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Working Group XI

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Working Group XI "Social Europe"

Subject: Preliminary draft report

Members of Working Group XI on "Social Europe" will find hereafter the preliminary draft report.

Preliminary draft report of WG XI, Social Europe

Introduction

1. The social content of European integration, the social face of Europe, is a matter of crucial concern for the citizens of the Union. It is also a matter that has become prominent in the deliberations of the Convention. European citizens are at one with their representatives in their concern over employment, conditions of work, social security, people's welfare before they become professionally active, while they are active and after they retire.
2. Social considerations constitute an essential part of European integration. As set out in Article 2 TEC: "The Community has the mission, by means of creating a common market, an economic and monetary union... to promote... a high level of employment and social protection". Social regulation is seen as a means necessary for the advancement of the common market itself. Acting in this spirit, the Council introduced, in 1968, the first community legislative act on a social issue: the Regulation concerning the free circulation of workers in the territory of the Community. Finally, with the European enterprise proceeding from the early phase of a common market to the mature form of a community of values, "economic and social progress" are proclaimed in Article 2 TEU as major aims of the European Union.
3. The outlines of a coherent social policy began to emerge with the Paris Summit of 1972 and the Commission action programme drawn up accordingly. It was built around three themes: achievement of full employment and of good quality jobs in the Community, improvement of living and working conditions for labour and increasing participation of social partners in the economic decision-making of the Community and of working personnel in the development of their enterprises. This important agenda, though limited in scope (as it does not at all touch on social security), reflects the huge efforts deployed over two centuries in Member States in the area of social policy, culminating in the modern European welfare State, an achievement common to each and every European nation, and indeed one of the finest accomplishments of modern European civilization.

4. The Working Group held [5] meetings during which it examined the seven questions set out in its mandate. It heard the following experts: Ms Anna DIAMANTOPOULOU, Commissioner for Employment and Social Affairs, Mr Frank VANDENBROUCKE, Belgian Minister of Social Affairs and Pensions, Professor Tony ATKINSON, Warden of Oxford University's Nuffield College, and Mr Olivier DUTHEILLET de LAMOTHE, French Conseiller d'État.

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

1. Article 2 of the preliminary draft Constitutional Treaty presented by the Praesidium to the Convention on 28 October 2002 (CONV 369/02) sets out to define the values of the Union and indicates by way of example such basic values as human dignity, fundamental rights, democracy, the rule of law, tolerance, respect for obligations and for international law.
2. In the current Treaties, the preambles, as well as in particular Article 2 TEC and Articles 1 and 2 TEU, set out the overall values and basic objectives of the Community and the Union. The values expressed therein include the attachment of the Union to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law, the attachment to fundamental social rights, the desire to deepen solidarity, a high level of employment and social protection, the harmonious, balanced and sustainable development of economic activities and sustainable growth, and equality between men and women.
3. In its examination of the basic and overarching values related to the social field which should be expressed in Article 2 of the future Constitutional Treaty, the Working Group agreed that the Article should be short and specific. It furthermore noted consensus in the Convention regarding the integration of the Charter into the Treaty, that the Charter should not be reopened, but that a clear link or reference to the Charter could be established in the Article on basic values.

4. There was broad demand for the inclusion of the notions of solidarity, equality, equal opportunities and democracy (the latter already mentioned in the preliminary draft Constitutional Treaty), values already prominently expressed in the current treaties, among the basic values of the Union. Some members suggested that the concept could be further specified as solidarity between people and/or between generations, or between Member States. Some members pleaded for the inclusion of a reference to social justice, while others suggested that this was rather to be considered as an objective than one of the basic values. Several members argued that as equality between men and women was a core feature of the European social model, it deserved a specific mention among the basic values. With regard to equal opportunities, some underlined that they would prefer that such a reference should not be limited to equal opportunities between men and women, but that it should be interpreted in its broadest sense so as also to cover race, sexual orientation and disability. Some proposed that not only equal opportunities but also equal treatment should be included, while others were of the view that these were rather to be considered as objectives. The concepts of tolerance and non-discrimination were also put forward, and some members underlined the fact that the Union is constantly becoming more diverse and that an expression of the basic values on which it is based should take into account the respect for the multicultural and multiethnic character of European society.
5. Other suggestions regarding values not contained in the preliminary draft Constitutional Treaty of 28 October included sustainable development or sustainability, the latter in terms of the economy, social policy and the environment. This was broadly welcomed by the Group, but it was argued by some that the concept of sustainability was rather to be considered as one of the major objectives of the Union, and that it should preferably be included in Article 3. It was furthermore suggested by some members that the wording dignity of the person should be employed instead of human dignity. Several other suggestions were made for basic values, which the Group after discussion considered rather as objectives. These included reference to the level of employment the Union should strive for (full employment v. a high level of employment, see discussion in relation to Article 3 on objectives) and the objective of ensuring a high level of health protection. In conclusion, the Group recommends that the following values be added to Article 2 of the Constitutional Treaty: solidarity, equality between men and women and equal opportunities.

6. Article 136 TEC, which sets out the objectives of Community social policy, refers to fundamental rights "such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers". As the EU Charter of Fundamental Rights contains many social provisions, the Group recommends that reference be made to it in the Constitutional Treaty provision to replace the current Article 136 TEC.

II. The inclusion of social objectives in Article 3 of the preliminary draft Constitutional Treaty that sets out to define the Union's general objectives

1. Article 3 of the preliminary draft Constitutional Treaty sets out to define the Union's general objectives. The Working Group examined to what extent and in what way these general objectives should include objectives in the social field.
2. It was recalled that next to the economic objectives of the Union, Article 2 TEC states that the Community should have as its task to promote a high level of employment and of social protection, equality between men and women and the raising of the standard of living. Article 136 TEC indicates the Community's social policy objectives, i.e. the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

3. It was recalled that at its meeting in Lisbon in 2000, the European Council agreed a new strategic goal for the Union for the decade: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion". The balance between economic, employment and social policies and environmental policy is central to the Lisbon strategy. Several members considered that this balance should be enshrined in the future Constitutional Treaty, and in particular in the article defining the general objectives of the Union. They argued that alongside economic growth and prosperity, sustainable development, the promotion of full employment and a high degree of social protection should be included in Article 3. There was a high degree of support in the Group regarding these objectives. A consensus was essentially reached on the objective of full employment. Members of the Working Group noted that according to Eurobarometer measurements 90% of the public expects Europe to take action on eliminating unemployment and eradicating poverty.
4. The Working Group considered which objectives of the Union in the social field should be expressed in the Constitutional Treaty. It did not consider the possibility of expressing them in Part Two of the Treaty, which will deal with policies and contain all the legal bases and where it could be appropriate to set out detailed objectives in each chapter dealing with each policy, thereby making it possible to keep the list in new Article 3 shorter and more general than the one in the existing Article 3 TEC.
5. In relation to employment goals, some argued, without expressing opposition to the objective of full employment, that a high level of employment was a more realistically attainable objective than full employment, and that the Union should create favourable conditions for job creation. There was, however, a very broad trend in favour of establishing full employment as an aim, not least taking into account the fact that the European Council in Lisbon (and its follow-up in Barcelona) had set the goal of full employment. Several members were of the view that the Union's objectives should include also the need to promote employability, and suggested that access to education and training or the concept of life-long learning should also figure among the general objectives. Several members also pointed to the need to strive not only for full employment or a high level of employment but also to strive to ensure the quality of jobs.

6. Several members were of the view that the definition of the objectives of the Union should contain a reference to the "European social model". In this respect, some members pointed to the need to be clear on the interpretation given to this concept, and some referred to the definition provided in the Presidency Conclusions relating to the Barcelona European Council in 2002, which stated that the European social model is based on good economic performance, a high level of social protection and education and social dialogue. Several members considered that the objectives should refer to the Union as a "social market economy", to underline the link between economic and social development and the efforts made to ensure greater coherence between economic and social policies. This proposal received broad support in the Group.
7. There was general support for the central place of equal opportunities for men and women among the objectives; some members also suggested referring to equal treatment. Other suggestions which received support from several members were the objectives of ensuring a high level of social protection and social inclusion, alternatively the fight against social exclusion and poverty. Further proposals introduced by some members on which there was no consensus regarding inclusion among the objectives included access to efficient and high-quality services of general interest, economic and social cohesion, health protection, and the right to information and consultation of employees.
8. A large number of members considered that access to services of general interest should figure among the Union's objectives, and underlined the link with access to basic services, such as health and education, for every citizen. Several members argued in favour of a horizontal provision that would go further than the form of words in the current Article 16 TEC and guarantee access to and thus provision of basic services. Some underlined that this should not exclude the application of the rules of the internal market to the providers of such services.

9. In conclusion, there was consensus in the Group to recommend that the following be included in the definition of the Union's objectives in Article 3 of the future Constitutional Treaty: sustainable development, the promotion of full employment, promotion of employability, not least through access to basic and continuous education, social inclusion and a high degree of social protection, equal opportunities between men and women [, and access to efficient and high-quality services of general interest whose operations are subject to the rules of the internal market].

III. Need to define the competences currently conferred on the Union/Community in respect of social matters. Possible conferral of new competences on the Union/Community in respect of social matters and, that being so, the type of those competences.

1. The Union's social policy objectives are set out in Article 136 TEC: "the Community and the Member States ... shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion".
2. Article 137¹ specifies how those objectives are to be achieved: "With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
 - (a) improvement in particular of the working environment to protect workers' health and safety,
 - (b) working conditions,
 - (c) social security and social protection of workers,
 - (d) protection of workers where their employment contract is terminated,

¹ Text of Article 137(1) as it stands following the Nice Treaty.

- (e) the information and consultation of workers,
- (f) representation and collective defence of the interests of workers and employers, including co-determination,
- (g) conditions of employment for third-country nationals legally residing in Community territory,
- (h) the integration of persons excluded from the labour market,
- (i) equality between men and women with regard to labour market opportunities and treatment at work,
- (j) the combating of social exclusion,
- (k) the modernisation of social protection systems".

3. Minimum requirements may be adopted only in the areas referred to in paragraphs (a) to (i), by means of a Directive. Adoption is by qualified majority and in codecision with the Parliament, with the exception of paragraphs (c), (d), (f) and (g) which are by unanimity and in consultation with the European Parliament.
4. Lastly, in Article 137(6) the Treaty rules out any Community intervention in the fields of pay, the right to strike and the right to impose lock-out.
5. The Group questioned the relevance of the scope of the current competences set out in the Treaty, particularly in the areas where any intervention is at present ruled out under Treaty Article 137(6).
6. The Group was divided on this matter. While all members felt that social matters should remain an area of shared competence, opinions differed on possible extensions or reductions of the current scope. Several members would like all provisions either closely or remotely related to social matters to be regrouped within a single chapter (in particular by bringing Articles 136 and 137 closer to the provisions of Article 13 (non-discrimination), Article 16 (services of general economic interest) and Article 42 (social security in the context of free movement of workers).

7. The Group was unable to reach a consensus on amending the exceptions in Article 137(6). A number of Group members felt that these were obsolete and could be deleted. Thus, it was pointed out that Article 137(6) TEC stipulates that the provisions of that Article shall not apply to pay. Although the purpose of the paragraph is to rule out the adoption of uniform minimum requirements for the Member States where such provisions consist primarily of setting the level and method for calculating pay, such as, for example, setting a minimum guaranteed wage, it does not, however, rule out the possibility of adopting measures intended to improve the working environment to protect the health and safety of workers, measures on working conditions, on informing and consulting workers or on integrating people excluded from the labour market, even if these measures have an impact on pay. The result is that many Community instruments contain provisions on pay.
8. Conversely, a considerable number of Group members expressed their support for the limits placed on action at European level. In particular, they emphasised that these were areas in which the specific features of each Member State are very important.
9. Others emphasised that the scope of the provisions of Article 137(1) was too broad as it was sometimes difficult to envisage what Union legislative initiative could be taken in certain areas (Article 137(1)(f) was mentioned to in this respect). However, this situation caused some Member States to fear sustained legislative action in the areas concerned, leading them to preserve the unanimity rule as a means of protection. Following that line of argument, a better definition of the scope of Community action could be combined with general use of qualified-majority voting (see point 6 of the terms of reference).
10. With regard to services of general interest, it was emphasised that these were linked to access to basic services (health, education, etc.) for all citizens, which many members considered should be included among the objectives. In their view, services of general interest were a means of achieving that objective.

11. The current Article 16 TEC recognises the legitimacy of services of general interest while specifying that they should be operated without prejudice to Articles 86 and 87 TEC (competition law and State-aid arrangements). Article 86(2) TEC provides, however, that "undertakings entrusted with the operation of services of general economic interest (...) shall be subject to the rules (...) Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them".
12. However, Article 16 TEC has an essentially declaratory value and cannot provide the basis for genuine European legislation on services of general interest. Some members would therefore like the Constitutional Treaty to contain a provision enabling the Union to legislate on services of general interest at European level.
13. The Group does not therefore recommend any change in the current distribution of competences, but would like all social provisions to be regrouped under a single title of the future Constitution. Better clarification of the scope of European action could be envisaged in order to enable general use of qualified-majority voting. European action could primarily concern areas of action closely linked to the functioning of the internal market and/or areas with a considerable cross-border impact as well as those relating to fundamental rights.

IV. The role of the open method of coordination and its place in the Constitutional Treaty

1. Following the Working Groups on Economic Governance and Simplification, which both recommended conferring constitutional status on the open method of coordination, the Group returned to this matter.
2. The open method of coordination was established by the European Council held in Lisbon on 23 and 24 March 2000. It is a new form of coordination of national policies.

3. Adhering closely to the model outlined for the coordination of employment policies (Articles 126 and 128 TEC), the European Council defined this method as follows:
- "the means of spreading best practice and achieving greater convergence towards the main EU goals. This method, which is designed to help Member States to progressively develop their own policies, involves:*
- fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms;*
 - establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice;*
 - translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences;*
 - periodic monitoring, evaluation and peer review organised as mutual learning processes.*
 - A fully decentralised approach will be applied in line with the principle of subsidiarity in which the Union, the Member States, the regional and local levels, as well as the social partners and civil society, will be actively involved, using variable forms of partnership. A method of benchmarking best practices on managing change will be devised by the European Commission networking with different providers and users, namely the social partners, companies and NGOs".* (Presidency Conclusions, Lisbon European Council, 23 and 24 March 2000, paragraph 37).
4. In Lisbon, the European Council thus stated its desire to extend the method incorporated in the Title on Employment of the TEC to other areas, such as the information society and research policy, enterprise policy, education and vocational training policy, combating social exclusion and social protection.

5. An empirical approach has been used to develop and adapt this method to the specific characteristics of each field of action. The method is therefore applied in different ways according to the specific fields of action, with an ad hoc procedure being worked out each time. That is why we sometimes speak of open methods of coordination, in the plural.
6. The Group welcomed the usefulness and efficiency of the method, which enables Member States to create synergies within the Union in order to deal with matters of common interest together.
7. With the exception of some members, who remained sceptical, consensus emerged on the insertion into the Treaty of a horizontal provision defining the open method of coordination and its procedure, and specifying that the method can be applied only where no Union competence is enshrined in the Treaty and in areas other than those where the coordination of national policies is governed by a special provision of the Treaty defining such coordination (in economic matters (Article 99) and in the area of employment (Article 128), in particular). The coordination procedures enshrined in the Treaty are compulsory and enable the Union institutions to make recommendations to Member States and even to impose sanctions on Member States which do not adhere to the line which they have taken. However, the open method of coordination could be applied to areas where coordination of national policies is provided for in the Treaty, but where the detailed arrangements are not laid down, in particular as regards trans-European networks (Article 155 TEC), enterprise policy (Article 157 TEC) and research and technological development (Article 165 TEC).
8. The Treaty provision on the open method of coordination should be embodied in the Constitutional Treaty, in the Chapter on those Union instruments which constitute non-legislative measures.

9. This provision should define the aims of the open method of coordination, namely to identify common objectives at Union level in a given area, which are to be achieved practically at national level, establish a timetable for action as well as outcome indicators making it possible to assess whether the national actions can achieve the objectives, and organise exchanges of experience between Member States.
10. The scope and limits of the method will also need to be specified by indicating that the open method of coordination is an instrument for achieving the Union's objectives; that the instrument can be implemented only where the Union does not have legislative competence, and Union competence in the area of sectoral coordination is not enshrined in the Treaty (Articles 99, 104 and 128) or where the Union has competence only for defining minimum rules, in order to go beyond these rules. The open method of coordination constitutes an instrument which supplements legislative action by the Union, but which can under no circumstances replace it. It enables the Union to support and supplement Member States' actions.
11. While allowing the flexibility of the instrument to be retained, incorporation of the open method of coordination in the Treaty should nevertheless contribute towards improving its transparency and democratic character, by defining its procedure and by designating the actors and their respective roles. In this respect, the method would be implemented each time by decision of the Member States meeting within the Council on the basis of a European Commission proposal, with notification of the European Parliament. National parliaments and regional or local authorities could be consulted during implementation, as could the social partners when the open method of coordination is applied to the social field. Civil society could possibly be consulted when the matter under coordination lends itself to that. The Commission would be responsible for analysing and evaluating the action plans decided on under the open method of coordination. The outcome of the Commission's analysis could be discussed within the European Parliament and national parliaments. The Commission would have the power to make recommendations to Member States' governments and to inform national parliaments directly of their opinions in order to trigger a "peer review" procedure and to prompt a national debate, the aim being to allow Member States, in the context of the Union, to set themselves common objectives while retaining national flexibility in the implementation thereof.

12. Although some members of the Working Group wished to include in the Treaty the list of subjects to which the open method of coordination could be applied, a consensus emerged against such a list but in favour of inserting a horizontal clause, as described above.
13. Some areas to which the method could be applied were mentioned in the Group, such as education, social protection, tax harmonisation and the establishment of minimum social standards.

V. The relationship between economic policy coordination and social policy coordination

1. Recent steps have been taken to ensure that there is greater coherence between the coordination of economic policies and social policies. In particular the Barcelona European Council decided that the calendars for the adoption of the Broad Economic Policy Guidelines and of the annual Employment Package should be synchronised.
2. The Group was of the view that the close relationship between economic and social policies needed to be reflected in the approach adopted by the Union. The Group therefore welcomed the decisions taken at the Barcelona European Council, but considered that more could be done to encourage coherence. The Group considered in particular that further efforts could be made in the organisation of the Council's work. It was broadly accepted that the different aspects of economic and social policy should continue to be prepared within the appropriate sectoral Council formation, but the Group also considered that responsibility for ensuring coherence of all the policy strands should lie formally with the Spring European Council, and that the General Affairs Council should prepare the outcome of the European Council, based on the different contributions from the sectoral Councils. These should include not only the Broad Economic Policy Guidelines and Employment guidelines, but also all other aspects of social policy to which the open method of coordination is applied. The Group recommends that this procedure should be formalised in the Constitutional Treaty.

3. The Group considered that there should be a presumption in the preparatory stages that no specific policy area should be subordinate to another. This was not clear in the current wording of Article 128(2), which refers to the Employment Guidelines being "consistent" with the BEPGs. The Group therefore recommends that this phrase be amended appropriately.
4. Some members of the Group considered that coherence between the different processes could be better ensured by merging them. This would mean that the scope of the Broad Economic Policy Guidelines be extended to include social issues and be renamed the Broad Economic and Social Policy Guidelines. A small number of members argued that coherence could be better assured by the appointment of a Vice-President in the Commission with specific responsibility for economic and social issues (the possible future arrangements for CFSP being cited as a model). Others considered that this was not necessary since the institutional arrangements in this area were very different from those in CFSP.
5. It was recommended by a number of members of the Group that the European Parliament should be given a greater role in the economic and social policy coordination processes.

VI. The procedures: possible extension of codecision and qualified majority voting to areas where unanimity is required at present.

1. The present situation was outlined, in particular with respect to the amendments made by the Treaty of Nice, which would enter into force on 1 February 2003. In the social field, the Council acts by adopting directives in codecision with the European Parliament. These directives set minimum rules.
2. The Council is in favour of adopting minimum requirements by qualified majority, with the exception of four areas for which the unanimity rule applies, with consultation of the European Parliament:
 - social security and the social protection of workers (Article 137(1)(c)),
 - the protection of workers where their employment contract is terminated (Article 137(1)),
 - representation and collective defence of the interests of workers and employers, including co-determination (Article 137(1)(f)),

- conditions of employment for third-country nationals legally residing in Community territory (137(1)(g)).

It was recalled that the Treaty of Nice stipulates that, by a unanimous decision, in the case of three of the subjects mentioned above – subparagraphs (d), (f) and (g) – the Council could, on a proposal from the Commission and after consulting the European Parliament, extend to unanimity recourse to codecision with the Parliament and majority voting (application of Article 251).

Member States retain the possibility of applying standards which give workers greater protection (137(5)).

Finally, several Convention members pointed out that the provisions of "Social Europe" were not confined to Articles 136 and 137 but also concerned Articles 13 (non-discrimination), 42 (social security arrangements) and 93, 95 and 175 (tax). The debate should also relate to their possible transition to qualified majority voting.

3. The Group debated at length the prospect of amending these provisions by expanding the field of qualified majority voting.

The Convention members belonging to the Group were divided into two categories of unequal weight:

- according to an active minority, comprising a number of government representatives, the discussions which had been held at Nice concerning the extension of the scope of qualified majority voting should not be reopened. The balance achieved at that time was satisfactory. The existing provisions should therefore remain unchanged. In addition, as the Treaty of Nice was only about to enter into force, it would seem inappropriate to consider amending it now when its provisions, particularly those making an extension of qualified majority voting possible, had not yet been able to show their effectiveness;

- conversely, for the other members of the Group, it was possible as of now to envisage improvements to the existing arrangements. In particular they stressed that the prospect of enlargement made improvements essential; the status quo would lead in practice to it being impossible for the Union to adopt regulations in the areas requiring unanimity. Some wanted across-the-board use of qualified majority voting covering not only Article 137(1) but also Articles 13, 16, 42, 95 and 175 of the Treaty. Others envisaged limited extension. Where limited extension of qualified majority voting was raised, the provisions quoted most often as having to remain subject to unanimity were those relating to social security schemes and to conditions of employment for third-country nationals.
- finally, some took up the line of argument developed under point III above, whereby a better definition of powers would facilitate acceptance of qualified majority voting.

4. On the basis of discussions within the Group, it appeared that general use of qualified majority voting would be difficult to contemplate. On the other hand, some progress could be envisaged, such as the transition to qualified majority voting of subparagraphs (d), (f) and (g) of existing Article 137(1). As such a prospect has already been made possible by the Treaty of Nice, for the purposes of clarification and simplification, it could be applied in the future Constitution. It is hard to imagine that it could not be determined, merely by reading the constitutional text, whether a particular subject fell under a specific adoption procedure (qualified majority or unanimity). However, that would indeed be the situation if Article 137(2) emerging from Nice were incorporated as it stood into the constitutional Treaty.
5. Only the provisions relating to social security schemes would therefore continue to require unanimity. Some pointed out that the coordination of social security schemes was essential with a view to a true single market. If the entire field could not be covered by qualified majority voting, it should at the very least be possible for technical coordination measures to be so adopted. This avenue would no doubt be worth exploring.

6. As regards requests for adoption by a qualified majority of the provisions set out in Article 13, it does not appear that a consensus could be reached for changing the current situation.
7. The Group recommends that transition to the procedure in Article 251 (qualified majority and codecision) for Articles 42, 137(1)(d), (f) and (g), as provided for in the Treaty of Nice, should apply in the future Constitution. Subparagraph 137(1)(c) would continue to require unanimity while the "bridging" provision introduced in 137(2) would be deleted.

VII. The role of the social partners, as it could appear in Title VI of the preliminary draft constitutional Treaty deals with the democratic life of the Union

1. The existing Treaties confer a specific role on the social partners in the field of social policy. Article 138 includes a general provision on this type of consultation and places an obligation on the Commission to consult representatives of employers and employees before submitting proposals in the social policy field. Article 137 stipulates that Member States may entrust management and labour with the implementation of certain directives. Article 139 opens up the possibility of establishing contractual relations, including agreements, between the Community and the social partners. Any framework agreement between management and labour concluded on the basis of Article 139 may lead, on a proposal from the Commission, to the adoption by the Council of directives which exactly reproduce the agreement concluded. Six agreements, including two sectoral agreements, have been subject to this procedure, i.e.:
 - agreement on parental leave,
 - agreement on part-time work,
 - agreement on fixed-term contracts,
 - agreement on the organisation of working time of mobile workers in civil aviation,
 - agreement on the organisation of working time of workers at sea,
 - agreement on teleworking.

2. Furthermore, an important role of management and labour has been acknowledged in the "Lisbon process". It has taken the form of regular "social affairs summits" on the occasion of spring European Councils which offer management and labour the opportunity to give their point of view on the issues discussed by the Council.
3. The Group unanimously welcomed the role of management and labour and the importance of social dialogue in Europe. It generally took the view that this role of management and labour, already included in the treaties, should be recognised, facilitated and – as far as possible – enhanced. It was agreed that this role should be specified in Title VI of the Constitution, and it was pointed out that this role should be distinct from that played by organised civil society, which should also be recognised.
4. The question of defining the social partners more precisely was raised on various occasions, but the Group did not adopt this approach.
5. It has often been stressed that the social partners should be consulted in all areas concerning them and a significant number of members of the Group made proposals for strengthening the role of the social partners and of social dialogue, particularly in macro-economic consultations, creation of legislation and, in order to facilitate negotiation at European level, by giving force of law to all European collective agreements. In this respect, the deletion of the provisions of the Treaty limiting the extent of negotiations was proposed on a number of occasions, but no consensus could be reached.

Certain members nevertheless considered that the autonomy of the social partners should be respected and that the success of the social dialogue often made legislation superfluous.

The Group also expressed satisfaction with the growing importance of social dialogue and stressed the major role that could be played by the organisation of tripartite social affairs summits held just before the spring European Councils. A number of members declared themselves in favour of formalising and/or institutionalising this process, by embodying it in the Constitutional Treaty. Others thought this arrangement should retain flexibility.

Finally, comments were made on the recognition of the role of civil society and the recognition of a European statute for associations.

In conclusion, a consensus was reached within the Group on the following points:

- the role of the social partners should be recognised explicitly in Title VI of the draft treaty,
- provision should be made for consulting management and labour in all fields concerning them,
- the treaty should stipulate that the Union encourages and promotes social dialogue,
- the procedure concerning collective agreements as set out in Article 139 TEU should be maintained.

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