

Working Group XI

Working Document 26 REV

Working Group XI “Social Europe”

Subject: Comments on points 4 to 7 of the Mandate

**Convention sur l'avenir de l'Europe
Groupe de travail « Europe sociale »**

Observations sur les questions n°4, 5, 6 et 7 du mandat du groupe

A. IV – LE RÔLE DE LA METHODE OUVERTE DE COORDINATION

Les deux processus de MOC les plus anciens, sur l'emploi et sur l'exclusion, ont un bilan très positif. Dans le domaine de l'emploi, cette méthode a permis d'établir une convergence réelle du contenu des politiques d'emploi et du marché du travail entre les Etats membres. Dans le domaine de l'exclusion, elle a permis une amélioration des politiques nationales par les échanges de bonnes pratiques. La France considère ce nouvel outil comme un complément nécessaire de l'action communautaire normative sur laquelle s'est construite l'Europe sociale.

C'est pourquoi il est essentiel d'inscrire dans le traité le principe de la méthode ouverte de coordination, comme processus fondé sur la notion de convergence des politiques des Etats membres dans les domaines d'intérêt commun.

Compte tenu de la spécificité des différents processus de MOC, qui requièrent des niveaux de contraintes, des objectifs et des calendriers différents, il est en outre souhaitable que le Traité comprenne des dispositions ad hoc dans chaque domaine concerné : l'emploi, la lutte contre l'exclusion, les retraites.

V – LA COORDINATION DES POLITIQUES ECONOMIQUES ET DES POLITIQUES SOCIALES

Le modèle européen de société consiste à garantir et à favoriser, dans un cadre démocratique et dans une perspective de développement durable, l'équilibre entre les objectifs de croissance et de compétitivité économique, d'une part, et de cohésion sociale, d'autre part.

C'est notamment par la synchronisation des processus des GOPE et des lignes directrices pour l'emploi que l'équilibre défini à Lisbonne entre politique économique, politique d'emploi et

politique sociale, peut être maintenu et réalisé. Il ne doit y avoir ni absorption, ni subordination d'un exercice envers l'autre, mais bien une complémentarité entre eux. Les GOPE ont néanmoins vocation à conserver le rôle de synthèse et de stratégie globale que leur confère actuellement le traité, et qui garantit la cohérence de l'ensemble des processus.

Cela implique que la préparation du Conseil européen de printemps permette la prise en compte des aspects sociaux.

Cet équilibre devra expressément apparaître dans le Traité, tant dans les dispositions consacrées à la politique d'emploi que dans celles consacrées à la politique économique.

Enfin, le Parlement Européen doit être mieux associé à l'élaboration de la politique de l'emploi en étant consulté sur le rapport annuel conjoint.

VI – LES PROCEDURES DE DECISION

Le vote à la majorité qualifiée devrait être étendu à l'ensemble du champ social, à l'exception de l'harmonisation des régimes de sécurité sociale. Cette extension doit également s'appliquer à la politique en matière de non discrimination, qui représente une composante essentielle des politiques sociales.

L'implication du Parlement Européen dans la définition des politiques sociales doit, en outre, être renforcée par l'extension de la procédure de codécision.

VII – LA VIE DEMOCRATIQUE DE L'UNION

Les partenaires sociaux doivent prendre une part plus active dans la détermination des politiques sociales au niveau européen. A cet égard, la création du Sommet social tripartite pour la croissance et l'emploi ainsi que son inscription dans le Traité constitueront un signe tangible du renforcement du dialogue social au niveau communautaire par l'implication plus forte des partenaires sociaux dans la préparation des Conseils européens de printemps.

On peut s'interroger sur la force juridique éventuelle qui pourrait être conférée aux accords volontaires des partenaires sociaux européens pris sur le fondement de l'article 139 du TCE. De tels accords, dits de seconde catégorie, contrairement à ceux pris dans des matières relevant de l'article 137-4 qui peuvent se traduire en directives du Conseil, ne s'intègrent pas dans le droit communautaire et n'ont donc pas de valeur contraignante. Dans la mesure où tant la transposition de ces accords que la vérification de leur mise en œuvre n'incombent pas aux Etats membres, nous souhaiterions que le groupe examine, sans entraver l'autonomie et l'initiative des partenaires sociaux, le moyen de rendre ce type d'accords juridiquement opposables et leur conférer un statut de portée générale.

L'importance du dialogue avec la société civile devrait également être reflétée dans le Traité en tant qu'élément essentiel de la vie démocratique de l'Union. Le renforcement de la société civile organisée au sein du Comité économique et social européen, dans le prolongement du Traité de Nice, doit permettre le développement d'une démocratie participative au niveau européen.

La reconnaissance dans le Traité de la pluralité des formes d'entreprises, qu'il s'agisse des entreprises commerciales, des associations, des mutuelles ou encore des coopératives, doit également permettre de concrétiser l'objectif de renforcement de démocratie participative de l'UE.

Mr. FARNLEITNER

4. What role could be given to the open method of coordination and what would be its place in the Constitutional Treaty?

The open method of coordination allows for rapid reaction to new challenges in areas that do not fall into the Union's competencies.

However, the choice of methods and the possibility to apply them differently in each field of action should remain free. By fixing the open method of coordination in the treaty this flexibility might get lost.

5. What relationship can be established between the coordination of economic policies and the coordination of social policies?

For a policy approach that is targeted towards the ambitious objectives of the European Union, such as full employment, the promotion of a high degree of social protection as well as the promotion of economic and social cohesion as envisaged in Article 3 of the preliminary draft Constitutional Treaty, member states and the Community have to develop and pursue a strategy for the better coordination of their policies. In each field of action (economic, monetary, employment and social policy) the appropriate method and procedure should be applied in order to increase the potential for growth and employment.

Quality of public services:

Access to services of general economic interest is vital for territorial and social cohesion. Securing this access without prejudice to the systems of property ownership is part of the European Social Model. These principles are laid down in Art. 16 and Art. 295 TEC.

I agree with the European Parliament's resolution¹ on "Services of General Interest in Europe",

¹ EP, Minutes of 13/11/01, A5-0361/2001 pt. 85.

stating that an amendment of Art. 16 TEC is not necessary to achieve greater legal certainty and clarity. Over-regulation in the area of general interest services would lead to reduced opportunities for operators and this would mean less benefits for citizens and taxpayers.

Nevertheless the European Union should pursue the development of this sector in order to safeguard such services for the citizens:

As far as secondary legislation, such as the envisaged proposal for a framework directive is concerned

- it should be noted and confirmed, that member states have complete legal freedom to determine important services in the general interest and that this includes, for example, protecting socially weaker customers from unjustifiable exclusion from provision or supply to remote areas at reasonable prices to promote social and territorial cohesion.
- Guidelines should be developed for non-commercial activities, e.g. of social, cultural or charitable nature in order to clarify under which conditions they are exempted from control of subsidies and in principle from the application for EU competition law.

6. Regarding procedures, to what extent should co-decision and qualified -majority voting be extended to matters for which unanimity is currently required?

As to the participation rights of workers (Art. 137 (1) lit f TEC) and working conditions of third country nationals (Art. 137 (1) lit g TEC) a change to qualified majority voting could be considered.

7. Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

The importance of the social dialogue should be stressed in title VI of the future Constitutional Treaty dealing with the democratic life of the Union.

A flexible definition of associations falling under the term social partners (associations of employers and employees) is necessary. The European representation (membership, existence in at least some member states) and an adherence to values and objectives as laid down in the Constitutional Treaty as well as to social peace should be essential. Social partner organisations can be based on voluntary as well as on obligatory (legal) membership.

It is time to broaden the number of the “Val Duchesse social partners”: Other social partners at European level must also be included in this process. UEAPME, Hotrec, Eurocommerce and Eurochambres could be mentioned in this context.

The social partners should play a key role in the European Union as think-tanks for reform and social conscience. They should act as multipliers of European strategies and as useful links to the citizens.

An early and comprehensive inclusion of the social partners in the decision making process would bring added value and could be realised by an obligatory consultation procedure. Each legislative proposal should be forwarded to these associations enabling them to give their opinion thereon. According to the Austrian system a time limit of about six weeks is the minimum rule. This consultation process should enhance the competition of ideas, but should not lead to a slow down of the decision making process.

We also recommend to delete the limitation in Art. 138 (2) TEC. The social partners should be heard in all areas of economic and social policy.

**PROPOSITIONS CONCERNANT LES POINTS 4,5,6,7 DU MANDAT DU GROUPE DE
TRAVAIL XI
"L'EUROPE SOCIALE"**

POINT 4 :

Quel peut être le rôle de la méthode ouverte de coordination et quelle serait la place de celle-ci dans le Traité Constitutionnel ?

Le Groupe de Travail IX "Simplification" a proposé de donner rang constitutionnel à la méthode ouverte de coordination. Celle-ci concerne l'action concertée des Etats-membres en dehors des compétences attribuées à l'Union par les Traités.

En l'occurrence, cette méthode a connu une reconnaissance officielle au Sommet de Lisbonne pour la politique de l'emploi et dont les résultats sont encourageants.

Un autre domaine est déjà exploré, il s'agit de la lutte contre la pauvreté.

Toutefois, il semble avoir été oublié que dès lors que les Collectivités Régionales et locales ont des compétences dans le domaine traité, il est nécessaire de les associer.

D'autres domaines pourraient faire l'objet de cette méthode ouverte de la coordination, avec ou sans les collectivités territoriales selon le cas :

1 - L'éducation/formation :

Le concept de "knowledge society" est fondamental pour que l'Europe établisse une économie dynamique et compétitive et connaisse un développement durable dans une économie globalisée et soumise à, ce qu'on pourrait appeler, la concurrence du savoir.

Pour que les Européens profitent des capacités d'expansion de cette "Société du savoir" et se prémunissent des instabilités nouvelles qu'elle peut générer, il faut leur en donner les moyens

intellectuels et techniques qui, seuls, leur donnent la possibilité de s'y adapter.

Dès lors que l'éducation relève de la responsabilité des Etats et de leurs Collectivités Régionales, ceux-ci peuvent décider en commun les acquis minimum de base qu'il faut offrir aux jeunes européens : langages, nouvelles technologies de l'information, biologie, histoire et géographie européenne, instruction civique européenne, sciences de la nature (terre, mer et air)...

2 - La réforme des retraites

Avec la mobilité des travailleurs, il faut également mettre en œuvre une homogénéisation des systèmes de retraites. C'est, certes, un chantier difficile et qui met en cause non seulement les Etats, mais aussi les partenaires sociaux. Là encore, par la méthode de la coordination ouverte, les Etats pourraient déterminer des objectifs à mettre en œuvre progressivement.

3 - La Gouvernance Régionale

La diversité régionale est souvent considérée comme un plus pour l'Union européenne. Toutefois, cette diversité structurelle interne aux Etats est aussi un frein pour le rôle que pourraient jouer les Collectivités territoriales dans l'Union européenne.

Une certaine harmonisation de leurs compétences ne nuirait pas à la richesse identitaire des Régions. En revanche, elle leur apporterait une meilleure visibilité de leur action, tant au niveau local qu'Européen.

C'est un problème qui touche non seulement les niveaux de pouvoirs en Europe, mais aussi à la cohésion économique et sociale du territoire de l'Union et la possibilité d'une application plus homogène des politiques sociales de l'Union (cf infra);

4 - Parmi les autres domaines, on pourrait citer la lutte contre les drogues et sur ce point, je rejoins les propositions de Madame Mariette Giannakou.

POINT 5 :

Quelle relation peut-on établir entre la coordination des politiques économiques et la coordination des politiques sociales ?

Toute politique économique a des effets sur la politique sociale et vice-versa. C'est le fondement de l'économie sociale de marché.

Pour autant, il ne s'agit pas de conditionner toute action économique à ses effets sociaux, ce serait une contrainte inacceptable. Il est des actions économiques telle que la stabilité des prix qui doivent être poursuivies quelqu'en puissent être les conséquences immédiates.

On peut néanmoins retenir un certain nombre de principes qui pourraient régir la coordination économique :

- le principe de responsabilité sociale et environnementale des entreprises européennes,
- une gouvernance d'entreprise ouverte à l'actionnariat des salariés,
- une meilleure régulation des marchés financiers pour protéger les petits porteurs,
- un objectif d'harmonisation de la fiscalité des entreprises et de celles des ménages (impôts directs et indirects),
- un objectif d'harmonisation de la fiscalité des collectivités locales qui peuvent avoir des effets de dumping social et provoquer des délocalisation désastreuses au niveau des communes moyennes ou des économies territoriales,
- l'obligation de consultation préalable du Comité économique et social quant aux éventuelles conséquences sociales des négociations commerciales de l'Union.

Une autre manière d'établir une relation efficace entre la coordination des politiques économiques et la coordination des politiques sociales est de les territorialiser. Le social, comme l'économie, sont des domaines qui ont une dimension territoriale. C'est d'ailleurs un thème ,le développement polycentrique, largement étudié dans le Schéma de Développement de l'Espace Communautaire, SDEC. Il fait appel à des solidarités entre les territoires, ville-campagne, pour un développement durable, un meilleur cadre de vie et la protection de l'environnement. Il permet de mieux régler les problèmes sociaux et culturels des populations de ces territoires et de créer des synergies par la responsabilisation des acteurs locaux.

POINT 6 :

Quant aux procédures, dans quelle mesure la co-décision et le vote à la majorité qualifiée devraient-elles être étendues à des matières pour lesquelles l'unanimité est actuellement exigée ?

La procédure de co-décision et du vote à la majorité qualifiée pourraient être étendus aux domaines suivants :

- la fiscalité

Il ne s'agit pas d'uniformiser systématiquement toutes les taxes fiscales, mais de rechercher celles qui ont un impact direct, tant sur la cohésion économique, impôt sur les sociétés, sur la solidarité, comme les impôts locaux ou sur le développement durable et l'environnement, impôt sur la pollution, etc...

Par ailleurs, certaines dispositions figurant à l'article 137 pourraient faire l'objet d'un vote à la majorité qualifiée :

- la protection sociale des travailleurs,
- les contributions financières visant la promotion de l'emploi et la création d'emplois,
- autres.

Il faudrait, par ailleurs, envisager la fixation d'un calendrier annuel pour fixer les étapes et les consultations pour la mise en œuvre de la politique sociale de l'Union.

POINT 7 :

Le Titre VI de l'avant-projet de Traité Constitutionnel traite de la vie démocratique de l'Union. Le rôle des partenaires sociaux devrait-il figurer dans ce Titre VI et, si oui, lequel ?

La démocratie participative énoncée dans l'Article 34 de l'avant-projet du Traité Constitutionnel appelle une participation accrue des partenaires sociaux.

Plusieurs articles du TCE traite de la consultation des partenaires sociaux par la Commission européenne et ceci en dehors du CES.

La question est de savoir si le renforcement de cette consultation passe par un CES réorganisé et faisant une place accrue à la représentation des partenaires sociaux ou par une sorte d'institutionnalisation de la consultation des partenaires sociaux hors CES.

PROPOSITIONS DE PERVENCHE BERÈS

CONCERNANT LES QUESTIONS 4 À 7 DU MANDAT

*Question 4. Quel peut être le rôle de la méthode ouverte de coordination et quelle serait la place de celle-ci dans le *Traité constitutionnel* ?*

La méthode ouverte de coordination (MOC) peut être un instrument efficace pour les compétences complémentaires de l'Union. Elle ne doit toutefois pas se substituer ou être confondue avec les instruments de coordination économique et sociale plus ambitieux (GOPE, Stratégie pour l'emploi, etc.). Elle ne doit pas non plus pouvoir être utilisée comme un moyen de décider et de mettre en œuvre les compétences attribuées à l'Union, ces dernières relevant de la procédure législative (VMQ et codécision). Y compris dans le domaine social, l'enjeu reste de définir des normes communes pour lesquelles l'outil législatif doit continuer à être exploré dans toute la mesure du possible.

Dans le domaine social, son champ application couvre actuellement l'éducation, l'emploi et l'intégration sociale. Il devra s'élargir notamment aux questions suivantes :

- la protection sociale, celle de la santé et les systèmes de retraites, dans la mesure où ces questions ne seraient pas traitées dans le cadre des GOPE : si l'organisation et la gestion des systèmes de sécurité sociale doit relever de la compétence exclusive des Etats membres, la MOC peut s'avérer utile pour contribuer à remplir l'objectif commun d'en préserver les missions et la viabilité financière ;

- l'harmonisation fiscale et la définition de minima sociaux, dans les domaines qui ne feront pas fait l'objet d'un transfert de compétences vers l'Union, et vers la procédure législative.

Les conclusions du groupe de travail IX « simplification » recommandent à juste titre de conférer à la MOC un rang constitutionnel, ce qui permettrait de renforcer sa légitimité. Par ailleurs pour davantage de transparence, de démocratie et d'efficacité il serait utile d'y prévoir un droit d'initiative non exclusif de la Commission, la consultation systématique du Parlement européen, ainsi que l'association des parlements nationaux et des partenaires sociaux.

<p>5. <i>Quelle relation peut-on établir entre la coordination des politiques économiques et la coordination des politiques sociales ?</i></p>
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Dans le prolongement du rééquilibrage entre les objectifs économiques et sociaux de l'Union européenne et la consécration de ce l'on a appelé l'économie sociale de marché, le groupe de travail doit logiquement plaider pour un équilibre et une cohérence entre les politiques économiques et sociales. Or les unes et les autres demeurent en grande partie de compétence nationale bien qu'il s'agisse désormais dans les deux cas de questions d'intérêt commun. Il s'agit donc dans le cadre des compétences complémentaires et plus précisément dans l'effort de coordination de ces politiques au niveau européen de mettre en œuvre une véritable gouvernance économique et sociale. Celle-ci est indispensable à l'achèvement du marché unique qui présente trop de dysfonctionnements (dumping fiscal, dumping social, non prise en compte de l'intérêt général européen) aux dépens d'une concurrence saine et régulée. Le Conseil européen de printemps doit être formellement consacré à la modernisation économique et sociale. Par ailleurs, au-delà de la méthode ouverte de coordination évoquée lors de l'examen du point précédent, le groupe de travail devra plaider pour une meilleure coordination des politiques économiques et sociales dans les domaines suivants :

- les Grandes orientations des politiques économiques (GOPE). L'actuel article 99 du traité doit intégrer les modifications suivantes.

- Au niveau du contenu : il faut transformer les GOPE en GOPES, c'est-à-dire en Grandes orientations des politiques économiques **et sociales**.

Par ailleurs les GOPES étant l'instrument central de la coordination il faudra qu'elles incluent et mettent en cohérence les dispositions contenues dans les autres instruments de coordination, plus particulièrement les lignes directrices pour l'emploi (actuel article 128), le processus de Luxembourg (la stratégie européenne pour l'emploi), le processus de Cologne (dialogue macro-économique) ainsi que les différents processus définis dans la stratégie de Lisbonne.

- Au niveau de la procédure, les exigences de démocratie, de transparence et d'efficacité appellent à instituer un rôle de proposition à un vice-président de la Commission désigné selon une procédure spéciale, en accord avec le Conseil européen, sur le modèle envisagé pour le Représentant européen à l'action extérieure. La procédure devra également prévoir un mécanisme

approprié d'approbation par le Conseil et le Parlement européen, et une participation des parlements nationaux.

- Le respect de la procédure : le groupe de travail "gouvernance économique" a en majorité reconnu que le contrôle ("premier avertissement") devait relever de l'impartialité de la Commission. Si la procédure se poursuit par un vote au Conseil, l'Etat membre incriminé ne devrait pas pouvoir prendre part au vote.

- Toute décision ou tout projet de décision en matière économique devrait comporter un volet sur les conséquences sociales prévisibles des mesures envisagées, prévoyant la mise en oeuvre d'études d'impact préalables, et l'avis (et donc la consultation préalable) des partenaires sociaux. Ceci doit être intégré et clairement identifié dans les justifications proposées aux mesures envisagées. Cette approche concrète appelle de la part de la Commission une véritable coordination des travaux de ses directions.
- sur la base de cette coordination les Etats membres harmonisent leurs positions en vue d'une représentation homogène et concertée dans les organisations internationales que sont l'Organisation internationale du travail et l'Organisation mondiale de la santé.

6. *Quant aux procédures, dans quelle mesure la codécision et le vote à la majorité qualifiée devraient-ils être étendus à des matières pour lesquelles l'unanimité est actuellement exigée ?*

Le corollaire du marché intérieur en matière sociale est la nécessité de trouver des réponses européennes à certains défis sociaux désormais d'intérêt commun. Cela implique :

- des règles pour le respect d'un haut niveau de protection sociale dans l'ensemble des politiques du marché intérieur (services en réseaux, services financiers, etc.) ;
- des politiques publiques structurelles mises en oeuvre le cas échéant par des ressources propres.

La codécision et la majorité qualifiée devront donc désormais s'appliquer à l'ensemble des questions sociales et en particulier :

- à l'ensemble des questions soumises actuellement à l'unanimité, en insistant sur les points suivants :
 - la coordination des législations de sécurité sociale pour les travailleurs migrants et les demandeurs d'emploi, qu'ils soient citoyens ou ressortissants des pays tiers ;
 - le dialogue social et le rôle des partenaires sociaux sans restriction (corégulation, défense collective des intérêts, etc.) ,
 - le droit du travail (élargis à l'éducation et la formation tout au long de la vie, un contrat de travail européen, la convergence des salaires, etc) ;
 - l'objectif d'un plein emploi de qualité ;
- aux questions suivantes, conformément aux transferts de compétences proposés au point 3 du mandat :
 - la définition de services publics européens ;
 - l'harmonisation sociale vers le haut ;
 - l'harmonisation fiscale là où elle est nécessaire au bon fonctionnement de systèmes de protection sociale ;
 - la définition de minima sociaux européens ;
 - la lutte contre la pauvreté et l'exclusion ;
 - la responsabilité sociale et environnementale des entreprises.

7. Le Titre VI de l'avant-projet de Traité constitutionnel traite de la vie démocratique de l'Union. Le rôle des partenaires sociaux devrait-il figurer dans ce Titre VI et, si oui, lequel?

L'article 34 de l'avant-projet de budget consacré à la démocratie participative, doit faire explicitement mention aux partenaires sociaux (y compris les organisations de retraités) et à la société civile en général.

Il doit être une base permettant :

- la mise en place d'un statut d'association européenne ;
- l'association à la prise de décision européenne :

Toute initiative (législative ou de coordination) comportant des dispositions afférentes à l'emploi ou à la protection sociale doit associer les partenaires sociaux et les acteurs de la société civile concernés. Une consultation formelle doit en outre être prévue préalablement aux Conseils européens de printemps.

- le dialogue social au niveau européen
 - doit être renforcé tant au niveau interprofessionnel que sectoriel ;
 - les modalités d'extension des accords négociés devraient être précisés ;
 - l'intégration des différentes formes d'organisation de l'activité économique (*cf* secteur de l'économie social).
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**Replies to questions 4–7 presented by the Secretariat of the
Convention working group XI on "Social Europe" by Mr. Antti
Peltomäki, Alternate Member of the Convention and Ms. Riitta
Korhonen, Alternate Member of the Convention, Member of the
Finnish Parliament**

Question 4. The role of the open method of coordination in the Constitutional Treaty

(The fourth question is about the role, which could be given to the open method of coordination and its possible place in the Constitutional Treaty)

The method of open coordination has been introduced into cooperation on social protection. Experience suggests that its various forms require improvement and that more flexible and much lighter procedures are needed.

There is no need to introduce open coordination to all areas that already have a legal framework defined for legislative purposes.

If it is deemed necessary that the method should be provided for in the Treaty, as is proposed by working group IX in its report, the provisions must be kept very general in nature. For instance, the Treaty could include a provision on a flexible method of cooperation between Member States, the implementation of which would be decided by the European Council separately in each individual case.

Question 5. The link between economic policy and social policy coordination

(The fifth question is about the link which could have been established between economic policy and social policy coordination.)

Under article 99, Member States shall consider their economic policies a matter of common interest and will coordinate their economic policies. Such coordination is based on the single currency and said common interest. Treaty regulations support the reinforcement of economic stability and sustainability. This in turn will help to support improvements in social security and its funding taking long-term challenges into account.

Social policy falls under each Member State's discretionary authority and is not coordinated at the Union level as is economic policy. The question seems to imply the contrary, however. There is no need to alter the relevant Treaty regulations that have a direct bearing on employment policy, social protection and social security, nor is there any need to complement the Treaty's provisions with regulations on the relationship between economic and social policies, which might obscure the Member State's discretionary authority and the basic fact that social policies come under that authority. In Article 3 of the preliminary draft of the Constitutional Treaty, where is mentioned promotion of a high level of social protection, might be included also cooperation on social protection. This would underline the importance of this process.

The independent status of economic policy coordination, employment strategy and cooperation on social protection should be secured in the future as well. With regard to employment policy, the Treaty should continue to require that the aim of a high level of employment must be taken into account in the planning and implementation of community policies and actions.

Question 6. Decision-making procedures

(The sixth question regards procedures: to what extent should co-decision and qualified-majority voting be extended to matters for which unanimity is currently required?)

As the Union is about to enlarge, Finland has been prepared to increase the use of qualified-majority voting with regard to articles 42 and 137, excluding work permit and social security issues.

Only directives that establish a minimum level may be issued under article 137. To protect the autonomy of Member States and social partners, it is important that this is not changed.

Article 308 has been applied in the case of the right of personnel of various types of European companies to participate in decision-making, because there is a commonly acknowledged need to achieve total harmonization. A separate legal framework can be established for these issues and provisions could be laid down with a qualified majority using the co-decision procedure. This could also resolve the dispute with the EP.

With regard to the employment process, at no time should it be provided for that the EP should take part in the evaluation of action plans concerning employment and in the processing of recommendations issued to Member States. This is more about political dialogue than legislation. Any opportunity for legislative harmonization has been excluded.

It is justifiable to hear the EP's opinion when European-level agreements between social partners are enforced. There is no justification for the co-decision procedure, however, because the question is about enforcing a decision, which means that its content cannot be changed.

Question 7. Role of the social partners

(The seventh question is about the role of the social partners. Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?)

The Constitutional Treaty should make reference to cooperation with social partners and call attention to the need to honour the autonomy of social partners and other non-governmental organizations.

With regard to employment and other working life related issues, the social partners play a special role compared with other NGOs because of their related agreement-making. Under the section on the employment committee, the Treaty provides for hearing the social partners in the context of the employment process.

In the forthcoming Constitutional Treaty, the obligation to hear the social partners and other NGOs could be entered in a general form which refers to hearing at the appropriate levels.

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.

Réponses de Anne Van Lancker relatifs aux questions 4 à 7 du mandat du groupe de travail.

I. la mise en œuvre des politiques de l'Union (questions 4-5-6)

Afin de pouvoir mener des politiques adéquates, il faut également prévoir les instruments et procédures, permettant la contribution de l'Union à la réalisation des objectifs selon un degré d'intensité variable et adaptée aux réalités complexes au sein de l'Union et des Etats membres.

La méthode ouverte de coordination. (question 4)

- La coordination des politiques devrait être introduite dans le Traité Constitutionnel, sous le Chapitre concernant les instruments de l'Union (mesures non-législatives). Ce nouvel instrument permettra aux Etats membres de coordonner leurs politiques autour d'objectifs définis en commun, d'indicateurs et de lignes directrices.

Cet article devrait :

- énoncer les objectifs de base, les procédures et les limites de la méthode ouverte de coordination d'une manière qui ne nuise pas à la souplesse de la méthode (l'un de ses principaux avantages) et qui n'ait pas pour effet de remplacer ou de contourner les mesures législatives;
- prévoir que la coordination des politiques soit organisée sur base d'une proposition de la Commission Européenne, approuvée par le Conseil et le Parlement Européen;
- prévoir que les parlements nationaux et les autorités régionales ou locales, ainsi que - le cas échéant - les partenaires sociaux et les ONG soient consultés;

Les domaines sociaux concernés, ainsi que la procédure sont spécifiés dans la deuxième partie du Traité constitutionnel dans son titre traitant de l'emploi et des affaires sociales.

La coordination des politiques économiques et sociales. (question 5)

- Il faut établir un équilibre entre les différentes procédures par la synchronisation des procédures de coordination dans le domaine économique, de l'emploi et social, tout en n'affectant pas l'autonomie des procédures. Cet équilibre doit apparaître dans le Traité aux articles concernant la coordination économique, la coordination concernant les politiques de l'emploi et des affaires sociales. Les différentes procédures doivent être complémentaires et non pas subordonnées. Les GOPE - éventuellement avec une autre dénomination comme p.e. Grandes Orientations pour la Politique Economique, de l'Emploi et de la convergence Sociale - ont néanmoins la vocation à conserver le rôle de synthèse et de stratégie globale tout en garantissant la cohérence de l'ensemble des processus. Cela implique un rôle de coordination pour le Conseil Affaires Générales dans la préparation des Conseils européens du Printemps, ainsi que la prise en compte de façon équilibrée des résultats des coordinations respectives.

- Les GOPE doivent être approuvées sur proposition de la Commission européenne, à la majorité qualifiée au Conseil en association avec le Parlement européen.

- En ce qui concerne la politique de l'emploi il faut mentionner l'objectif du plein emploi , ainsi que la qualité de l'emploi.

- En ce qui concerne la modernisation de la protection sociale, il convient d'introduire une disposition au Traité définissant cette matière comme une question d'intérêt commun conformément à ce qui est prévu pour la politique économique et la politique de l'emploi.

Procédures législatives et conventionnelles (question 6)

- La co-décision entre le Parlement Européen et le Conseil, qui décide à la majorité qualifiée, devient la procédure normale pour tout travail législatif. Du point de vue des compétences de l'emploi et des affaires sociales cela s'applique à

- la sécurité sociale dans le cadre de la libre circulation des travailleurs - où on devra également intégrer les migrants non – communautaires (article 42);
- la fiscalité (articles 95 et 175);
- la sécurité sociale et la protection sociale des travailleurs (article 137) ;

- la protection des travailleurs en cas de résiliation du contrat de travail (article 137) ;
- la représentation et la défense collective des intérêts des travailleurs et des employeurs, y compris la participation (article 137) ;
- les conditions d'emploi des ressortissants des pays tiers se trouvant en séjour régulier sur le territoire de la Communauté (article 137) ;
- les contributions financières visant la promotion de l'emploi (article 137) ;
- la cohésion économique et sociale (articles 159 et 161) ;
- la lutte contre toute forme de discrimination (article 13).

II. Les principes démocratiques de l'Union (question 7)

- Comme le dialogue social est la pierre angulaire de notre modèle social européen, il convient de l'intégrer dans la Constitution au titre VI "vie démocratique de l'Union":

- Un article transversal dans le Traité constitutionnel doit permettre la Commission à consulter les partenaires sociaux dans tous les domaines qui les concernent et promouvoir le dialogue social.
 - Les conventions collectives entre partenaires sociaux doivent être reprises dans la liste des instruments de la mise en œuvre des actions de l'Union. Il faut revoir la méthode de mise en œuvre des accords collectifs européens en octroyant à la Commission la compétence de conférer éventuellement un statut de portée générale aux accords collectifs européens, tout en garantissant l'autonomie et l'initiative des partenaires sociaux.
 - Le dialogue social, ainsi que la concertation sociale tripartite et bipartite, doivent être mentionnés dans la Constitution. Un Conseil européen du travail doit devenir l'enceinte pour la négociation d'accords collectifs entre partenaires sociaux, tandis qu'un "Comité tripartite pour la concertation sociale pour la croissance, l'emploi et la cohésion sociale" doit servir comme plateforme pour la préparation du dialogue macro-économique et la coordination socio-économique.
 - L'élaboration d'un système de médiateurs sociaux européen qui a comme mission de contribuer à régler des conflits de travail avec une dimension européenne et dont l'intervention peut être sollicitée par les comités européens d'entreprise.
- Il faut prévoir une base légale pour la reconnaissance par l'Union du dialogue civil au niveau européen et de son rôle dans l'élaboration des politiques de l'Union, afin de répondre aux aspirations de la société civile européenne.

Comments on paragraphs 4 to 7 of the mandate of the working group from Peter Hain, UK Government representative

I welcome this opportunity to provide further comments on the questions of the mandate. I look forward to elaborating on these points as discussions in the Social Europe working group progress onto these issues.

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 and millions are without work. How can the problems of social exclusion and unemployment be addressed?

I do not believe that a major revision of the social provisions of the Treaty would necessarily improve social cohesion or employment levels. However I do think that much more could be done through benchmarking and the exchange of best practice under the open method of co-ordination. Also the social dialogue could make an improved contribution to improving social cohesion, if it is revived and made more imaginative.

My comments below expand on these thoughts in the order of points 4 to 7 of the mandate.

4. The Open Method of Co-ordination

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.

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.

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:

- Raise rates of employment participation, especially for older workers and female workers, through targeted measures to reintegrate the workless into the labour market;
- Reform welfare systems to make work pay;
- 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;
- Reform pensions to ensure financial sustainability as the EU population ages;
- Meet the challenges of a more diverse, equal and multi-ethnic European society, in the context of enlargement; and
- Tackle the multiple causes of social exclusion and poverty.

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.

5. The relationship between economic and social co-ordination

I support the integration of social and employment objectives into the Broad Economic Policy Guidelines.

6. Qualified Majority Voting and Co-decision

In the enlarged Union it is right that we look again at procedures and decision-making processes. Work elsewhere in the Convention has done this. In some policy areas (such as aspects of Justice and Home Affairs) greater application of QMV may be desirable. However in the area of social policy 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 area where radical differences in approach exist between Member States. It is central to the German business model, but it is not part of the Scandinavian model, nor is it part of the British model where voluntary, non-binding collective agreements are the norm. Failing to recognise this diversity could have a serious effect on the future of industrial relations in each of our systems.

Since 1997, the UK Government has been engaged in a delicate balancing act, providing a better working environment through its fairness at work programme but maintaining the flexibility of the UK labour market. We do not want to see that balance upset. Indeed, there are arguments for some competence (such as on collective representation and defence) to be returned to Member States because of the close correlation with the areas excluded under Article 137.5. Similarly, we believe that the funding and organisation of social security systems is for Member States to decide in the light of their own needs and priorities.

7. The role of the Social Partners

A common complaint is that social dialogue at European level 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 situation is sterile. Both employers and trade unions should show imaginative leadership in reviving social dialogue and building social partnership. Reviving the social dialogue is crucial if we are serious about improving social cohesion. 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.

The autonomous work programme announced on 28 November 2002 is a good start to re-energising the social dialogue. 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; and
- 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. I 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.

A key part of this responsibility lies in ensuring that the social dialogue is fully representative of its wider constituency, both employers and employees. Greater consideration should be given to the way in which the excluded (including the unemployed) are included in this process. One significant category of those currently inadequately represented within the social dialogue are small and medium-sized enterprises (SMEs), which make up 98% of the EU's businesses and 56% of the EU's employees.

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. I support retention of this provision, but believe the Union needs to establish an effective mechanism to ensure it is fully achieved. I propose that the Social Europe Working Group should recommend that a report be produced examining the current position of SMEs in relation to the social dialogue – both in terms of their input to it, and its impact on them; and putting forward conclusions on how to improve this.

The UK Government welcomed the social partners' intention to take responsibility themselves for implementing their agreement on teleworking in accordance with the procedures and practices specific to management and labour and the Member States. This has provided a welcome boost to the social dialogue process. But such voluntary agreements should not form part of Community law. Their merit is in their flexibility so that they can be adapted to the national traditions and practices of the social partners in each member state. Legally binding collective agreements are not the norm in all countries. The UK for example, has a voluntarist and decentralised approach to social dialogue – the social partners can make their agreements legally binding if they want to but

they invariably decide not to do so.

Finally, there is nothing currently stopping the social partners reaching agreements between themselves on matters such as pay or the right to strike. They are not constrained by the Treaties and can act freely outside them. There is no need to write specific provisions in the Treaty unless the desire is to create EU-wide laws and as I have argued before, the areas currently excluded by Article 137.5 are of such sensitivity and so rooted in national traditions, cultures and practices that they should remain the preserve of Member States.

Contribution of Mrs. Piia-Noora Kauppi (MEP, EPP-ED, Finland) to the Europe Socialé WG on questions number 4-7:

6.1.2003

Question 4: Which role could be given to the open method coordination and what is its possible place in the constitutional treaty?

The European Parliament report by Alain Lamassoure about the division of competencies takes the view that social policy in general should be a matter of shared competencies between the Union and its Member States. This would mean that the Member States may exercise their own policies as long as and insofar the Union has not yet done so. I agree totally with this view.

However, there are many areas of social policy, which the Lamassoure report leaves to the category of supplementary competencies of the Union. These include for example vocational training, health protection, employment policy and also the control and supervision of national budgetary policies.

Supplementary competencies of the Union are those conferred upon the Union where the Union is limited to supplement, support or coordinate action taken by the Member States with a view to achieving one of the Union's objectives, excluding any harmonisation of the laws and regulations of the Member States.

Open coordination method is most suitable to EU actions under the supplementary competences category. The benefits of open method of coordination are flexibility and respect of the principle of subsidiarity. These benefits are best achieved, if the method stays informal and based on MS common political will. Therefore I object that the method would be constitutionalized by writing a special Treaty article to define the method. I disagree with the final document and recommendations of the WG IX on Simplification when they say that the open method of coordination should be assigned constitutional status.

However, it becomes more and more obvious that there will be an extension of open method of coordination to new fields of policy. In this context, it is of utmost importance that the method remains transparent.

Question 5: What link should be established between economic policy and social policy protection?

I agree with the conclusions of the Barcelona European Council about streamlining the different economic and social coordination processes. This means that for example diverging time frames of the processes of employment policies and BEPG's should be coordinated and made more coherent. At the same time it has to be ensured that the coordination of the time frames must not lead to the unification of the two processes; clear distinction of these processes in terms of contents has to be ensured.

It is necessary to emphasize in this respect that the economic integration and the proper functioning of the Single Market must remain the main dynamic behind the stability and prosperity of Europe.

To fulfil these expectations, the European Social Model should be further developed and made more competitive compared to our main global competitors. Only this will lead to wealth creation and, therefore, to more employment opportunities.

What comes to the BEPG's in general, I agree with the recommendations of the WG Economic Governance.

Question 6: To what extent should co-decision and QMV be extended to matters for which unanimity is currently required?

From the 4 areas, which are currently excluded from the QMV voting, I think that there is a need to move the QMV decision making procedure only what comes to the conditions of employment for third-country nationals legally residing in Community territory.

However, the provisions of Treaty of Nice, which give the Council, acting unanimously on proposal from the Commission and after consulting the EP, the possibility to render co-decision applicable to the questions staying under unanimity, should be extended to cover also the social security and the social protection of workers. This would be a step to the right direction without abandoning the role of unanimity principle in this very important area.

The social systems of the MS are highly sensitive and divergent policy areas with long national traditions, especially affecting the budgetary provisions related to social security. The structure of the social system has a strong impact on the economy as a whole. That is why unanimity should remain *lex generalis* in the field of social policy.

Question 7: The role of social partners?

The current EU treaty provisions concerning the social dialogue result from the European social partners 1991 contribution to the Intergovernmental Conference. They are thereby a solid reflection of the working of the social dialogue on the European level.

A commanding feature of the social dialogue is its autonomous nature. Social partners can take over the role of the executive and legislative authorities and enter into agreements independently avoiding unnecessary legislation and regulation. Through social dialogue the social partners are better able than central EU regulation in finding solutions that satisfy both businesses and their employees. Social dialogue on the European level also helps to ease the tension caused by centralised decision-making on social affairs in an EU governed by so many different social systems. All in all European social dialogue has worked well resulting in a number of European wide agreements between the social partners.

Social dialogue also has an important part in implementing reforms related to the Lisbon strategy. By giving social dialogue more autonomy and strength it can be expected to do even better. What social dialogue does not need is further regulation or governmental interference. Therefore the current treaty provisions should be respected. No further treaty provisions should be added to an EU constitution regarding social dialogue.

The unique role of the social partners to negotiate European agreements independently must be

respected.

A clear differentiation should be made between the rising demand for civil dialogue and social dialogue. A civil dialogue is only an information and consultation process, which should under no circumstances be allowed to hamper with the workings of social dialogue.

Contribution from Helle Thorning-Schmidt to the working group XI on social Europe

Question 4: The role on the open method of co-ordination

The open method of co-ordination should be written into the new constitutional treaty and made more democratic, transparent and efficient.

The European Parliament (EP) must be involved formally at all stages of the process. The EP should take an active part in the initial stages of open co-ordination where objectives, guidelines and indicators are agreed. But the EP could also be playing a vital role in the follow-up and surveillance procedures. E.g. the EP might be given the powers to ask national ministers to come to the EP to explain what their country has done to live up to the agreed objectives.

Question 5: Which link could be established between economic policy and social policy co-ordination.

Referring to the current article 99 in the Treaty, it should be stressed that the guidelines of the overall economic policy should be harmonised with the employment guidelines. It should be made clear that the purpose of the general economic guidelines is to promote growth and employment as well as stability.

Furthermore, a better co-ordination between the work of the economic affairs council and the social council should be introduced.

Question 6: To what extent should co-decision and qualified-majority voting be extended to matters for which unanimity is currently required?

Qualified majority voting by the Council should be the general rule, also in the social field. This means that in the social- and employment policy where unanimity is the rule today, Art. 137, 1 litre c), d), f) and g), qualified majority voting should be introduced. However, the exemption in Art. 137,5 should be kept.

Also, it should be stressed that in cases of annulment of working contracts, Member States should be able to make the basic choice whether workers should be protected by longer term of notice or by for instance a high quality system for unemployment benefit (Art. 137, 1 litre d). Furthermore, Member States should also be able to choose how they represent the interest of workers and employers. The EU should not decide how Member States choose to set up national systems of negotiation between the social partners. However, the EU could decide on minimum standards for representation when it comes to trans-national systems of negotiation (Art. 137, 1 litre f). In addition, it should be made clear in Article 137 where the EU can introduce supporting measures and how the social partners can be involved.

There is also a need for QMV in other policy areas with relevance for welfare provisions. Tax policy is one example. Minimum regulations should be the rule.

Question 7: The role of the social partners

The European industrial relations system - the rules for negotiation, of implementation of, and compliance with cross-national or European collective agreements - must be strengthened. A conflict resolution mechanism must be created. At the same time it should be made clear that the EU respects national differences in systems of collective agreements.

A hearing procedure should be established so that the Commission automatically hears the social partners when it presents new initiatives for legislation.

Also the comitology procedures must be revised to allow social partners to participate in programme committees in areas where the treaties delegate a special role to social partners.

The social partners and the national parliaments should take a more active part in the open co-ordination method.

When relevant, the European social partners should also be able to present a case for the European Court of Justice.

Finally, the social tripartite summits prior the spring meetings of the European Council should be formalised.

Dr. Sylvia-Yvonne Kaufmann, MEP

Beitrag zur AG "Soziales Europa"

Kommentare zu den Punkten 4-7

4. Welche Rolle kann die offene Koordinierungsmethode spielen und welchen Platz hätte sie im Verfassungsvertrag?

Nach dem Vorschlag des Abschlußberichts der Arbeitsgruppe IX sollte "das offene Koordinierungsverfahren, das ein konzertiertes Vorgehen der Mitgliedstaaten in Bereichen ermöglicht, für die der Union in den Verträgen keine Zuständigkeiten übertragen werden, ... verfassungsrechtlichen Rang erhalten"¹. Ich teile diesen Vorschlag nicht. Es sollte auch weiterhin grundsätzlich den Mitgliedstaaten überlassen bleiben, die Verfahren zur Ausübung ihrer ausschließlichen Kompetenzen selbst festzulegen. Die Verfassung der Europäischen Union sollte sich dagegen darauf beschränken, die Verfahren für die Ausübung der *Unionskompetenzen* durch die *Unionsorgane* zu definieren.

Zu Recht verweist die Arbeitsgruppe IX in ihrem Abschlußbericht darauf, dass die offene Koordinierungsmethode nicht mit den Koordinierungszuständigkeiten verwechselt werden darf, über die die Union im Wirtschafts- und Beschäftigungsbereich bereits verfügt. Meiner Meinung nach besteht ein dringender Bedarf über diese beiden Bereiche hinaus, auch Teile der bisher in der nationalen Zuständigkeit verbliebenen Sozialpolitik und Umweltpolitik zu koordinieren. Wie im Wirtschafts- und Beschäftigungsbereich sollte die Kompetenz zur Koordination dieser Politiken der Europäischen Union übertragen werden. Für all diese Bereiche sollte ein einheitliches Verfahren gelten.² Einen Grund, in der Verfassung der Europäischen Union jeweils ein anderes Verfahren vorzusehen, kann ich nicht erkennen.

Im Gegenteil, durch die Anwendung einer in der Verfassung der Europäischen Union festgelegten "offenen Methode der Koordinierung durch die Mitgliedstaaten" würden die politischen Verantwortlichkeiten für die Koordinierungsmaßnahmen vollends versteckt, denn die Mitgliedstaaten sind als die eigentlich handelnden und damit allein verantwortlichen Akteure kaum noch auszumachen. Selbst in rechtlicher Hinsicht wäre eine klare Zurechenbarkeit des Handelns kaum noch möglich. Und nicht zuletzt ist noch völlig ungeklärt, an welche Grundrechte dieses Koordinierungshandeln gebunden sein wird - soll eine verfahrensrechtliche Bindung der Mitgliedstaaten durch den Verfassungsvertrag zugleich eine Bindung an die Grundrechte der Europäischen Union auslösen oder sollen die nationalen Grundrechte den Maßstab bilden. Auch der Aufgabe des Konvents nach Vereinfachung der bisherigen Vertragsregelungen wird also eine verfassungsrechtliche Verankerung der offenen Methode der Koordinierung keinesfalls gerecht.

¹ Dokument CONV 424/02, Punkt F.

² Diese Regelungen müssen eine volle Mitbestimmung durch das Europäische Parlament vorsehen, um die Koordinierung stärker als bisher demokratisch zu legitimieren. Vor allem aber müssen diese Regelungen die politischen Verantwortlichkeiten in diesen Bereichen klar erkennbar festlegen, damit die Demokratie in der Europäischen Union auch tatsächlich mit Leben erfüllt werden kann.

5. Welche Beziehung kann zwischen der Koordinierung der Wirtschaftspolitiken und der Koordinierung der Sozialpolitiken hergestellt werden?

Um ein Soziales Europa zu schaffen ist es notwendig, nicht nur die sozialen und wirtschaftlichen Zielstellungen sondern auch die Instrumente der Sozial- und der Wirtschaftspolitik in eine Gleichgewichtung zu bringen. Zudem stehen beide Bereiche in einem derartigen Verhältnis gegenseitiger Abhängigkeit und Beeinflussung, dass es nicht nur sinnvoll, sondern geradezu notwendig erscheint, die Wirtschafts-, Beschäftigungs- und Sozialpolitiken der Mitgliedstaaten in einem integrierten Prozess zu koordinieren.

Der Bedarf an einer solchen integrierten Koordination von Wirtschafts-, Beschäftigungs- und Sozialpolitik wurde bereits auf dem Gipfel von Lissabon anerkannt. Dort wurde der Ansatz eines gleichseitigen Dreiecks gewählt, bei dem diese drei Politikfelder integriert, also einschließlich ihrer Verflechtungen betrachtet werden. Bei genauer Betrachtung ist das Versprechen von Lissabon jedoch nicht eingehalten worden. Die Koordination verläuft immer noch hauptsächlich innerhalb der einzelnen Politikfelder, die Koordinationsprozesse sind nicht aufeinander abgestimmt und haben z.T. widersprüchliche Ziele. Ebenso wenig gibt es eine Gleichberechtigung zwischen den drei Politikfeldern. Stattdessen müssen die beschäftigungspolitischen Leitlinien, mit den wirtschaftspolitischen Leitlinien in Einklang stehen (Art. 128 EGV), aber nicht umgekehrt, was faktisch ihrer Unterordnung entspricht. Die Koordination im Bereich der Sozialpolitik, die mit Hilfe der Offenen Methode der Koordinierung¹ erfolgt, ist überhaupt nicht auf die anderen beiden Bereiche bezogen. Ebenso wenig wird die in Göteborg hinzugetretene vierte Dimension, die Umweltpolitik, bei den bisherigen Koordinationsverfahren einbezogen.

Es ist daher erforderlich, die Koordinationsverfahren zur Wirtschafts-, Beschäftigungs- und Sozialpolitik zu reformieren und gemeinsam mit der „Umweltdimension der Gemeinschaft“ in einem einzigen integrierten Verfahren (Nachhaltigkeitsstrategie der Gemeinschaft) zu bündeln. Wie bisher geht es dabei um eine *Koordination von Politiken der Mitgliedstaaten* entlang gemeinsam vereinbarter europäischer Grundzüge und Leitlinien. Mit solchen „EU-Leitlinien für eine nachhaltige wirtschaftliche und soziale Entwicklung“ könnten verbindliche Ziele für die Politik der EU und der Mitgliedstaaten formuliert und mit einem multilateralen Überwachungsverfahren - wie bisher bei den wirtschaftspolitischen Leitlinien - ihre Umsetzung organisiert und bewertet werden. Auf diese Weise wäre die EU imstande, eine Strategie für Nachhaltigkeit und Solidarität als Prozess zu gestalten. Um eine verbesserte Bewertung und eine verbesserte demokratische Beteiligung aller relevanten Akteure zu gewährleisten, könnten die Leitlinien für einen Zeitraum von zweieinhalb Jahren konzipiert werden.

6. Was die Verfahren betrifft, inwieweit sollten die Mitentscheidung und die Beschlussfassung mit qualifizierter Mehrheit auf Bereiche ausgedehnt werden, für die derzeit Einstimmigkeit erforderlich ist?

Gerade vor dem Hintergrund der Erweiterung auf 25 und mehr Mitgliedstaaten ist die Gefahr groß, dass durch das Einstimmigkeitsprinzip Fortschritte in der Sozialpolitik blockiert werden und somit Kompetenzen, welche die EU in diesem Bereich hat, nicht

¹ Bisher nur zur Bekämpfung von Armut und sozialer Ausgrenzung sowie im Bereich Renten- und Gesundheitspolitik.

genutzt werden können. Daher plädiere ich dafür, dass alle Bereich der Sozialpolitik, die in die Kompetenz der Gemeinschaft fallen, dem Verfahren der Mehrheitsentscheidung im Rat unterworfen werden. Um die demokratische Legitimität zu stärken, sollte das Europäische Parlament Mitentscheidungsrechte erhalten. In gleicher Weise sollte es auch an der Ausübung der Koordinierungskompetenzen der Europäischen Union beteiligt sein.

7. Titel VI des Vorentwurfs des Verfassungsvertrags betrifft das demokratische Leben der Union. Sollte die Rolle der Sozialpartner in diesem Titel VI erwähnt werden, und wenn ja, welche?

Eine der Hauptsäulen des Europäischen Sozialmodells ist der soziale Dialog. Dieses auf nationaler Ebene vielfach bewährte Verfahren wurde bereits sehr früh auch auf europäischer Ebene erprobt, aber erst mit dem Vertrag von Maastricht formalisiert. Gemäß Art. 139 Abs. 1 EGV kann der Dialog zur Herstellung vertraglicher Beziehungen, einschließlich des Abschlusses von Vereinbarungen führen; diese wiederum können in Form von Richtlinien durchgeführt werden¹.

Aufgrund der in den Mitgliedstaaten verankerten Tradition des sozialen Dialogs sowie seiner wachsenden Rolle auf europäischer Ebene muss die Rolle der Sozialpartner in angemessener Weise in der Verfassung verankert werden.

¹ Auf dieser Grundlage entstand beispielsweise die Richtlinie zum Elternurlaub oder zur Teilzeit.

Comments on questions 4-7 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

4. What role could the open method of co-ordination play, and what place should it be given in the constitution treaty?

The open method of co-ordination has proved its worth as a valuable supplement to directive regulation – not least in the employment and social policy area. It is, however, important to stress that it cannot replace necessary legislation. The obvious strength of the method is that member states may take inspiration from each other through benchmarking and exchange of best practice, thereby improving efforts in the individual policy areas.

In connection with the enlargement of the EU it would be natural to direct even more attention to the open method of co-ordination. Firstly, it may prove difficult with 25 member states to find the common denominator necessary for joint regulation in the form of directives. Secondly, the method is suitable for areas in which member states have quite different starting points, as the specific results to be achieved by each country within a given period have been adapted to that country's circumstances and do not require achievement of a certain minimum level within a specified period of time.

Against this background, I recommend that the open method of co-ordination be incorporated in the convention treaty as a generally applicable method in areas which, according to the treaty, fall under the competence of the EU. The tool should be used as an alternative and supplement to regulation within the EU's area of competence, taking into consideration the special circumstances applicable to the individual policy areas.

Attention should also be directed to the possibilities for improving the method. The method could, despite its designation, very well be more open. Thus, greater efforts should be made to involve the European Parliament and strengthen the role of the social partners in the process. Likewise, efforts should be made to embed the method more broadly by involving civil society, including at the local level.

5. What type of coherence could be established between the coordination of economic policies and the coordination of social and labour market policies?

The coordination between the two policy areas impacts the development of citizen welfare. This stresses the importance of careful consideration with respect to improving the coordination of the two policy areas. It is crucial that the guidelines for the overall economic policy agree with the employment guidelines based on a competitive and stable European economy, see, *inter alia*, the Lisbon strategy.

Efforts are currently being made to ensure better coherence between the coordination of the two policy areas. On 3 December 2002, the Council (employment ministers) and ECOFIN decided to

streamline the existing coordination processes, that is, the processes concerning overall economic policy guidelines and guidelines for employment. The spring meeting of the European Council will be pivotal in this respect.

There is in this connection potential for further improvement by involving the social partners more actively in the cooperation, including not least through macro-economic dialogue, and by further involving the European Parliament.

6. As regards procedures, to what extent should the common decision-making procedure and qualified majority voting be extended to areas that currently require unanimity?

The enlargement of the EU has highlighted the need for more operational decision-making procedures, as a too far-reaching use of unanimity might block the EU's competence to pass resolutions.

Therefore, qualified majority and joint decision-making with the European Parliament should be the general rule in article 137.

However, there are exceptions, including in particular article 137(1)(d) and article 137(1)(f).

The meeting of the European Council in Nice in 2000 discussed whether a number of articles – articles 13, 42 and 161 – should be comprised by the rules on voting by qualified majority and joint decision-making. A first step could thus be to include in the considerations the areas which were in play in connection with that meeting but on which no final decision was made.

7. Section VI of the preliminary draft constitution treaty concerns the Union's democratic life. Should the role of the social partners be included in section VI and, if so, to what extent?

Section VI of the treaty concerns the democratic life of the Union and includes, *inter alia*, the principles of openness and citizen involvement.

The social partners play a special role and have special impact on the decision-making process in the EU. This should also be reflected in the section on the democratic life of the Union. Thus, my reply to the question whether the role of the social partners should be incorporated in the treaty is positive.

Specifically, I suggest that reference be made in article 34 of the draft treaty text, which defines the principle of proactive democracy based on citizen involvement, that is, participatory democracy, to the special role of the social partners.

It is essential in this connection that the relevant parties are capable of filling their roles. It is likewise essential that the social and civil dialogues are not mixed. The social dialogue consists of the dialogue between the social partners themselves and the dialogue between the social partners and the Council/governments, whereas the civil dialogue consists of the dialogue between NGOs and the Council/governments.

As far as the social summit is concerned, the scheme should be determined in terms of the treaty – not least to remove any authority problems in relation to article 202.

Comments by Emilio GABAGLIO

On questions 4, 5, 6, 7 of the Group Mandate

Question 4:

In the employment/social policy areas “policy coordination” has been initiated with the so-called Luxembourg process (following the introduction of a Title on Employment in the Amsterdam Treaty in 1997).

Later, in 2000, the Lisbon Council introduced the “open method of coordination” which is now starting to be applied to social inclusion and to social protection.

In contrast to the Luxembourg process, this new method has no legal basis in the Treaty.

In view of the fact that the Luxembourg process has proved its worth over the last five years, the method of policy coordination should now be recognised in Part One of the new Constitutional Treaty as a “general” EU decision making instrument, with the details of its contents and procedures being dealt with in Part Two.

The method should be applied in policy areas where primary responsibility remains with Member States (social protection and pensions; social inclusion; education and training, public health ...)

However, the “open method of coordination” must not be considered as a substitute for EU legislation when this is required, for example, for setting minimum social standards.

For the operational definition of the open method of coordination reference to the language of art 128 (Luxembourg process) could be of help.

Parliamentary scrutiny, both European and National, should be envisaged as well as a wide-ranging consultation process in particular with the social partners at all levels (see Final report of WG VI Economic Governance).

Question 5:

After Lisbon 2000 the annual Spring European Council is intended to lay down the EU's general political orientations on economic, employment, social and sustainability policies.

To ensure this outcome the existing processes do not need to be merged but to be made more coherent and interdependent . Recent Commission proposals (August 2002) go in the right direction, providing for the synchronisation of the different economic and employment cycles.

Parliamentary scrutiny at European and national levels, as well as Social Partners involvement need to be reinforced. In this respect, it should be noted that the European Social Partners in their joint submission to the Laeken European Council (2001) proposed that “the standing Committee on Employment be replaced by a tripartite concertation committee for growth and employment which would be the forum for concertation between the Social Partners and the public authorities on the overall European strategy defined in Lisbon. In addition to its specific work on the broad economic policy guidelines, on the employment guidelines and on structural reforms, this Committee would examine the Community's overall economic and social strategy ahead of the Spring European Council”.

In response to these proposals the Laeken European Council agreed “... that a Social Summit of this kind would in future be held before each Spring European Council (point 40 of the Presidency Conclusions).

Such a Summit took place prior to the Barcelona Spring Council in 2002.

In view of implementing the Laeken conclusions the Commission has recently submitted a proposal which is under consideration by the Council.

The Constitutional Treaty should provide for such a Social Summit to take place in relation to the Spring European Council.

Question 6:

The case for extending qualified majority voting linked with EP co-decision across the board in a number of policy areas is longstanding. It will be even more necessary in an enlarged European Union.

This applies also to the adoption of minimum requirements in the areas of Art 137 where unanimity is presently required.

Exception could be made for “Social Security and social protection workers” although the technical coordination of social security systems (Reg 1408/71; art. 42 of the Treaty) should also be decided by qualified majority voting.

Question 7:

Reference to the Social Partners (Management and Labour) must definitely be made in the Constitutional Treaty:

- in view of the role they play in economic governance, labour market, and social policy in all Member States, including in the new ones: since a number of policy decisions in these areas are taken at European level, this transfer of responsibility must be matched by a comparable Social Partners involvement at the same level;
- taking into account the existing “acquis” represented by the EC Treaty provisions (including the recognition of the Social Partners role as “co-regulators” on labour market related issues. - (Art. 137-139).
- bearing in mind that after Lisbon the European Council is constantly calling on the Social Partners (Management and Labour) to contribute to the implementation of the EU overall economic, employment and sustainability strategy.
- considering the current practice of involving the Social Partners in economic governance procedures such as the Macro-Economic dialogue (since Cologne 1999), the Luxembourg

employment process (since 1997), and, the Social Summits associated with the European Council meetings.

In view of the above, Social Partners (Management and Labour) should be referred to in:

- Part One of the Constitutional Treaty (Title VI: the Democratic life of the Union) through a specific article based on the following language
“The EU recognise and promotes the involvement of the Social Partners in the economic and social Governance process. The EU promotes and support social dialogue between the Social Partners (Management and Labour)”;
- Part Two of the Treaty, where the obligation to consult and involve the Social Partners should be indicated, with reference to concrete policy areas and procedures as appropriate.

Existing provisions on social dialogue should also be maintained.

Reference should be made to Social Summit as indicated in response to question 5.

Finally, although separated from the Social Partners related provisions, reference should be made in the Constitutional Treaty (Title VI, Part one) to the general principle of extensive and structured consultation of civil society organisations by the EU Institutions to promote openness, good governance and citizens involvement.

Comments on paragraphs 4 to 7 of the Mandate by Mr Filadelfio Guido Basile

4. What role could be given to the open method of coordination and what would be its place in the Constitutional Treaty?

As it clearly emerged during the December 5 debate on the report of the Working group on simplification, there is not an agreement as far as the inclusion of the open method of coordination in the Constitutional treaty is concerned. The perplexities seem to me to be partly justified, as the open method of coordination must grant a rapid reaction to new challenges in areas that do not fall into the Union's competences, and an excessive formalisation of the method itself would compromise its necessary flexibility when applied to different legislative fields.

I'm personally favorable to the inclusion of the open method in the Treaty as a significant and useful way to an enhanced cooperation between member States; I also share the Working Group on simplification's stress on the necessity of avoiding any confusion between the open method and the coordination competences conferred to the Union in the economic and employment fields. Even though I think the open method of coordination ought to be applied to some specific areas (for instance, education and professional training), I'm against both any listing of such areas in the new Treaty and any specification of general methods to be applied to any of those areas.

5. What relationship can be established between the coordination of economic policies and the coordination of social policies?

As I already said in my answers to questions 1-2 of the mandate, the incorporation of the Charter of fundamental rights into the Treaty almost naturally implies a stronger emphasis on the social dimension of the EU. Such an emphasis ought to be translated into a strengthening of the link between the coordination of economic policies and the promotion of a higher degree of social integration. I personally think that this strengthened link could be reached through a better equilibrium and a fuller coordination between the annual definition of the Broad Economic Policy Guidelines and the Employment Guidelines. This enforced coordination could find in the Spring European Council its natural outcome, but it should also be duly considered when redrafting the articles of the Treaty dealing with economic and social policies.

I also agree with M.me Andreani on the necessity of a better association of the European Parliament to the elaboration of employment policies through its consultation on the annual report, but I also think that an analogous, improved association ought to concern National parliaments.

In our last meetings, many members of the Group have also stressed the importance, for territorial and social cohesion, of access to services of general economic interest, and have suggested that the new Treaty should include a specific mention of quality of public services as an integral part of the EU economic and social policies. Even though I'm not personally against such an inclusion, I also think that any mention in the Treaty should not interfere with the Member States' right to find specific ways of securing the access to such services without compromising their own systems of property ownership.

6. Regarding procedures, to what extent should co-decision and qualified-majority voting be extended to matters for which unanimity is currently required?

As a previous member of the Working Group on simplification, I completely agree with its conclusions according to which codecision with qualified majority must be considered the quintessential EU legislative procedure, with limited and well-argued exceptions. Consequently, I do not think the Nice compromise - opening the possibility for the Council to unanimously decide to render co-decision applicable to the four matters where unanimity is still required - can be considered enough. I suggest that co-decision with qualified majority should directly apply to the representation and collective defence of the interests of workers and employers and to the condition of employment for third-country nationals. As far as the fields of social security and the protection of workers are concerned, the political sensibility of the matter could justify the application of the Nice compromise, unanimity being a norm that it remains up to the Council to modify.

7. Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

I agree that social partners should be specifically mentioned under Title VI and that their role ought to be enhanced. I do not think that a clearer definition or a rigid listing of who and what the social partners ought to be would be of any help. In this as in so many other aspects of the EU architecture, rigidity must be banned. As far as the modalities of the social partners' association to the EU legislative process are concerned, I think that, as for the economic and social policies, they

ought to be consulted by the Commission before presenting any proposal in those fields. They could thus provide a think-tank making the Union and its laws much nearer to workers as well as to common citizens.

Comments by Dick Roche, Member of the Convention, on Questions 4-7 of the Mandate of the Working Group

I attach preliminary views on questions 4-7 of the mandate of the Social Working Group. I hope to expand on these views during the next meeting of the Group on Friday, 10 January.

Question 4: What role should be given to the open method of coordination and what would be its place in the Constitutional Treaty?

This issue was discussed in both the Economic Governance and Simplification Working Groups. No consensus could be found in the former, while a majority in the Simplification Group favoured constitutional status for the Open Method of Coordination.

I continue to have some reservations about including the OMC in the new Treaty. It can be justifiably argued that its informal and flexible nature is best served by keeping it outside of the Treaty. I recognise also, however, that there is an argument that without a clear Treaty base, the open method risks losing momentum and credibility, and having little impact on social cohesion. It may be that a carefully worded provision, emphasising its importance and ensuring that the open method does not become a “one size fits all” approach, could be the best way to maintain the flexibility and non-binding nature of the current coordination process.

Question 5: What relationship can be established between the coordination of economic policies and the coordination of social policies?

Some co-ordination between the Economic Policy Committee, Economic and Finance Committee, Social Protection Committee and the Employment Committee already takes place. In recent years this co-ordination process has been strengthened further, for example, with regard to preparations for the Spring European Council, and in terms of developing the Broad Economic Policy Guidelines.

I believe that it is important that the policy co-ordination process remains as 'light', and focussed on key issues, as possible. I do not believe that new processes are required. Rather, the emphasis should be on maximising 'tangible outputs' from existing policy co-ordination processes.

The Broad Economic Policy Guidelines are rightly regarded as the central element of the EU economic policy co-ordination process. The key role of the BEPGs needs to be respected, as does the ECOFIN Council's role in their preparation.

Question 6: Regarding procedures, to what extent should co-decision and qualified majority voting be extended to matters for which unanimity is currently required?

It should be recalled that lengthy debate on the extension of qualified majority voting took place during negotiations on the Treaties of Amsterdam and Nice and that a relatively small

number of areas continue to be subject to unanimity. Those that remain reflect, as was noted by the Simplification Working Group, areas of national sensitivity for Member States.

Different Member States have very different systems of social security and this diversity needs to be recognised. The system of social security contributions, like taxation, is an important issue of national sovereignty. The democratic acceptability of decisions in this area requires that such decisions are made by a unanimous procedure which involving consensus that recognises the different social, cultural and economic backgrounds in, and requirements of, the different Member States.

Question 7: Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

There is no doubt but that the social partners have an extremely important role to play. Their role is already currently recognised in Articles 138 and 139 TEC; however, there may also be value in an enhanced reference to social partnership in Title VI. One issue that will require examination is the definition of social partnership. In some Member States, including Ireland, the term is defined quite loosely, while in others, the term may simply mean trade unions and employers, or trade unions alone. Any reference in Title VI must take account of this.

Meeting of Working Group XI – Social Europe, 10 January 2002

Speaking Points

(Dick Roche, Member of the Convention)

Question 4: What role should be given to the open method of coordination and what would be its place in the Constitutional Treaty?

- When discussing the future place and role of the open method of coordination, we must always take into account that, for the most part, it is its informality and its flexibility to respond and develop in different ways depending on the subject at issue that is its greatest appeal.
- Any change to the role of the open method must not threaten this informality and flexibility.

- While I believe that the open method is currently working well, I accept that there is an argument that without a clear Treaty base, the open method risks losing momentum and credibility, and having little impact on social cohesion.
- There may be merit in a carefully worded provision, emphasising the importance of the open method, for example in the areas of employment and social inclusion, and ensuring also that it does not become a “one size fits all” approach.
- If the open method is to be included in the Treaty, I believe that any new provision should be articulated on a broad basis, without being prescriptive as to its extension to other areas or as to its detailed method. This would help to ensure the key aim of maintaining its flexibility and adaptability.

Question 5: What relationship can be established between the coordination of economic policies and the coordination of social policies?

- Undoubtedly, it is true to say that coordination between economic policies and social policies can be complicated by the fact that policy areas are compartmentalised within the Council and the Commission. Within the Council, for example, two formations, ECOFIN and Employment, Social Policy, Health and Consumer Affairs (ESPHCA), are responsible.
- The key, however, does not lie in merging current formations or in creating new structures. I believe that on balance, however, that it is better to maintain an employment view that can counter a strictly economic one.
- I believe that it is important that the policy co-ordination process remains as 'light', and focussed on key issues, as possible. The emphasis should be on maximising 'tangible outputs' from existing policy co-ordination processes.

- In my written comments earlier this week, I noted that some co-ordination between the Economic Policy Committee, Economic and Finance Committee, Social Protection Committee and the Employment Committee already takes place.
- It has been agreed that a clearly articulated annual policy coordination cycle is important with the Spring European Council being the defining moment in that process, where the Council reviews implementation to date and give direction for the year ahead. This should go some way to strengthening the consistency and complementarity of the processes.
- To improve complementarity, there may also be merit in introducing into the Treaty a requirement, similar to that in Article 128(2) of the Treaty of the European Communities, to permit complementary input by the Employment Guidelines into the Broad Economic Policy Guidelines.
- The proposals to streamline and coordinate the processes as mentioned above, which have been agreed by the EPC, EMCO and SPC as well as by the two Councils, should if implemented, be sufficient to improve the situation.

Question 6: Regarding procedures, to what extent should co-decision and qualified majority voting be extended to matters for which unanimity is currently required?

- It is important to recall that that lengthy debate on the extension of qualified majority voting took place during negotiations on the Treaties of Amsterdam and Nice and that a relatively small number of areas continues to be subject to unanimity.
- Members of the Group will remember that the Final Report of the Working Group on Simplification accepted that there were areas of great national sensitivity for Member States where it was appropriate to retain unanimity.

- Different Member States have very different systems of social security and this diversity needs to be recognised. The system of social security contributions, like taxation, is an important issue of national sovereignty. The democratic acceptability of decisions in this area requires that such decisions are made by a unanimous procedure involving consensus that recognises the different social, cultural and economic backgrounds in, and requirements of, the different Member States.
- In the field of employment and industrial relations, no one particular model is appropriate to all Member States. For example, Ireland has a voluntarist approach to industrial relations, which encourages management and labour to develop their own mechanisms in response to their particular needs. Such an approach is at odds with a legalistic style of regulation.
- Other Member States similarly have their own varied traditions to maintain. Therefore, I believe it essential that Member States retain the ability to look at each proposal for legislation in this area on its own merits and in light of their own national systems and practice, before agreeing to any new regulation, or, if necessary, protecting their national positions.

Question 7: Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

- The role of social partners is already currently recognised in Articles 137¹, 138² and 139³ TEC and the Lisbon Process has also accepted their importance (the Council is

¹ Article 137 provides for the possibility of Member States to entrust the implementation of certain directives in the social field to the social partners

² Article 138 includes a general provision for the consultation of management and labour, as well as an obligation on the Commission to consult them both in advance of submitting proposals in the social policy field.

³ Article 139 provides for the possibility of establishing contractual arrangements between the Community and the

currently examining the question of formalising the Tripartite Social Summit).

- There may nevertheless also be value in an enhanced reference to social partnership in Title VI.
- The proposed Article 34 refers to the term “citizens organisations of all kinds”. This term may be sufficiently broad to include the social partners, and have the merit of being broad enough to encompass new organisations as they develop in the future.
- A better approach, however, may be to include a separate reference to reflect the formal process of social partner dialogue and significant involvement in the policy process.
- One issue that will require examination is whether or how social partnership should be defined. The term can mean a number of different things in different Member States.
- In Ireland, social partnership involves the community and voluntary sector as well as the employer, labour, and farming interests in a wide-ranging agenda for economic and social development. In other Member States, social partnership may simply mean trade unions and employers, or trade unions alone.
- The key must be to ensure the representativeness of the social partners and to allow for the designation of new partners as appropriate.

social partners. Each such framework agreement can lead to the adoption by Council of the wording as a directive.

Beitrag MdEP Dr. WUERMELING zur Beantwortung der Fragen 4, 5, 7 des Mandates der AG „Soziales“

4. *Welche Rolle kann die offene Koordinierungsmethode spielen und welchen Platz hätte sie im Verfassungsvertrag?*

Die sogenannte „Offene Koordinierung“ kann ein sinnvolles Instrument in Bereichen sein, in denen die EU über Rechtssetzungskompetenzen verfügt. Sie darf aber nicht zu einer „Ersatzgesetzgebung“ außerhalb der EU-Kompetenzen werden. Diese Tendenz besteht derzeit: Durch Zielvorgaben, Überwachung und Bewertung im Rahmen der sogenannten „Methode der offenen Koordinierung“ übernimmt die EU politische Gestaltungsmacht auch in Bereichen, in denen sie nicht zuständig ist.

In dieser Form ist die Methode der offenen Koordinierung nicht sinnvoll, denn sie

- ist demokratisch bedenklich: Für die Debatte und Entscheidung sozialpolitischer Fragen sind die nationalen Parlamente demokratisch legitimiert. Die EU kann hier nur handeln, soweit ihr vertraglich Zuständigkeiten eingeräumt wurden.
- konterkariert die Bemühungen um eine bessere Kompetenzabgrenzung zwischen EU und Mitgliedstaaten.
- schwächt notwendigen Wettbewerb der Mitgliedstaaten um die beste Politik durch zentrale Vorgaben.
- ist bürokratisch, denn sie schafft ein komplexes System, das kaum noch ein Politikfeld offen lässt und weder von der Öffentlichkeit noch von den politischen Entscheidungsträgern immer voll zu durchschauen ist.

Regelrechte europäische Vorgaben oder Leitlinien insbesondere quantitativer Zielvorgaben sowie Überwachungs- und Kontrollrechte nützen im Bereich des Sozialschutzes wenig.

5. *Welche Beziehung kann zwischen der Koordinierung der Wirtschaftspolitiken und der Koordinierung der Sozialpolitiken hergestellt werden?*

Es besteht keine Notwendigkeit, auf EU-Ebene eine Super-Koordinierung zwischen der Koordinierung der Wirtschaftspolitiken und der Koordinierung der Sozialpolitiken herzustellen.

Im Gegenteil: Eine Koordinierung der Sozialpolitik dürfte wenig Sinn machen, da dieser Politikbereich vor allem die traditionelle Vielfalt der sozialen Sicherungssysteme und die unterschiedlichen Bedingungen in den Mitgliedstaaten widerspiegelt. Sozialpolitik muss sich an der jeweiligen nationalen Volkswirtschaft orientieren. Sozialpolitik ist in der Wirtschafts- und Währungsunion einer der wenigen verbliebenen Politikbereiche, in denen die unterschiedliche wirtschaftliche Leistungskraft der Mitgliedstaaten ausgeglichen werden kann. EU-Vorgaben würden zudem in die Eigenverantwortlichkeit der Mitgliedstaaten zur Finanzierung ihrer Sozialstandards eingreifen.

7. Titel VI des Vorentwurfs des Verfassungsvertrags betrifft das demokratische Leben der Union. Sollte die Rolle der Sozialpartner in diesem Titel VI erwähnt werden, und wenn ja, welche?

Die Sozialpartner können an Entscheidungsprozessen beteiligt werden, soweit die zu beurteilende Materie von den EU-Zuständigkeiten umfasst wird. Der für ihre Mitwirkung vorgesehene soziale Dialog auf Gemeinschaftsebene (Art. 138, 139 EG) trägt ihrer Bedeutung aber bereits hinreichend Rechnung. Eine weitergehende Verankerung der Sozialpartner im Titel VI des Verfassungsvertrags-Vorentwurfs ist daher nicht erforderlich.

Comments by David O’Sullivan on Questions 4-7 of the Working Group’s mandate

Question 4 *What role could be given to the open method of coordination and what would be its place in the Constitutional Treaty?*

The “open method of coordination” is now a familiar term of political shorthand, but has never been defined precisely in legal terms. It is generally understood to mean a process which draws, in certain respects, upon the coordination methods used in particular areas such as the broad economic policy guidelines (Article 99) and the coordination of national employment policies (Article 128), with the following objectives:

- to define at EU level certain common objectives to be turned into concrete action at national level;
- to fix a timetable and performance indicators to evaluate whether this national action will meet the objectives;
- to exchange best practice.

In its White Paper on European Governance,¹ the Commission defined when Community action might be complemented or reinforced by the use of the open method:

- The open method of coordination is used on a case by case basis. It is a way of encouraging co-operation, the exchange of best practice and agreeing common targets and guidelines for Member States, sometimes backed up by national action plans as in the case of employment and social exclusion. It relies on regular monitoring of progress to meet those targets, allowing Member States to compare their efforts and learn from the experience of others.

In some areas, such as employment and social policy or immigration policy, it sits alongside the programme-based and legislative approach; in others, it adds value at a European level where there is little scope for legislative solutions. This is the case, for example, with work at a European level defining future objectives for national education systems.

- The Commission plays an active co-ordinating role already and is prepared to do so in the future, but the use of the method must not upset the institutional balance nor dilute the achievement of common objectives in the Treaty. In particular, it should not exclude the European Parliament from a European policy process. The open method of coordination should be a complement, rather than a replacement, for Community action.

The White Paper also laid out the circumstances under which the open method should be used:

- The use of the open method of coordination must not dilute the achievement of common objectives in the Treaty or the political responsibility of the Institutions. It should not be used when legislative action under the Community method is possible; it should ensure overall

¹ COM(2001) 428 final, adopted by the Commission on 21 July 2001

accountability in line with the following requirements:

- It should be used to achieve defined Treaty objectives;
- Regular mechanisms for reporting to the European Parliament should be established;
- The Commission should be closely involved and play a coordinating role;
- The data and information generated should be widely available. It should provide the basis for determining whether legislative or programme-based action is needed to overcome particular problems highlighted.

From a procedural point of view, there is a key difference between procedures of coordination of national policies provided for explicitly in the Treaty, and those set up simply on the basis of a political agreement (such as European Council conclusions). Procedures under the Treaty (for example, a requirement that Member States make reports or forward information) are obligatory and may provide for the Union's institutions to make specific recommendations to the Member States, and can even provide for sanctions on Member States that do not follow agreed policy lines.

In the area of social policy, the progress of the European employment strategy provides clear evidence of how EU policy-making can be helped by the process of agreeing objectives at European level and designing and implementing policies at national level which contribute to the overall European objective.

The question which now arises is whether it would be useful to consolidate the open method in the Constitution as a horizontal instrument, or to incorporate it sector by sector. In its recent Communication,¹ the Commission concluded that:

“The Union must have at its disposal a range of instruments to implement its policies. The non-binding options include in particular the **open method of coordination** whereby common guidelines can be given for certain areas which lie outside the Union's legislative powers. The constitutional treaty should mention this method and guarantee that the way it is applied is consistent with the Community method.”

In conclusion, it would be advisable to give the open method of coordination a clear basis in the Constitution as one of the instruments to achieve the Union's objectives. This is of clear relevance to social policy. As explained before, however, this reference should not affect those coordination processes provided for explicitly in certain areas (such as Article 99, 104 and 128 TEC) and should not be used in cases where the Union's objectives could better be achieved through legislation.

Question 5 *What relationship can be established between the coordination of economic policies and the coordination of social policies?*

Economic growth, employment and social protection are all mentioned in the Treaty among the main tasks of the Community (Article 2). Economic policy is an area of common concern under the Treaty, and Article 99 defines the procedure for policy coordination. Under the employment title, the Treaty foresees a coordinated strategy for employment, which must be consistent with the broad economic policy guidelines (Article 128). Thus, in the area of employment and social policy coordination, these two Treaty-based instruments coexist with procedures that are based on requests

¹ Communication of the Commission on the institutional architecture: For the European Union – Peace, Freedom, Solidarity (COM(2002) 728, 5.12.2002).

from the European Council, applying the “open method of coordination” to fields such as social inclusion, pensions, and health care and care for the elderly.

- The Broad Economic Policy Guidelines (BEPGs) - introduced by the Maastricht Treaty and based on Treaty Article 99 (2) - are at the centre of economic policy co-ordination and provide the framework for overall economic policy orientations. There are strong linkages of substance between the BEPGs and processes subsequently developed in the field of employment and social policy, most notably with the Luxembourg process. Employment and the efficient functioning of labour markets are one of the elements of the BEPGs, which contain general labour market guidelines for all Member States, as well as country-specific labour market recommendations.
- The Luxembourg process - set up at the European Council in November 1997 and based on Treaty Article 128 - establishes the European Employment Strategy. This aims to strengthen the EU-level co-ordination of national employment policies and to bring employment to the forefront of the political agenda. As far as the content is concerned, the Employment Guidelines partially cover the same ground as the BEPGs, but in other areas go clearly beyond. While both cover the functioning of labour markets, the Employment Guidelines go into greater detail and “should cover a broad employment policy agenda in an integrated way”.¹
- There are a number of other initiatives which have brought economic and social policies together. The Lisbon European Council decided to apply the open method of coordination to social inclusion. At the same time, the Lisbon Conclusions stressed that existing processes, like the Luxembourg process, continued as before. Last year, the open method of co-ordination was introduced in the area of pensions by the Laeken European Council. The upcoming Joint Report on health care and long-term care, to be drawn up on the basis of replies to a questionnaire sent to Member States, will be the basis for further co-operation in this area. As specified in the mandate of the Social Protection Committee, cooperation should extend in time to the issue of “making work pay”.

The general perception of the existing policy coordination seems to be that the substance is dealt with in an adequate and satisfactory way. However, a distinction needs to be made between the BEPGs and the European Employment Strategy, both enshrined in the Treaty, on the one hand, and the more recent social protection elements, including the use of the open method of coordination in the fields of social inclusion and pensions, on the other.

As far as the Employment Strategy is concerned, the impact assessment demonstrated that this treaty-based annual process is well established and works to the satisfaction of both Member States and the Commission. The same can be said of the BEPGs. However, the European Council at Barcelona, recognising the strong mutual interaction and interdependence of the two processes, asked the Council and the Commission to streamline and synchronise the calendars for the BEPGs and the Employment Guidelines. The Commission has therefore proposed to streamline the two processes, whilst preserving their autonomy. The goal would be to achieve greater coherence, transparency and effectiveness in policy co-ordination, and to improve the mutually supportive character and complementarity of the two sets of instruments. The Council has broadly endorsed the Commission’s approach.

¹ Joint employment report 2002 (COM(2002) 621) adopted by the Commission on 13 November 2002

The social inclusion and pension processes, and projected closer cooperation stemming from the mandate of the Social Protection Committee in relation to health care, care for the elderly and “making work pay”, are all important elements as part of a global and coherent approach towards the modernisation of social protection systems. Simplification and streamlining would also improve consistency and effectiveness in this area. An improved, modernised social protection system can best be achieved through maximising the coherence of EU policies and the synergies between the economic and employment policy co-ordination cycles.

Question 6 *Regarding procedures, to what extent should codecision and qualified-majority voting be extended to matters for which unanimity is currently required?*

Decision-making in the social field cannot be divorced from the wider issue of decision-making under the Constitution. As the Commission has recently made clear,¹ the need for a more efficient Union and the need for a simplified Union both require the adoption of codecision and qualified majority voting as a general rule.

Social policy is unquestionably a core task of the Union, and there is no reason for it, or for aspects of it, to be an exception from the general rule. Although the Nice Treaty gives the Council the freedom to decide – by unanimity – to extend QMV in some areas, this falls short of what is required. All provisions should be subject to codecision and qualified majority voting.

Articles 42, 136 and 137 include a series of specifications defining the confines of Union competence and explaining the limited purpose of EU action, including the need to protect diverse forms of national practice and the specification that legislation under article 137 consists of “minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States”.

Nevertheless, concern has been expressed in the past that EU action might interfere with the operation or financing of national social security systems. If further reassurance on this point is required, this should be secured in a way which does not prevent the EU from acting effectively where it has competence. Rather than retaining unanimity, it should come from a redrafting of the Treaty provisions to make clear that these matters do not fall within EU competence.

Question 7 *Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?*

Social dialogue is a core element of the European Social model² and its role has been enshrined in the Treaty (Articles 137-139).

First, social dialogue is a source of law. Social partners at European level are empowered to negotiate agreements to regulate social policy matters, in particular in the fields covered by Article 137.

¹ Communication of the Commission on the institutional architecture: For the European Union – Peace, Freedom, Solidarity (COM(2002) 728, adopted by the Commission on 5 December 2002).

² See in particular point 22 of the Barcelona European Council conclusions, which reads as : “the European social model is based on good economic performance, a high level of social protection and education and social dialogue”

According to the procedure foreseen in Articles 138 and 139 of the Treaty, at any moment of the consultation procedure launched by the Commission, social partners can announce their willingness to enter negotiations. If an agreement is reached, at their joint request, the Commission may submit it to the Council for implementation by way of a directive. The Council may adopt or reject the agreement.

Since the Maastricht Treaty came into force, six agreements, two of them sectoral, have been drawn up in this way:

- agreement on parental leave;
- agreement on part-time work;
- agreement on fixed-term work;
- agreement on the organisation of working time for mobile workers in civil aviation;
- agreement concerning the organisation of the working time of seafarers;
- agreement on telework.

The first five agreements have been implemented by way of a Council directive, while the last one, on telework, will be implemented in accordance with procedures and practices specific to social partners and the Member States.

Community law stemming from social partners' agreements results in acts that are better adapted to economic and social needs, while ensuring the fullest compliance with the principles of proportionality and subsidiarity.

Second, the obligation stemming from the Treaty (Article 138) for the Commission to consult social partners before submitting proposals in the area of social policy means that legislation is only required when other measures have proved ineffective. It also means that proposals can be tailored to take due account of the opinions expressed by the parties most closely concerned. In this way, social dialogue also plays a major role in upstream monitoring of compliance with subsidiarity and proportionality.

Social partners have also been involved in other ways, in particular as regards the implementation of the employment strategy, and more broadly the Lisbon agenda as a whole. A good example is the framework of action for lifelong development of competencies and qualifications which the social partners submitted to the Barcelona European Council.

Moreover, ETUC, CEEP and UNICE/UEAPME have agreed a work programme for the period 2003-2005, following a request from the Barcelona European Council, which goes well beyond their participation into the legislative process.

Taking into account the depth and the success of the social partners' involvement, their role should be clearly recognised in the Constitution. The question of whether this should best appear in title VI of the provisional draft Constitution will depend on whether the scope of this title goes beyond the relation of the citizen with the institutions to include representational structures. In any event, the *acquis* in terms of the social partners' involvement in the legislative process has to be preserved, and the mechanisms currently in force need to be confirmed.

In addition, a significant improvement could be made to the existing situation: when implementing a social partners agreement by way of a legislative instrument, the European Parliament should be on equal footing with the Council. The current imbalance should end.

Finally, following a joint declaration of the European social partners, the European Summit at Laeken in December 2001 requested the holding of a social partners summit on the eve of each Spring European Council. The Commission has presented a proposal for a decision on the creation of a Tripartite Social Summit for Growth and Employment, which would be the forum for consultation between the social partners and the EU institutions and Member States on the Lisbon strategy.

Contribution by Mr. Vytenis Povilas Andriukaitis, Member of the Convention

To the working group on Social Europe

Question 4: What role could be given to the role of the open method of co-ordination and what would be its place in the Constitutional Treaty?

I support the introduction of the open method of co-ordination into the Constitutional Treaty. This new instrument provides for necessary flexibility so as to enable the member states to co-ordinate certain aspects of their social policies around common defined aims, benchmarks and guidelines, adopted by the Council on a proposal of the Commission.

To avoid a problem of democratic deficit, the open method of co-ordination, must be made more transparent and the European Parliament should be actively involved throughout the process. The European Parliament should set objectives, guidelines and indicators together with the Council. Representatives of respective committees of national parliaments could also be invited to take part in the process.

Question 5: What relationship can be established between the co-ordination of economic policies and the co-ordination of social policies?

The European social model should be promoted and protected. There must be a strong link between economic and social co-ordination. This will allow to use the economic potential of the Union in order to achieve full employment, a high level of social protection and realise the principle of solidarity by ensuring that people in all regions of the Union enjoy the same high quality of life.

Economic and social priorities should be set for the Union as a whole, with targets for economic, employment, social and environmental policy that member states are committed to achieve.

Question 6: Regarding procedures, to what extent should codecision and qualified majority voting be extended to matters for which unanimity is currently required?

Qualified majority voting by the Council should be a general rule. I support the idea of extending this rule into the social matters.

The matters provided for in Part 6 of Article 137, i.e., pay, the right of association, the right to strike, the right to impose lock-outs, which under the present scheme of regulation are within the exclusive competence of the members states may be left as an exception to the general rule.

Question 7: Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

The principle of participatory democracy should be encouraged.

The role of trade unions, employer organisations and other social partners should be recognised in the Constitutional Treaty.

I support the idea of formalising the social tripartite summits prior to the spring meetings of the European Council.

Civil society should be granted the right to be consulted on legislation. For instance, I agree that social partners should be allowed to participate in comitology procedures in areas in which consultation with social partners is provided for by the Treaty.

Further Comments by **Mr. Vytenis Povilas Andriukaitis,**

Member of the Convention

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To the Working Group on Social Europe

In view of the discussions of the Social Europe working group on 10 January 2003, I would like to make further comments on the role of the social partners.

I support the idea of having a specific reference to Social Partners (Management and Labour) in the Constitutional Treaty. The employers and trade unions play a special role compared with other NGOs because of their active involvement in co-regulation of labour market related issues. I therefore support the proposals by Mr. Emilio Gabaglio contained in the Working group XI Working document 20.

I also support the deletion of the limitation in Article 138 (2) TEC to allow the consultation with social partners in all areas of economic and social policy.

Contribution by Hans Martin Bury on questions 4 – 7 of the mandate of Working Group XI on Social Europe (CONV 421/02)

Question 4: What role could be given to the open method of coordination and what would be its place in the Constitutional Treaty?

The open method of coordination is a particularly close form of political cooperation among the member states which, in keeping with the Lisbon conclusions, has now been used in various fields of policy. It is applied in very different modes. This makes it possible to develop tailor-made procedures for the field of policy in question taking into account distinctive national features. This method is particularly well-suited for those areas in which regulation is neither desired nor possible, in which the member states are nevertheless striving to achieve a greater degree of coherence. In view of the principle of subsidiarity, however, national scope for action and competences should not be restricted.

Anchoring the open method of coordination in the Treaty is not necessary as it merely serves to foster the voluntary pursuit of common goals and, in legal terms, will remain in a non-binding framework not subject to jurisdiction. Moreover, the promotion of cooperation is already sufficiently codified by the new version of Article 137 of the Nice Treaty.

Question 5: What relationship can be established between the coordination of economic policies and the coordination of social policies?

The Lisbon summit established that the three areas of policy – economic policy, employment policy and social policy – are elements of equal importance in achieving the strategic goal of making the Union the most competitive and dynamic knowledge-based economic area in the world by 2010 – an economic area capable of sustainable economic growth with more and better jobs and greater social cohesion. Interlinking these three areas of policy is the prerequisite for achieving the ambitious goals of Lisbon and for making progress along this path in the European Union involving the accession candidates.

It was agreed at the Lisbon European Council that "other Council formations should contribute to the preparation by the ECOFIN Council of the Broad Economic Policy Guidelines." The relevant agreements between ECOFIN and other Councils are welcome and should be swiftly implemented.

Question 6: Regarding procedures, to what extent should codecision and qualified-majority voting be extended to matters for which unanimity is currently required?

In the framework of the convention, we support qualified-majority voting as the general rule though exceptions should remain possible in narrowly defined cases.

Question 7: Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

If reference is made in Title VI of the draft Constitutional Treaty to individual groups or institutions with which the European Union is engaged in a structured dialogue, then the social partners should be mentioned. Their role should be to conduct the social dialogue (Article 139 of the TEC).

Further Comments by **Mr. Vytenis Povilas Andriukaitis**,

Member of the Convention

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To the Working Group on Social Europe

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I also support the deletion of the limitation in Article 138 (2) TEC to allow the consultation with social partners in all areas of economic and social policy.

**Beitrag von Hans Martin Bury zu den Fragen 4 – 7 des Mandats der Arbeitsgruppe XI
"Soziales Europa" (CONV 421/02)**

Frage 4: Welche Rolle kann die offene Koordinierungsmethode spielen und welchen Platz hätte sie im Verfassungsvertrag?

Die offene Koordinierungsmethode ist eine besonders enge Form der politischen Zusammenarbeit der Mitgliedstaaten, die entsprechend den Schlussfolgerungen von Lissabon mittlerweile in verschiedenen Politikfeldern eingesetzt wird. Sie wird in sehr unterschiedlicher Ausprägung angewendet. Dies ermöglicht maßgeschneiderte Verfahren für die jeweiligen Politikfelder unter Berücksichtigung ihrer nationalen Besonderheiten. Die Methode eignet sich besonders gut für solche Bereiche, in denen eine Rechtsetzung nicht gewollt oder nicht möglich ist, in denen die Mitgliedstaaten aber trotzdem ein höheres Maß an Kohärenz anstreben. Dabei sollen unter Beachtung des Subsidiaritätsprinzips nationale Handlungsspielräume und Kompetenzen nicht eingeschränkt werden.

Eine vertragliche Verankerung der offenen Koordinierungsmethode ist nicht erforderlich, da sie nur der freiwilligen Verfolgung gemeinsamer Ziele dient und rechtlich im unverbindlichen, nicht justiziablen Rahmen bleibt. Die Förderung der Zusammenarbeit ist überdies bereits durch die Neufassung des Art. 137 im Vertrag von Nizza ausreichend kodifiziert.

Frage 5: Welche Beziehung kann zwischen der Koordinierung der Wirtschaftspolitik und der Koordinierung der Sozialpolitiken hergestellt werden?

Der Gipfel von Lissabon hat die drei Politikbereiche - Wirtschaftspolitik, Beschäftigungspolitik und Sozialpolitik - als gleichgewichtige Teile zur Erreichung des strategischen Ziels festgestellt, die Union bis zum Jahr 2010 zum wettbewerbsfähigsten und dynamischsten wissensbasierten Wirtschaftsraum der Welt zu machen - einem Wirtschaftsraum, der fähig ist, ein dauerhaftes Wirtschaftswachstum mit mehr und besseren Arbeitsplätzen und einem größeren sozialen Zusammenhalt zu erzielen. Die Verknüpfung dieser drei Politikbereiche ist Voraussetzung, die ehrgeizigen Ziele von Lissabon zu erreichen und die Europäische Union auf diesem Wege unter Einbeziehung der Beitrittskandidaten voranzubringen.

Der Europäische Rat von Lissabon hat sich geeinigt, dass „der Rat in seinen anderen Formationen zur Ausarbeitung der Grundzüge der Wirtschaftspolitik durch den Rat „Wirtschaft und Finanzen“ beiträgt“. Entsprechende Vereinbarungen zwischen ECOFIN und anderen Räten werden begrüßt und sollten zügig umgesetzt werden.

Frage 6: Was die Verfahren betrifft, inwieweit sollen die Mitentscheidung und die Beschlussfassung mit qualifizierter Mehrheit auf Bereiche ausgedehnt werden, für die derzeit Einstimmigkeit erforderlich ist?

Wir setzen uns grundsätzlich im Rahmen des Konvents für die Abstimmung mit qualifizierter Mehrheit im Rat als Regelfall ein, wobei in eng begrenzten Ausnahmefällen aber die Einstimmigkeit noch möglich bleiben muss.

Frage 7: Titel VI des Vorentwurfs des Verfassungsvertrags betrifft das demokratische Leben der Union. Sollte die Rolle der Sozialpartner in diesem Titel VI erwähnt werden, und wenn ja, welche?

Wenn in Titel VI des Verfassungsentwurfs einzelne Gruppen oder Institutionen benannt werden, mit denen die Europäische Union in einem strukturierten Dialog steht, dann sollten die Sozialpartner genannt werden. Ihre Rolle sollte die Durchführung des sozialen Dialogs (Art. 139 EGV) sein.

Further Comments by **Mr. Vytenis Povilas Andriukaitis,**

Member of the Convention

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To the Working Group on Social Europe

In view of the discussions of the Social Europe working group on 10 January 2003, I would like to make further comments on the role of the social partners.

I support the idea of having a specific reference to Social Partners (Management and Labour) in the Constitutional Treaty. The employers and trade unions play a special role compared with other NGOs because of their active involvement in co-regulation of labour market related issues. I therefore support the proposals by Mr. Emilio Gabaglio contained in the Working group XI Working document 20.

I also support the deletion of the limitation in Article 138 (2) TEC to allow the consultation with social partners in all areas of economic and social policy.

Professor Dr. Jürgen MEYER

10. Januar 2003

Vorschläge zu den Punkten 4 – 7 des Mandates der Arbeitsgruppen XI („Soziales Europa“)

Punkt 4 : Rolle der offenen Koordinierungsmethode und Frage ihrer Verankerung in einer Europäischen Verfassung

Die Methode der offenen Koordinierung als zentrales Element der auf dem Gipfel von Lissabon im Jahre 2000 beschlossenen Strategie zur Stärkung von Beschäftigung, Wirtschaftsreform und sozialem Zusammenhalt hat sich bisher als nützlich bei der Definition gemeinsamer Ziele und Indikatoren sozialer Konvergenz in Teilbereichen einer gemeinsamen Sozialpolitik der Mitgliedstaaten erwiesen und sollte deshalb weiterhin bei der Schaffung eines sozialeren Europas eingesetzt werden.

Falls die Methode der offenen Koordinierung in einer Europäischen Verfassung - wie im Abschlussbericht der Arbeitsgruppe IX „Vereinfachung“ vorgeschlagen – konkretisiert und definiert wird, sollte jedoch klargestellt werden, dass sie keinen Ersatz gemeinschaftlicher Rechtsetzungsverfahren darstellt. Trotz ihrer beachtlichen Erfolge bei der Erzielung tatsächlicher

Konvergenz in Teilbereichen der Sozialpolitiken der Mitgliedstaaten, handelt es sich bei der Methode der offenen Koordinierung um eine intergouvernemental ausgerichtete Zusammenarbeit mit erheblichen Defiziten an demokratischer Legitimation, da eine Beteiligung des Europäischen Parlaments (im Unterschied zum Verfahren bei der Koordinierung der nationalen Beschäftigungspolitiken, Art. 128 – 130 EG) nicht vorgesehen ist. Das Europäische Parlament muss daher bei Verankerung in der Verfassung in die offene Koordinierungsmethode einbezogen werden.

Punkt 5: Beziehung zwischen der Koordinierung der Wirtschaftspolitiken und der Koordinierung der Sozialpolitiken in der Gemeinschaft

Die Förderung und Verteidigung unseres europäischen Gesellschafts- und Sozialmodells erfordert eine enge Verbindung zwischen wirtschaftlicher und sozialer Koordinierung. Nur so können wir das wirtschaftliche Potenzial der Union zum Erreichen von Vollbeschäftigung, einem hohen Niveau des Sozialschutzes und der gleichen hohen Lebensqualität in allen Regionen der Union erreichen. Dazu brauchen wir wirtschaftliche und soziale Prioritäten für die Union als Ganzes sowie Ziele für die Wirtschafts-, Beschäftigungs-, Sozial- und Umweltpolitik, auf die sich die Mitgliedstaaten verpflichten. Das europäische Gesellschafts- und Sozialmodell verlangt die Auflösung der bestehenden Asymetrie und die Anerkennung der Gleichrangigkeit der sozialen mit der wirtschaftlichen Dimension Europas in einer europäischen Verfassung.

Die Sozialpolitik der Union hat durch die Aufnahme eines Solidaritätskapitels in die Europäische Charta der Grundrechte und deren zu erwartende Integration in die Verfassung bereits eine erhebliche Aufwertung erfahren. Die in der Grundrechte-Charta enthaltenen sozialen Grundrechte sind von grundlegender Bedeutung für die europäische Werteordnung und sollten als Basis für eine effektive Entfaltung des Sozialrechts im neuen zweiten Teil der Verfassung und für ein europäisches Gesellschafts- und Sozialmodell dienen, in dem Freiheit und soziale Gerechtigkeit gleichermaßen garantiert sind.

Erforderlich ist eine bessere Synchronisierung der verschiedenen Koordinierungsprozesse im Bereich der Wirtschafts-, Beschäftigungs- und Sozialpolitik. Der hierzu mit den Schlussfolgerungen von Lissabon verfolgte integrierte europäische Ansatz, mit dem wirtschaftliche und soziale Erneuerung erreicht werden soll, ist zu unterstützen. Für weniger sinnvoll halte ich allerdings die „Zusammenmischung“ aller Zielsetzungen in den genannten Bereichen in einem gemeinsamen Verfahren, wie es etwa mit der Integration sozialer Ziele in die „Grundzüge der Wirtschaftspolitik“ im Sinne von Art. 98, 99 Abs. 2 EG - „Grundzüge der Wirtschafts- und Sozialpolitik“ - vorgeschlagen wird. Untersucht werden könnte allerdings, ob und in welchen Teilbereichen „Grundzüge der Sozialpolitik“ (entsprechend den „Grundzügen der Wirtschaftspolitik“ in Art. 99 Abs. 1 EG) als Angelegenheit von gemeinsamem Interesse der Gemeinschaft und der Mitgliedstaaten angesehen werden könnten. Als wesentliches Verbindungselement für die Koordinierung der Wirtschafts- und der Sozialpolitiken eignet sich insbesondere die Beschäftigungspolitik, welche Kernelemente sowohl wirtschaftlicher als auch sozialer Ziele betrifft. Die Beschäftigungspolitik mit dem neu in der Europäischen Verfassung zu verankernden Ziel der Vollbeschäftigung muss als zentrales europäisches Politikfeld angesehen werden, auf dem aktive Impulse gesetzt werden. Beschäftigungspolitik muss zur Querschnittsaufgabe werden.

Punkt 6: Ausdehnung des Mitentscheidungsverfahrens und der Beschlussfassung mit qualifizierter Mehrheit

Das europäische Sozialmodell muss auch nach der Erweiterung erhalten bleiben und ausgebaut werden. Bei gegenwärtigem Stand der wirtschaftlichen Integration können die Bestrebungen nach einem „Sozialen Europa“ nicht länger durch rein nationale Lösungen realisiert werden. Zur Beseitigung des „sozialen Defizits“ in Europa sollten daher Mitentscheidung und die Beschlussfassung mit qualifizierter Mehrheit als Regelverfahren in allen Bereichen eingeführt, in denen die Gemeinschaft im Bereich der Sozialpolitik gesetzgebend tätig wird, zumal es sich lediglich um einen weiteren Ausbau der Politik der Festlegung von Mindeststandards handelt. Entsprechend dem Maastrichter Abkommen zur Sozialpolitik sollen soziale Mindeststandards ein

von allen Mitgliedstaaten erreichbares Niveau an arbeits- und sozialrechtlicher Absicherung europaweit festschreiben. Sie sind so auszugestalten, dass sie wirtschaftlich schwächere Länder nicht überfordern, jedoch in möglichst vielen Mitgliedsländern zu sozialem Fortschritt führen. Dabei muss gewährleistet sein, dass höhere soziale Standards in einzelnen Mitgliedstaaten nicht durch europäische Gesetze verschlechtert, vielmehr verbessert werden können.

Die im EG-Vertrag aufgeführten sozialpolitischen Kompetenzen sollten daher eindeutig der Kompetenzkategorie der gemeinsamen Politiken zugeordnet werden: für die Bereiche Kündigungsschutz, Interessenvertretung und Arbeitsbedingungen für Drittstaatsangehörige würde das Verfahren der Qualifizierten Mehrheitsentscheidung und Mitentscheidung eingeführt. Eine solche Reform ist bereits im Vertrag angelegt. Nicht vollständig ausgeschlossen werden darf schließlich auch ein Nachdenken über die Einführung gemeinsamer Mindeststandards oder „sozialer Konvergenzkriterien“ im bisher ausgegrenzten Bereich der sozialen Sicherheit und des sozialen Schutzes der Arbeitnehmer (Art. 137 Abs. 4, Spiegelstrich 1 in der Fassung des Vertrages von Nizza). Denn die Modernisierung der Systeme des sozialen Schutzes unterliegt bereits der Mehrheitsentscheidung und mit einander verbundene Kompetenzen sollten aus funktionalen Gründen dem gleichen Entscheidungsverfahren zugeordnet werden.

Punkt 7: Rolle der Sozialpartner

Statt zentraler Vorgaben aus Brüssel müssen Dialog und Vernetzung von Entscheidungsträgern und Vertretern der Betroffenen auf allen Ebenen den europäischen Reformprozess steuern. Der Bereich der europäischen Sozialpolitik kann als Modellbereich für die fortschreitende Entwicklung einer Mehrebenenendemokratie in Europa angesehen werden, denn die Union gewährt den Sozialpartnern in diesem Bereich eine zentrale Rolle und fördert in besonderem Maße den sozialen Dialog als Kernelement des europäischen Sozialmodells. Dies sollte auch in einer europäischen Verfassung zum Ausdruck kommen. Die Sozialpartner sollten frühestmöglich in alle Entscheidungsprozesse im Bereich der Sozialpolitik und bei der Vorbereitung der jährlichen Frühjahrs-Gipfel zur europäischen Sozialpolitik einbezogen werden und auf diese Weise eine noch stärkere Rolle bei der Entwicklung einer europäischen Sozialpolitik spielen als bisher. Sie sollten allerdings auch die ihnen auf europäischer Ebene gewährten erheblichen Mitwirkungsbefugnisse (Art. 137 – 139 EG) voll und ganz nutzen. Die Verankerung des sozialen Dialogs in der Verfassung ist eine Ausprägung des Subsidiaritätsprinzips im Bereich der Sozialpolitik und daher von entscheidender Bedeutung für das Europa der Bürgerrechte und der sozialen Rechte, welches dem Grundsatz einer möglichst umfassenden Beteiligung der Bürger an Entscheidungen, die ihr eigenes Leben betreffen, verpflichtet ist. Die Rolle der Gewerkschaften und ihr Recht auf Organisation auf internationaler Ebene sowie die Rolle der Arbeitgeberorganisationen und anderer Sozialpartner sollten anerkannt werden.

Further Comments by **Mr. Vytenis Povilas Andriukaitis,**

Member of the Convention

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To the Working Group on Social Europe

In view of the discussions of the Social Europe working group on 10 January 2003, I would like to make further comments on the role of the social partners.

I support the idea of having a specific reference to Social Partners (Management and Labour) in the Constitutional Treaty. The employers and trade unions play a special role compared with other NGOs because of their active involvement in co-regulation of labour market related issues. I therefore support the proposals by Mr. Emilio Gabaglio contained in the Working group XI Working document 20.

I also support the deletion of the limitation in Article 138 (2) TEC to allow the consultation with social partners in all areas of economic and social policy.

Professor Jürgen Meyer

10 January 2003

**Proposals relating to questions 4 to 7 of the mandate of
Working Group XI on Social Europe**

Question 4: What role could be given to the open method of coordination, and what would be its place in the Constitutional Treaty?

The open method of coordination, a key element of the strategy for employment, economic reform and social cohesion which was adopted at the Lisbon summit in the year 2000, has proved useful in helping to define common aims and indicators of social convergence in various areas of the Member States' common social policy and should therefore continue to be used in the establishment of a more 'social' Europe.

If the open method of coordination is fleshed out and defined in a Constitutional Treaty, as is proposed in the final report of Working Group IX on Simplification, however, it should be made clear that the method is no substitute for Community legislative procedures. Despite its considerable

successes in achieving real convergence in various areas of the Member States' social policies, the open method of coordination is a form of intergovernmental cooperation which is seriously lacking in democratic legitimacy. Unlike the procedure for the coordination of national employment policies as prescribed in Articles 128 to 130 of the EC Treaty, the open method of coordination does not involve the participation of the European Parliament. If the open method of coordination is to be enshrined in the Constitutional Treaty, it must therefore involve the European Parliament.

Question 5: What relationship can be established between the coordination of economic policies and the coordination of social policies?

The promotion and defence of our European model of society and social welfare depend on the existence of a close link between economic and social coordination. This is the only way in which we can fulfil the economic potential of the European Union to the extent of achieving full employment, a reliable social safety net and the same high quality of life in all regions of the Union. To this end we need economic and social priorities for the Union as a whole as well as economic, employment, social and environmental policy objectives to which the Member States will commit themselves. The European model of society and social welfare requires the correction of the present asymmetry between the social and economic dimensions of Europe and the recognition of their equal status in a European constitution.

The social policy of the Union has already been upgraded by virtue of the inclusion of a solidarity chapter in the European Charter of Fundamental Rights and its anticipated incorporation into the Constitutional Treaty. The fundamental social rights contained in the Charter of Fundamental Rights play a primary role in the European value system and should serve as the basis for the effective development of a bedrock of social law in the new second part of the Constitutional Treaty and for a European model of society and social welfare in which freedom and social justice are guaranteed in equal measure.

There is a need for better synchronization of the various coordination processes in the **domains of** economic, employment and social policy. The integrated European approach to economic and social renewal that was adopted to this end in the conclusions of the Lisbon summit should be supported. I believe it is less useful, however, to 'blend together' all the objectives in the aforementioned policy areas into a single construct, as with the proposed integration of social objectives into the broad guidelines of economic policy referred to in Articles 98 and 99(2) of the EC Treaty ('broad guidelines of economic *and social policy*'). Nevertheless, consideration could be given to the question of whether and in which areas 'broad guidelines of social policy' - corresponding to the 'broad guidelines of economic policy' as defined in Article 99(1) of the EC Treaty - could be regarded as matters of common concern for the Community and the Member States. A particularly apt catalyst for the coordination of economic and social policies is employment policy, which relates to core elements of both economic and social objectives. Employment policy, with its aim of full employment, which is to be enshrined in the Constitutional Treaty as a new objective of the European unification process, must be regarded as a key area of European political activity, an engine of political progress. The promotion of employment is a responsibility that must become part of every political portfolio.

Question 6: Regarding procedures, to what extent should codecision and qualified-majority voting be extended to matters for which unanimity is currently required?

After enlargement, the European social model must remain intact and be further developed. Given the level of economic integration that has now been achieved, the efforts to create a ‘social Europe’ can no longer be devoted to the pursuit of purely national solutions. In order to eliminate the ‘social deficit’ in Europe, codecision and qualified-majority voting should therefore become the norm in every area of social policy in which the Community is empowered to legislate, especially since the sole purpose of its legislative activity in this domain is to go on developing the policy of setting minimum standards. Under the Maastricht Agreement on Social Policy, the purpose of these minimum social standards is to enshrine throughout the Union a set of employment and welfare safeguards which all Member States can be reasonably expected to guarantee. These standards must be so formulated that they do not overstretch the resources of the economically weaker countries but still lead to social progress in as many Member States as possible. Care must also be taken to ensure that European legislation does not diminish higher social standards set by individual Member States but offers scope for every State to improve its social safety net.

The powers vested in the Community by the EC Treaty in the domain of social policy should therefore be unequivocally assigned to the competence category of common policies: qualified-majority voting and codecision would thus be introduced for decisions concerning protection against dismissal, representation of interests and conditions of employment for nationals of non-EU countries. The foundations of such a reform have already been laid in the Treaty. Lastly, we must not entirely rule out the possibility of considering the introduction of common minimum standards or ‘social convergence criteria’ in the hitherto excluded area of the social security and social protection of employees (Article 137(4), first indent, of the EC Treaty as amended by the Treaty of Nice). The fact is that matters concerning the modernization of the system of social protection are already subject to majority voting, and related areas of competence should, for functional reasons, be governed by the same decision-making procedure.

Question 7: Should the role of the social partners appear in Title VI and, if so, what should this role be?

Instead of being controlled by edicts from Brussels, the European reform process should be driven by dialogue and the creation of networks comprising decision-makers and representatives of interested parties at every level. The domain of European social policy may be regarded as a model for the ongoing development of a multilayered democracy, since the Union assigns a key role to the representatives of management and labour (the ‘social partners’) in this domain and makes special efforts to encourage dialogue between them (the ‘social dialogue’) as a core element of the European social model. This should also be reflected in a European constitution. The social partners should be involved from the earliest possible stage in all decision-making processes in the field of social policy and in preparations for the annual spring summit on European social policy; in this way, they would play an even more prominent role than hitherto in the development of a European social policy. Moreover, they should also make full use of the considerable participatory powers vested in them at the European level by Articles 137 to 139 of the EC Treaty. The enshrinement of the social dialogue in the Constitutional Treaty is an affirmation of the subsidiarity principle in the realm of social policy and is therefore of crucial importance in the establishment of European civil and social rights in a Union bound by the principle of the widest possible involvement of its citizens in decisions affecting their own lives. The role of the trade unions and their right to organize themselves internationally as well as the role of the employers’ organizations and other members of

the social partnership should be explicitly recognized.

Further Comments by **Mr. Vytenis Povilas Andriukaitis**,

Member of the Convention

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To the Working Group on Social Europe

In view of the discussions of the Social Europe working group on 10 January 2003, I would like to make further comments on the role of the social partners.

I support the idea of having a specific reference to Social Partners (Management and Labour) in the Constitutional Treaty. The employers and trade unions play a special role compared with other NGOs because of their active involvement in co-regulation of labour market related issues. I therefore support the proposals by Mr. Emilio Gabaglio contained in the Working group XI Working document 20.

I also support the deletion of the limitation in Article 138 (2) TEC to allow the consultation with social partners in all areas of economic and social policy.

Professeur Jürgen MEYER

Le 10 janvier 2003

**Propositions relatives aux points 4-7 du mandat du groupe de travail XI
("Europe sociale")**

Point 4 : rôle de la méthode ouverte de coordination et question de la place de celle-ci dans une constitution européenne

Considérée comme l'élément central de la stratégie adoptée au Sommet de Lisbonne en 2000 pour le renforcement de l'emploi, des réformes économiques et de la cohésion sociale, la méthode ouverte de coordination a montré jusqu'à présent son utilité dans la définition des objectifs et indicateurs communs de la convergence sociale dans certains volets d'une politique sociale commune des États membres ; il faudrait donc continuer à y recourir dans le cadre de la création d'une Europe plus sociale.

Dans le cas où la méthode ouverte de coordination se voit concrétisée et définie dans une constitution européenne - comme le propose le rapport conclusif du groupe de travail IX

"Simplification" - il devrait toutefois être précisé qu'elle ne vient pas remplacer la procédure législative communautaire. En dépit de ses succès importants, qui ont permis d'atteindre une convergence concrète dans des volets des politiques sociales des États membres, la méthode ouverte de coordination est une collaboration de type intergouvernemental qui connaît des déficits considérables de légitimation démocratique, puisqu'elle ne prévoit pas d'implication du Parlement européen (contrairement à la procédure de coordination des politiques nationales de l'emploi, art. 128 -130 CE). Le Parlement européen doit donc être impliqué dans la procédure de méthode ouverte de coordination en cas d'intégration de celle-ci dans la constitution.

Point 5 : relation entre la coordination des politiques économiques et la coordination des politiques sociales dans la Communauté

La promotion et la défense de notre modèle européen de société et de notre modèle social suppose une association étroite des coordinations économique et sociale. Ce n'est que de cette manière que nous pouvons arriver au potentiel économique de l'Union qui permettra d'atteindre le plein emploi, un niveau élevé de protection sociale et un niveau de qualité de vie élevé et tendant à se rapprocher dans toutes les régions de l'Union. Pour cela, nous avons besoin de priorités économiques et sociales pour l'Union dans son ensemble ainsi que d'objectifs contraignants pour les États membres dans les politiques économique, de l'emploi, sociale et environnementale. Le modèle social européen exige que l'on supprime l'asymétrie existant actuellement et que l'on reconnaisse dans une constitution européenne que les dimensions sociale et économique de l'Europe occupent le même rang.

Par l'adoption d'un chapitre relatif à la solidarité dans la Charte européenne des droits fondamentaux, et la perspective de l'intégration de ce chapitre dans la constitution, la politique sociale de l'Union s'est déjà vue considérablement valorisée. Les droits sociaux fondamentaux contenus dans la Charte des droits fondamentaux sont d'une importance essentielle pour l'ordre européen des valeurs, et ils devraient servir de base pour un développement concret du droit social dans la nouvelle deuxième partie de la constitution et pour un modèle social européen où liberté et justice sociale soient garanties au même titre.

Il est nécessaire de mieux synchroniser les différents processus de coordination dans le domaine des politiques économique, de l'emploi et sociale. L'approche européenne intégrée poursuivie dans ce sens par les conclusions de Lisbonne, et qui doit permettre d'atteindre le renouvellement économique et social, doit être soutenue. J'estime par contre moins judicieux de "fondre" tous les objectifs fixés dans les domaines cités en une procédure commune, tel qu'on le propose avec l'intégration des objectifs sociaux dans les "grandes orientations de la politique économique" visées aux art. 98, 99, paragraphe 2, CE - "grandes orientations de la politique économique *et sociale*". Il faut cependant analyser si et dans quels domaines partiels des "grandes orientations de la politique sociale" (correspondant aux "grandes orientations de la politique économique", art. 99, paragraphe 1, CE) peuvent être envisagés comme objet d'intérêt commun de la Communauté et des États membres. La politique de l'emploi se présente comme l'élément de liaison essentiel pour la coordination des politiques économique et sociale, dans la mesure où elle concerne des éléments centraux des objectifs tant économiques que sociaux. Avec le nouvel objectif du plein emploi, qu'il convient d'ancrer dans la constitution européenne, la politique de l'emploi doit être considérée comme une politique européenne centrale qui reçoit des impulsions actives. La politique de l'emploi doit devenir une mission transversale.

Point 6 : extension de la procédure de codécision et du vote à la majorité qualifiée

Le modèle social européen doit être maintenu et développé, y compris après l'élargissement. Dans l'état actuel de l'intégration économique, les efforts en vue de réaliser une "Europe sociale" ne peuvent plus être fournis par des solutions uniquement nationales. Pour éliminer le "déficit social" en Europe, il faudrait donc introduire la codécision et le vote à la majorité qualifiée comme procédure régulière dans tous les domaines où la Communauté détient des compétences législatives en matière de politique sociale, d'autant qu'il s'agit uniquement de la poursuite du développement de la politique de fixation de normes minimales. Conformément à l'accord de Maastricht sur la politique sociale, les normes sociales minimales doivent déterminer un niveau de protection en matière de droit du travail et de droits sociaux que tous les États membres puissent atteindre. Elles doivent être conçues de manière telle que les pays plus faibles économiquement ne soient pas sollicités excessivement, mais que des progrès sociaux soient toutefois atteints dans le plus de pays membres possible. Il faut aussi garantir que les normes sociales plus élevées que connaissent certains États membres ne puissent pas voir une diminution de leur qualité en raison de lois européennes, mais bien qu'elles puissent encore être améliorées.

Les compétences en matière de politique sociale énoncées dans le traité CE devraient donc figurer dans la même catégorie de compétences que les politiques communes : dans les domaines de la protection contre le licenciement, de la défense des intérêts et de conditions de travail pour les ressortissants de pays tiers, la procédure du vote à la majorité qualifiée et de la codécision serait introduite. Une telle réforme est déjà inscrite dans le Traité. Enfin, on ne peut pas exclure totalement une réflexion sur l'introduction de normes minimales communes ou de "critères de convergence sociaux" dans le domaine, non visé jusqu'à présent, de la sécurité sociale et de la protection sociale des travailleurs (art. 137, paragraphe 4, 1^{er} tiret, dans la version de Nice du Traité). Et ce, étant donné que la modernisation des systèmes de protection sociale est déjà soumise au vote à la majorité qualifiée et que des compétences liées entre elles devraient, pour des motifs fonctionnels, être soumise à la même procédure de décision.

Point 7 : rôle des partenaires sociaux

Au lieu de mesures centrales venant de Bruxelles, le dialogue et la mise en réseau des décideurs et des représentants des catégories concernées, à tous les niveaux, doivent diriger le processus européen de réforme. Le domaine de la politique sociale européenne peut être vu comme un domaine modèle pour la progression d'une démocratie à tous niveaux en Europe, car l'Union garantit un rôle central aux partenaires sociaux dans ce domaine et encourage particulièrement le dialogue social comme élément central du modèle social européen. Cet aspect devrait aussi trouver son expression dans une constitution européenne. Les partenaires sociaux devraient, le plus tôt possible, être impliqués dans tous les processus décisionnels en matière de politique sociale et dans la préparation du sommet sur la politique sociale européenne qui se tient au printemps de chaque année ; ils devraient ainsi jouer un rôle encore plus important qu'auparavant dans le développement d'une politique sociale européenne. Ils devraient en tout cas aussi utiliser pleinement les importantes compétences de participation au niveau européen qui leur sont garanties (art. 137-139 CE). L'insertion du dialogue social dans la constitution est une marque du principe de subsidiarité dans le domaine de la politique sociale, et elle est donc d'une importance décisive pour l'Europe des droits des citoyens et des droits sociaux, laquelle est tenue au respect du principe d'une participation la plus large possible des citoyens aux décisions qui les concernent personnellement. Le rôle des syndicats et leur droit de s'organiser au niveau international, ainsi que le rôle des organisations

d'employeurs et d'autres partenaires sociaux devraient être reconnus.

Contribution de Louis Michel – Groupe Europe Sociale – Points 4 et 7 du mandat

A. Le rôle de la méthode ouverte de coordination dans le futur traité constitutionnel

Conformément au point 4 de son mandat, le Groupe de travail est appelé à réfléchir sur le rôle de la méthode ouverte de coordination et sur la place de celle-ci dans le futur traité constitutionnel. La présente note constitue une contribution à cette réflexion.

1. Améliorer la visibilité de la méthode ouverte de coordination

La « méthode ouverte de coordination » est une méthode spécifique, qui a été portée sur les « fonts baptismaux » lors du Conseil européen de Lisbonne en mars 2000. Sa philosophie transparaît à l'article 137 CE, tel que remplacé par le traité de Nice, qui prévoit (paragraphe 2) la possibilité pour le Conseil d'adopter « des mesures destinées à encourager la coopération entre États membres par le biais d'initiatives visant à améliorer les connaissances, à développer les échanges d'informations et de meilleures pratiques, à promouvoir des approches novatrices et à évaluer les expériences ». L'on vise par là la faculté pour le Conseil d'adopter des mesures de soutien financier tendant à instaurer une telle coopération intergouvernementale.

La méthode ouverte de coordination est devenue une réalité dans un certain nombre de matières (voir ci-après point 2). Pourtant, elle ne dispose pas, à ce jour, d'un ancrage formel dans le traité. Conformément à l'objectif de clarification et de transparence assigné aux travaux de la Convention, il serait indiqué, dans ces conditions, de conférer à la méthode ouverte de coordination une meilleure visibilité dans le futur traité constitutionnel, en l'identifiant dans le « noyau dur » de ce traité comme une méthodologie, aux côtés des instruments d'action de l'Union et, éventuellement, aux côtés d'autres modes de coordination.

2. Recours à la méthode ouverte de coordination

La méthode ouverte de coordination s'applique actuellement dans les matières de la lutte contre la pauvreté et de la promotion de l'insertion sociale, où elle a déjà débouché sur une série de résultats tangibles. Elle est également applicable à la question des pensions, où les États sont convenus d'objectifs et d'une méthode de travail communs (rédaction de « rapports de stratégie nationale ») concernant l'avenir des régimes de pension légale face aux défis démographiques (vieillesse de la population, notamment). Une troisième matière relève de l'application de la méthode ouverte de coordination : la matière des soins de santé et de l'aide aux personnes âgées.

La question se pose de savoir s'il convient ou non d'étendre la méthode ouverte de coordination à d'autres matières.

Il reste que, pour toute une série de « défis sociaux » qui affectent indistinctement l'ensemble de nos sociétés européennes certes parfois avec des degrés variables, la méthode ouverte de coordination apparaît, compte tenu de sa nature à la fois informative et prospective, comme une solution

susceptible de contribuer, en dehors de toute intervention législative contraignante, au progrès social en Europe et à l'émergence graduelle d'un « modèle social européen ».

Il ne faudrait dès lors pas exclure a priori que cette méthode puisse s'appliquer à d'autres défis sociaux, actuels ou futurs, d'envergure européenne, et pour lesquels le fruit du recours à la méthode ouverte de coordination pourrait être perçu par les citoyens comme l'incarnation progressive d'une « Europe sociale ».

3. Prévoir une définition générale de la méthode ouverte de coordination

L'immense majorité des citoyens ignore l'existence et le sens de la méthode ouverte de coordination, alors que celle-ci revêt une importance grandissante sur un certain nombre de questions en prise directe avec leur quotidien .

Il serait dès lors bon que la méthode ouverte de coordination fasse l'objet, d'une définition générale, qui mette l'accent sur les caractéristiques communes des différentes formes que peut revêtir cette méthode en fonction du domaine de politique envisagé.

Dans cette définition générale, l'accent devrait être mis sur le fait que la méthode ouverte de coordination constitue une méthode de soutien ou de complément des actions des États membres, dans des matières relevant de la compétence de ceux-ci. La méthode ouverte de coordination pourrait être définie comme « consistant pour les États membres, à leur initiative propre ou à celle de la Commission, à fixer en commun, dans le respect des diversités nationales et régionales, des objectifs et des indicateurs dans une matière donnée, et à permettre à ces États, sur la base de rapports nationaux, d'améliorer leurs connaissances, de développer les échanges d'informations, de vues, d'expériences et de pratiques, et de promouvoir, en rapport avec les objectifs fixés, des approches novatrices susceptibles de déboucher, le cas échéant, sur des lignes directrices, des recommandations ou d'autres formes de législation européenne » .

4. Impliquer les différents acteurs de l'Union

L'une des critiques adressées à la méthode ouverte de coordination – méthode intergouvernementale par nature – tient au fait que, alors qu'elle est susceptible d'aboutir à des initiatives concrètes à l'échelle européenne, elle se déroule en marge du processus décisionnel européen. Certains affirment parfois que cette méthode manque d'assise démocratique en raison de la « mise à l'écart » du Parlement européen. D'autres craignent qu'au fil du temps, elle mette en péril l'équilibre institutionnel entre les différents acteurs de l'Union (Parlement européen, Conseil, Commission), en déplaçant progressivement le centre de gravité décisionnel de l'Union vers le Conseil. La méthode ouverte de coordination est aussi vue avec scepticisme en raison du caractère non contraignant de la procédure qui lui est liée.

Afin de rencontrer ces critiques, il conviendrait d'abord d'impliquer la Commission, en tant que gardienne du traité et détentrice du savoir-faire nécessaire au bon fonctionnement pratique de la méthode ouverte de coordination. À cet égard, la Commission pourrait non seulement suggérer aux États membres, si cela lui paraît conforme à l'intérêt commun européen, de s'engager sur la voie de cette méthode dans un domaine donné, mais également garantir le respect par ceux-ci des engagements de nature procédurale (présentation de rapports, le cas échéant sous une forme particulière) qu'ils se sont eux-mêmes assignés. Sur ce dernier point, sans aller jusqu'à reconnaître à

la Commission la faculté d'attirer un État devant la Cour de justice des Communautés européennes en cas de manquement à ses obligations procédurales, il pourrait être prévu que la Commission puisse interpeller l'État membre concerné, recueillir ses observations sur le manquement constaté et, pour autant que de besoin, publier son point de vue à ce sujet. Ainsi, la sanction resterait dans la sphère politique, mais sa portée ne serait néanmoins pas purement symbolique.

Il incomberait aussi à la Commission de traiter les informations obtenues des États membres en vue de leur synthèse et de l'usage utile qui pourrait en être fait.

La Commission, le Parlement européen et les partenaires sociaux européens devraient en outre avoir la possibilité de s'exprimer sur les résultats auxquels a abouti le recours à la méthode ouverte de coordination dans un domaine donné de la politique sociale, en particulier lorsque ceux-ci sont de nature à conduire à l'adoption d'un instrument de par le Conseil et/ou par la Commission.

B. Le rôle des partenaires sociaux : Le dialogue social au sein de l'Union

Conformément au point 7 de son mandat, le groupe de Travail est appelé à examiner la question du rôle des partenaires sociaux.

Les développements qui suivent constituent une contribution à cette réflexion.

L'article 137 du traité CE fixe les objectifs de la politique sociale et les matières relevant de cette politique pour lesquelles la Communauté est compétente. Les actes communautaires pris dans ce cadre peuvent être adoptés par la voie de deux procédures alternatives. La première est la procédure classique de co-décision impliquant le Conseil et le Parlement européen. La seconde est basée sur le dialogue social. La Communauté peut mettre en oeuvre un accord conclu au niveau européen entre partenaires sociaux. En d'autres termes, la Communauté peut donner une force contraignante à un tel accord. L'acte est formellement adopté par le Conseil, même si celui-ci ne fait qu'incorporer dans un acte communautaire, l'accord intervenu. Aucune intervention du Parlement européen n'est prévue par le traité dans le cadre de cette procédure.

(a) La phase de consultation: préalable à toute initiative communautaire dans le domaine de la politique sociale

Les deux procédures ont une phase initiale commune qui consiste, pour la Commission, à consulter les partenaires sociaux. En vertu de l'article 138, paragraphe 2, du traité CE, cette consultation doit impérativement être organisée préalablement à toute initiative communautaire dans le domaine de la politique sociale.

Le traité ne précise cependant pas quels partenaires sociaux sont visés. Dans sa communication du 14 décembre 1993 concernant la mise en oeuvre du protocole sur la politique sociale, la Commission a défini certains critères permettant d'identifier les partenaires sociaux dont la représentativité justifie à ses yeux qu'ils soient consultés au cours de cette phase initiale.

Les critères de représentativité utilisés sont les suivants. Les organisations doivent:

- être interprofessionnelles, sectorielles ou catégorielles et être organisées au niveau européen;
- être composées d’organisations elle-mêmes reconnues comme faisant partie intégrante des structures des partenaires sociaux des États membres et avoir la capacité de négocier des accords et être, dans la mesure du possible, représentatives dans tous les États membres;
- disposer de structures adéquates leur permettant de participer de manière efficace au processus de consultation.

Ces critères de représentativité ont été repris littéralement par la Commission dans sa communication du 20 mai 1998 “Adapter et promouvoir le dialogue social au niveau communautaire”. Sur la base de ces critères, la Commission a dressé une liste, jointe à sa communication du 14 décembre 1993. Cette liste a été mise à jour dans la communication du 20 mai 1998.

Les dispositions du futur Traité Constitutionnel devraient préciser que la Commission “consulte les partenaires sociaux représentatifs”.

Les critères de représentativité, devraient aussi être incorporés dans le Traité. Alternativement, il pourrait être prévu que les critères de représentativité soient établis conjointement par le Conseil et le Parlement européen selon la procédure de co-décision.

Il est aussi souhaitable que la Commission publie chaque année dans le Journal officiel de l’Union européenne, la liste des partenaires sociaux représentatifs. Une telle obligation pourrait éventuellement être imposée à la Commission dans le Traité.

(b) La phase de la négociation d’accords entre partenaires sociaux: aucun droit absolu de participation

Les partenaires sociaux peuvent, à l’occasion d’une consultation à propos d’une initiative de la Commission, informer celle-ci de leur volonté d’engager un dialogue social. Ce dialogue entre partenaires sociaux au niveau communautaire peut conduire, si ces derniers le souhaitent, à des relations conventionnelles, y compris des accords. Il est précisé que la durée de la procédure ne peut pas dépasser neuf mois, sauf prolongation décidée en commun par les partenaires sociaux concernés et la Commission.

De nouveau, le traité CE ne précise pas quels partenaires sociaux sont visés par la négociation d’accords. Il ressort uniquement des articles 138 et 139 du traité CE que les partenaires sociaux concernés par la négociation se trouvent parmi ceux qui ont été consultés par la Commission. Cela n’implique toutefois pas que tous les partenaires sociaux consultés par la Commission, à savoir les partenaires sociaux repris sur la liste figurant en annexe à la communication de la Commission du 20 mai 1998, ont le droit de participer aux négociations qui seraient entreprises. En effet, la phase de négociation, qui prend éventuellement naissance au cours de la phase de consultation initiée par la Commission, relève de la seule initiative des partenaires sociaux qui souhaitent enclencher une telle négociation. Les partenaires sociaux concernés par la phase de négociation sont donc ceux qui ont

mutuellement manifesté leur volonté d'engager le processus de négociation et de le conduire à son terme. Aucun partenaire social, quels que soient les intérêts qu'il prétend représenter, ne peut donc faire valoir un *droit* à participer à une négociation entreprise conformément aux articles 138 et 139 du traité CE.

Dans sa communication du 20 mai 1998, la Commission a encore confirmé qu'elle "ne peut intervenir dans [l]es négociations [entre partenaires sociaux]. Il appartient aux partenaires sociaux de décider de la composition des tables de négociation et d'aboutir aux compromis nécessaires. Le respect du droit pour tous partenaires sociaux de choisir les interlocuteurs de la négociation est un élément clé de l'autonomie des partenaires sociaux".

Le problème suscité par la situation actuelle réside dans le fait que la procédure de négociation, n'est régie par aucune règle de droit communautaire. À défaut de "règles de jeu", c'est la règle du consensus entre tous ceux se trouvant autour de la table des négociations qui s'applique inévitablement. Cette règle du consensus total est propice à l'exclusion de certains partenaires sociaux des négociations, notamment ceux qui risquent d'avoir une opinion "dissidente" dans une certaine matière.

Afin d'éviter ce problème, il devrait être prévu que la procédure de négociation d'un accord entre partenaires sociaux puisse être réglée par le Conseil et le Parlement européen statuant en co-décision. Le Conseil et le Parlement européen pourraient ainsi fixer des critères de nature à garantir a priori que la négociation sera entamée par des partenaires sociaux dont la représentativité peut être considérée comme suffisante au regard du contenu de l'accord à conclure. Le Traité devrait en outre prévoir la mise en place au niveau européen d'un organe au sein duquel les accords seraient négociés et conclu.

(c) La phase de la mise en œuvre des accords au niveau communautaire

Lorsque les partenaires sociaux concernés ont conclu un accord, ils peuvent adresser une demande conjointe à la Commission pour que l'accord soit mis en œuvre au niveau communautaire. La Commission, qui récupère ainsi la maîtrise de la procédure, examine s'il y a lieu de présenter une proposition en ce sens au Conseil.

La Commission vérifiera la légalité des clauses de l'accord au regard du droit communautaire. Elle vérifiera aussi la représentativité cumulée des partenaires sociaux signataires de l'accord. La Commission examinera donc si les différents signataires de l'accord représentent conjointement au niveau communautaire toutes les catégories d'entreprises et de travailleurs concernés par l'accord.

La vérification de la représentativité cumulée des partenaires sociaux s'impose d'autant plus que, dans la procédure législative basée sur la conclusion d'accords entre partenaires sociaux, le Parlement européen n'exerce pas son rôle de co-décideur en vue de l'adoption de la législation. Dans ce contexte, le respect du principe de démocratie, sur lequel l'Union est fondée, requiert que les partenaires sociaux ayant conclu l'accord auquel le Conseil confère une assise législative au niveau communautaire, soient représentatifs en ce sens qu'ils couvrent l'ensemble des intérêts affectés par le contenu de l'accord conclu

Actuellement, ce contrôle de la représentativité cumulée est effectué a posteriori par la Commission et le Conseil lors de l'adoption d'une décision qui mettra en œuvre l'accord intervenu. Un tel contrôle est, le cas échéant, également opéré par la Cour de justice ou le Tribunal de première instance des Communautés européennes à l'occasion d'un recours en annulation introduit contre la

décision du Conseil mettant en oeuvre l'accord.

Dans sa communication du 20 mai 1998, la Commission s'engage à informer "immédiatement le Parlement de toute demande dont elle pourrait être saisie par les partenaires sociaux en vue d'élaborer une proposition législative pour la mise en oeuvre d'un accord au titre [de l'article 139, paragraphe 2, du traité CE]. Ainsi, le Parlement pourra donner son avis sur la proposition en temps voulu avant que le Conseil n'adopte sa décision formelle".

Cette pratique, d'information et de consultation pour avis doit également être codifiée dans le texte du Traité.

Pour ce qui concerne les sommets de Printemps, les conclusions du Conseil européen de Laeken ont, de manière explicite, insisté sur la nécessité de développer et de mieux articuler la concertation tripartite sur les différents aspects de la stratégie de Lisbonne. Il a été convenu qu'un tel sommet social se tiendrait avant chaque Conseil européen de printemps.

Il convient d'impliquer davantage les partenaires sociaux dans la poursuite des objectifs de Lisbonne et ceux définis dans le cadre du développement durable.

Il est en outre essentiel que les Ministres « sociaux » soient présents lors de ces sommets qui ne doivent pas être exclusivement composés des chefs d'Etat et de Gouvernement.

Le texte du futur Traité doit contenir une référence à ce sommet tripartite, tant pour ce qui concerne sa composition, que les matières qui en feront l'objet. L'Union a besoin d'un cadre institutionnel permettant de stabiliser le fonctionnement de cette concertation.

Louis Michel



CONVENTION WORKING GROUP " SOCIAL EUROPE "

POINTS 4-7

**OPEN METHOD OF COORDINATION, COORDINATION BETWEEN ECONOMIC AND
SOCIAL POLICIES, CO-DECISION AND QMV, ROLE OF SOCIAL PARTNERS**

B. Contribution from Mr G. Jacobs

Question 4: what role could be given to the open method of coordination and what would be its place in the Constitutional Treaty ?

Coordination of national policies has started in the economic area as part of the preparation for the Euro (Maastricht Treaty provisions) and has then been applied “mutandis mutandis” to employment (employment title of Amsterdam Treaty).

The European Council decided to put policy coordination at the heart of the strategy for growth and employment decided in Lisbon (open method of coordination). As a result the method is now applied, in different ways, in the social protection area (processes on social inclusion and on pensions). Work is progressing to put in place some policy coordination in the field of education and training policies.

According to UNICE, the open method of coordination has a double advantage. It is particularly well adapted to

- bring about both social and economic progress, and

- ensure that EU action is in line with the principle of subsidiarity in areas characterised by strong national specificities.

Thought should be given to how best to enshrine this double advantage of the “open method of coordination” in the constitutional Treaty.

However, when doing so, it is important to make a distinction between different parts of the Treaty (general constitutional part, sections on specific policies, additional acts) and what should rather be left to implementing acts outside the Treaty.

At this stage, UNICE would like to flag out two key points:

- EU mechanisms to coordinate national policies must be adapted to the policy area concerned in order to preserve the flexibility of the Lisbon strategy.
- Since the method is designed to be applied in areas where the primary responsibility remains national, treaty provisions must be drafted in a way which clearly reflects this.

Question 5: what relationship can be established between coordination of economic and social policies ?

Economic and social progress can only go hand in hand. To achieve this, it is important to ensure synergies between the processes for coordinating economic policies on the one hand and employment policies on the other hand.

UNICE therefore welcomes the synchronisation and streamlining of these processes. This does not mean that processes should be merged but rather that they should be made coherent and interdependent. With regard to existing treaty provision on employment, UNICE supports the intention to streamline and simplify the procedure.

UNICE would also like to recall that in their joint contribution to the Laeken European Council, the European social partners proposed that “the Standing Committee for Employment be replaced by a tripartite concertation committee for growth and employment which would be the forum for concertation between the social partners and public authorities on the overall strategy defined in Lisbon.” In response to this, the

Laeken European Council agreed that “a social summit of this kind would in future be held before each Spring European Council” and the Commission recently made a proposal for a decision on a Tripartite Social Summit.

Question 6: to what extent should co-decision and QMV be extended to matters for which unanimity is currently covered ?

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 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 Treaty.

Question 7: should the role of social partners appear in title VI (democratic life of the Union) and if so, what should be its role ?

The draft constitutional treaty prepared by the Praesidium contains an article 34 which sets out a general principle of participatory democracy. Given the specific role that social partners play in economic and social governance in all European countries, a specific reference to the role of social partners should be added in title VI (part one of the Treaty).

This would not substitute appropriate provisions on consultation of social partners in relevant policy areas in part 2 of the Treaty, as is the case, for example, on employment with article 130 of the employment title.

Concerning social policy issues, the role of social partners is not limited to consultations. Articles 138 and 139 of the Treaty set the rules for consultation of the social partners, for negotiations between them at EU level and for implementation of their agreements. They were designed to

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

Articles 138 and 139 should be maintained without any changes in the next Treaty.

The European social partners intend to present a joint contribution on this point in the near future.

Contribution by the **Earl of Stockton MEP**, Substitute Member of the Convention -

"Remarks on the Mandate of Working Group XI"

- 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 values outlined in the new Constitutional Treaty should be broad enough to be able to reflect any changes in society, and should not focus on setting out specific objectives but rather be a true reflection of European citizens' shared ideals. Central to these values should be the balancing concepts of solidarity and individual responsibility.

- 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?*

Any social objectives at a European level must be underpinned by the aim of making the EU globally competitive, whilst fully respecting individual Member States' social security systems and circumstances. Outlining any excessively rigid social objectives risks stifling the competitiveness of Europe and therefore its ability to deliver those very 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?*

Giving the EU new social competences is mistaken, as it places social policy at a level inconsistent with subsidiarity, a concept the Convention is trying hard to enhance. Member States vary greatly in their approach to social issues, particularly in the areas specifically mentioned in Article 137.5 of the TEC. To attempt any common European approach on these issues would not only intrude on a core concept of Member State sovereignty, but would also hinder their ability to adapt their national,

regional and local situations to economic change.

4. What role could be given to the open method of co-ordination and what would be its place in the Constitutional Treaty?

The open method of co-ordination has been a valuable tool in the Union's progress towards the Lisbon goals, thanks to its flexible and non-binding nature, which allows the EU to act in areas where it cannot introduce legislation. Any attempt to insert it into the Constitutional Treaty must not compromise that flexibility or enable this method to become a binding instrument.

5. What relationship can be established between the co-ordination of economic policies and the co-ordination of social policies?

It is natural that there should be a method of co-ordination between the two, which was agreed at the Barcelona Council in 2002, as a way of ensuring that the co-ordination of social policies is sustainable and in line with the co-ordination of economic policies. This should, however, not lead to a subjugation of the latter by the former.

6. Regarding procedures, to what extent should co-decision and qualified-majority voting be extended to matters for which unanimity is currently required?

Social Policy lies at the heart of European states' identity, and so any joint progress must be based on a consensus that takes into account the state of affairs in every Member State. Whilst extending co-decision with the directly elected Parliament would allow for democratic input and endorsement, a move towards QMV in these areas however, would over-ride the need for consensus; a move that would harm, not aid, the image of the Union in the eyes of its citizens.

7. Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the Social Partners appear in Title VI and, if so, what should this role be?

The role of the Social Partners should be recognised as a valuable tool for action in the social field at European level. Dialogue between employers and employees can provide tailored solutions that are more in line with national, regional and local situations. The emphasis should be on producing

guidelines which aim to improve companies' competitiveness and employee protection rather than on legislation for its' own sake. There must, therefore, be some mechanism to introduce more democratic legitimacy and accountability into the process.



Comité économique et social européen

**CONTRIBUTION PRELIMINAIRE DES OBSERVATEURS
REPRESENTANT LE COMITE ECONOMIQUE ET SOCIAL EUROPEEN
AUX QUESTIONS 4,5 ET 7 DU MANDAT DU GROUPE DE TRAVAIL
"EUROPE SOCIALE" DE LA CONVENTION EUROPEENNE
(CONV 421/02)**

Question 4 : Méthode ouverte de coordination

Le CESE considère, sans préjudice des compétences législatives de l'Union, que la méthode ouverte de coordination constitue un outil précieux pour tout un ensemble de politiques: cohésion économique et sociale, emploi, etc., à condition que les partenaires sociaux et les autres acteurs de la société civile soient effectivement impliqués à chaque niveau. Dans le contexte de la réforme du processus de décision, la méthode ouverte de coordination doit disposer d'une base juridique dans le traité constitutionnel.

Question 5 : Coordination des politiques économiques et sociales

Conformément à l'évolution des politiques communautaires, le contexte dans lequel l'Europe évolue est celui d'une **économie sociale de marché ouverte à la concurrence**, définition qui devrait être introduite dans le traité (articles 4, 98, 105 de l'actuel TCE). Le CESE estime que la politique économique doit également être évaluée à l'aune de son impact sur la croissance et l'emploi. Les grandes orientations de politique économique (GOPE) et les lignes directrices pour l'emploi doivent être élaborées en symbiose. Il convient de modifier en conséquence l'actuel article 99, paragraphe 2, du TCE.

Le Comité est également d'avis qu'il y a lieu de rétablir le droit de proposition de la Commission ainsi que la consultation obligatoire du CESE en ce qui concerne

l'élaboration des grandes orientations de politique économique.

Question 7 : Rôle des partenaires sociaux

a. Le Comité juge nécessaire le renforcement du dialogue social et, dans ce cadre, le développement de la participation et des responsabilités spécifiques des partenaires sociaux. Dans ce contexte, le Comité est favorable à ce que le rôle des partenaires sociaux soit consacré dans la première partie du traité constitutionnel.

À cet égard, il convient de distinguer nettement le dialogue civil du dialogue social. Le dialogue social européen est un mécanisme disposant de pouvoirs quasi législatifs. Il est clairement défini en termes de participants, de pouvoirs et de procédures.

b. Concernant le dialogue civil, le Comité préconise le renforcement de la démocratie participative par le développement de processus qui permettent aux organisations de la société civile d'être associées à un stade précoce au processus de formation des politiques et à la préparation des décisions, ainsi qu'à la mise en œuvre de celles-ci.

Sans préjudice de sa structure et de ses compétences, le CESE a un rôle clé à jouer dans l'organisation du dialogue civil et a vocation à en être l'enceinte. A ce sujet, il a d'ores et déjà transmis à la Convention une proposition de rédaction de l'article de l'avant-projet de traité constitutionnel¹.

European Convention

¹ Article 34

La démocratie participative

1. Le dialogue civil

- a. Les institutions de l'Union assurent la transparence et mettent en œuvre des procédures d'information, d'audition et de consultation permettant aux organisations économiques, sociales, culturelles et civiques d'être impliqué dans le processus de formation et de mise en œuvre des politiques communautaires dans le cadre du dialogue civil.
- b. Conformément à l'article 23 (1) du présent traité, le Comité économique et social européen garantit que l'Union entretient un dialogue permanent avec les organisations de la société civile.

2. [Le dialogue social]

Working Group XI: Social Europe
Proinsias de Rossa, Member of the Convention

Responses to Questions 4 – 7 of Mandate

Open Method of Co-ordination

The importance of the Open Method of Co-ordination has been emphasised, in relation to the implementation of the Lisbon Process, in the area of social inclusion, in respect of the involvement of civil society and the social partners, and to building a shared understanding of social issues. The Convention Working Group on Economic Governance has recommended that “the basic objectives, procedures and limits” of the method should be included in the Constitutional Treaty, but without undermining its flexibility or circumventing Community procedures and policies. This recommendation should be supported, with the strong proviso that the roles of the European Commission and of the European Parliament and national parliaments are fully recognised.

Relationship between Co-ordination of Economic Policies and Co-ordination of Social Policies

The Convention Working Group on Economic Governance has made a number of recommendations related to the improvement of co-ordination of economic policies – in particular through increased focus on implementation and through strengthening the role of national parliaments. The political commitment of Member States will be critical in this respect. The Working Group made particular reference to the conclusions of the Barcelona European Council on streamlining co-ordination processes. It went on to emphasise the relevance of such reforms to the effective implementation of the Lisbon process.

Co-ordination of Social Policy in the EU context should be given greater priority to ensure that the significant range of initiatives in the social field are implemented fully.

At Nice, the European Council adopted a Social Policy Agenda which aims at “providing a comprehensive and coherent approach to confront new challenges” in areas including promoting full employment and quality work, modernising social protection and promoting gender equality. This ambitious agenda will require the application of both the Open Method of Co-ordination and enhanced monitoring and co-operation between Member States as outlined in the Nice Agenda.

Procedures (Co-decision, QMV, Unanimity)

The achievement of a true social dimension for the Union, and the effectiveness of the Constitutional Treaty itself, require the extension of QMV to those areas in which unanimity is currently applied. It is also important that the current exclusions in Article 137.6 (pay, right of association, right to strike etc.) are removed.

Role of the Social Partners

Social Dialogue at European level is already a specific component of the Treaty (Articles 136 and 138 - 139 TEC). The Nice Social Policy Agenda proposes a number of approaches to strengthening this dialogue and promoting interaction between social dialogue at EU and national levels. It must be acknowledged that, in many cases, EU policies will not be successfully implemented at the level of the Member State in the absence of the full involvement and support of the social partners.

The existing treaty provisions must be reconfirmed in the Constitutional Treaty. The Treaty must strengthen the autonomous role of the social partners as co-regulators and as participants in EU related decision-making procedures in all areas of their

direct interest and responsibility. The Treaty should provide what the ETUC has described as a “ permanent European social partner infrastructure, aimed at securing and developing the institutionalised consultation, social dialogue and negotiation with the recognised European social partners at inter-professional and sector level on EU treaty-related issues, in an efficient way.”

Such an infrastructure could also include social partner agreements on a framework for negotiations at European and cross-border levels and provision for a privileged Relationship between the social partners and the ECJ, including direct access to the Court in specified circumstances.

The basic treaty provisions in these matters should remain in the relevant section of Part Two (A3 II) but subject to the appropriate elements of Titles I, III and V of Part One. Reference to the role of the social partners in the proposed Article 34 of Title VI could be appropriate, having regard to the importance of social dialogue in the realisation of participative democracy at both EU and national levels.