (e.g. cross border questions of mutual recognition of qualifications; pension portability; social security rights for migrant workers).

In the exercise of shared competences, any EU legislation should respect the principles of subsidiarity and proportionality. In the employment field these principles should preclude the application of detailed EU regulations to SMEs, except for core standards (such as those relating to the core values outlined earlier) that the social partners, including small and medium sized firms, would define by mutual agreement.

### **Qualified majority voting**

The areas that currently require unanimity cover issues at the heart of industrial relations and social security in each of our countries. Different Member States have very different systems. These have developed over many years to take account of particular traditions and cultures. Codetermination, for example, is an essential part of the German business model. But it is not part of the model of most other Member States, where voluntary collective agreements or other forms of employee participation are the norm. Failing to recognise this diversity could have a serious effect on the future of industrial relations in each of our systems.



<p><i>should be adaptable to national situations. Benchmarking should look worldwide.</i></p>	<p><b>Open method of co-ordination</b></p> <p>The Treaty could be amended to emphasise the importance of the use of the open method of co-ordination, for example in areas such as employment and social inclusion.</p>
<p><i>The BEPGs should include social and employment objectives.</i></p>	<p>Since 1997 there has been a considerable expansion of benchmarking and peer review within the EU in the employment and social field: the Employment Guidelines; the extension of the “open method of co-ordination” to social inclusion agreed at Lisbon; and the decisions to extend co-operation in pensions and health-related areas, such as long term care for elderly people.</p>
<p><i>Social dialogue has an important role in improving social outcomes.</i></p>	<p>The key task of the Employment, Social Policy, Health and Consumer Affairs Council would be to define the main challenges facing the EU if we are to meet the Lisbon goals in these areas. The Council should discuss and share best practice on how these challenges could be met. This could include ideas to:</p>
<p><i>The EU social dialogue must be “unblocked” and be made more imaginative.</i></p>	<ul style="list-style-type: none"> <li>• Raise rates of employment participation, especially for older workers and female workers, through targeted measures to reintegrate the unemployed into the labour market</li> <li>• Reform welfare systems to make work pay</li> <li>• Promote employability through modernising training systems, tackling adult illiteracy, expanding lifelong learning, and encouraging higher education institutions to increase access to students from disadvantaged social groups</li> <li>• Reform pensions to ensure financial sustainability as the EU population ages, and in particular comply with the Barcelona commitment of a gradual rise in the effective retirement age</li> <li>• Meet the challenges of a more diverse, equal and multi-ethnic European society, in the context of enlargement</li> <li>• Tackle the multiple causes of social exclusion and poverty</li> </ul>
<p><i>The dialogue could address:</i></p>	

*Lifelong learning at work, labour mobility, new forms of work organisation, pensions issues and staff support.*

*Binding agreements from the social partners should be subject to better regulation principles, including a ... requirement to produce impact assessments.*

*The Treaty could recognise an Annual Social Summit.*

Member States would draw up Action Plans in these areas. Inevitably, they would have to be less precise in some areas than others. But Member States would report annually on progress made. And the Commission would also analyse and review the Action Plans. The European Parliament and Committees of the appropriate National Parliament would debate the Commission's findings. The Commission would have the power to make formal non-binding recommendations to Member State Governments and directly inform National Parliaments of their views with the intention of opening up the peer review process and making it part of national political debate.

This strengthened and streamlined process of social and employment benchmarking would enable Europe to set common goals, while retaining the national flexibility to tackle them. Of course we should avoid setting EU wide "measurable objectives" or "targets" which are inappropriate given the diversity of social systems in Member States. Benchmarking should take place not just against the best within the EU but also against the best in the world.

### **The relationship between economic and social co-ordination**

We support the integration of social and employment objectives into the Broad Economic Policy Guidelines. All relevant Council formations should work in a co-ordinated manner to prepare the draft for the spring European Council.

### **Role of the Social Partners**

Strengthened social dialogue is about improving the response of non-state institutions to the challenges facing European societies. Social dialogue should operate at multiple levels: between employer and employee representatives at European, national, regional and local levels; and it can take many different forms, particularly between Member States.

At European level the complaint is that social dialogue is “blocked”. The employers see the unions as wanting to use social dialogue to extend workplace regulation using the Article 139 procedures. As a result they hold back from any willingness to negotiate on issues, so that the Commission has then to decide whether to bring forward a legislative proposal of its own: the employers look to the Council to block this. This is sterile. The employers should be encouraged to take social dialogue seriously – but the unions need to provide some assurance that they are not seeking prescriptive legislation through the back door.

Both employers and trade unions should show imaginative leadership in reviving social dialogue and building social partnership. The autonomous work programme announced on 28 November 2002 is a good start. We need to leave scope for the social partners to identify their own areas of activity, linked to the delivery of the Lisbon goals or to the challenge of raising productivity. But there are certainly many topics where social dialogue ought to be fruitful, for example:

- A company framework for lifelong learning (employee entitlements and obligations, course attendance and performance responsibilities)
- Overcoming obstacles to labour mobility within the Union
- New forms of work organisation
- The future of occupational and new second tier pensions
- How good practice in companies can best be transferred
- How to support and sustain a diverse workforce, including attention to work-life balance and reducing the pay gap.

The EC Treaty accords the social partners a powerful role under Articles 138 and 139. That role needs to be undertaken responsibly. We believe that the social partners can take on board much from the Commission’s Better Regulation Package and Good Governance initiatives, in particular the preparation of impact assessments and measures to improve transparency. The social partners also need to be able to speak for as wide a constituency as possible. We should look at the way that the

voice of small firms, the unemployed and the excluded can be heard within this process.

The Treaty currently notes in Article 137 the need to avoid imposing administrative, financial and legal constraints which would hold back the creation and development of small and medium-sized undertakings. We support retention of this provision, but believe the Union needs to establish an effective mechanism to police it. We propose that a special committee of small firms should be established to advise on how proposals can be best implemented in SMEs.

As already initiated at the Barcelona European Council, we support the idea of an Annual Social Summit to take place before the Spring European Council's annual consideration of the economic and social 'state of the Union'. We also welcome similar mechanisms for dialogue between social partners and employment and social affairs ministers.

In addition, we should recognise the importance of civil dialogue and the role of those organisations that channel the needs, interests and aspirations of the citizens and that take an active part in the process of consultations concerning national policies in the fields of poverty, social exclusion or youth.

The Union can be proud of its efforts so far in giving its citizens a higher standard of living and greater social cohesion. But too many Europeans remain on the margins of society. Millions are without work. There may be no need for major revision of the social provisions of the Treaty. But much more can be done through benchmarking and the exchange of best practice under the open method of co-ordination. The Constitution needs better to reflect the values that we share. We firmly believe that this working group can play a vital role in taking forward this work in building a Social Europe.

