

Working Group XI

Working Document 41

Working Group XI “Social Europe”

Subject: **Comments on points 1 to 7 of the Mandate**

Members of Working Group XI on “Social Europe” will find hereafter a paper from Mr. Valdo Spini, alternate member of the Convention.

Draft Mandate

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 fundamental values of the Community and the Union are enshrined in article 2 TEC and in article 2 TEU. Some of them are extremely important, such as equality, equal opportunities (however, article 13 of the TEU provides that the Council shall take unanimously appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) and social justice.

Discrimination is also prohibited by article 21 of the Charter of Fundamental Rights of the European Union, equal opportunities are enshrined in article 23 of the same Charter, and the principles of social justice by chapter IV (Solidarity) of the Charter. The incorporation into the future Constitutional Treaty of the Charter of Fundamental Rights would spell out more clearly the values and the principles on which the future Europe is based. At all events, it will be necessary to make these concepts more explicit.

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?

The objectives of the Community and of the Union are indicated in article 2 TEC and article 2 TEU: however, these make no mention of the guarantee to supply economic services of general interest, or the extension of the principle of social and economic cohesion at the regional level and no longer only at the national level, and a strengthening of the objectives of high employment. With these added, the joint provisions of articles 2 TEC and 2 TEU would describe the "social market economy" model. What is involved here is defending and promoting the European social model, which is one of the distinctive features of the identity and the purposes of the very existence of the European Union.

The right to social security and social assistance is recognised by article 34 of the Charter of Fundamental Rights, while the right of access to services of general economic interest is enshrined in article 36 of that Charter.

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?

Social policies are currently set out in article 3(1)(i)-(k) and regulated by Titles VIII (Employment), XI (Social Policies,

Education, Vocational Training and Youth) and XVIII (Economic and Social Cohesion) in the TEC; the importance of services of general economic interest is provided for in article 16 TEC; cooperation with relation to employment services, removing obstacles to worker mobility and the commitment to ensuring a balance between the supply and demand for jobs in every region and in every sector of production is envisaged by article 40 (the decisions of the Council are taken by a qualified majority vote, acting in co-decision with the European Parliament); and lastly, article 42 TEC provides the right for migrants to have access to social services currently available where they work (the relevant decisions are taken by the Council unanimously, in co-decision with the European Parliament).

These are all competencies which I believe should be shared between the Union and the Member States, and a powerful policy-setting and coordination role should be given to the Commission. Tighter procedures should also be introduced for EU policy on employment, with the possibility of **setting** binding targets for the Member states.

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

The importance and effectiveness of the open method of coordination largely depend upon its informality. It may, however, be necessary to mention it in the future Constitutional Treaty in order to establish the legal basis for the open method of coordination, provided that this does not hamper the Method by excessive formalities. So far the it has been applied very little.

The progress report on the work of the European Convention submitted by its President to the European Council in Copenhagen (12-13/12/2002) seems indeed to propose a codification of the open method of coordination.

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

Employment Guidelines are approved by the Council of Ministers with a qualified majority after hearing the opinion of Parliament, the Committee of the Regions, the Economic and Social Committee and the Committee on Employment, acting on a proposal by the Commission, based on the conclusions of the Employment European Council.

According to the economic theory of clubs (J.M.Buchanan: Economic Theory of Clubs, *Economica*, Vol 32, 1965, which identifies the forms of cooperation that are necessary in a community that needs public and worthy goods that individuals do not produce in sufficient quantities on their own) the role of the Commission should be strengthened in preparing the Broad Economic Policy Guidelines, with the participation of the European Parliament. Similarly, the role of the Commission to make proposals should also be strengthened in relation to the adoption of the Employment Guidelines. Furthermore, since growth and full employment are closely connected macroeconomic objectives, both sets of Guidelines should be made as homogeneous as possible, either by unifying the two documents or by unifying the adoption procedures (choosing the one which makes the Commission's proposal the least amendable).

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

The Union has often set itself wide-ranging ambitious objectives that have ended in small-scale projects, or at least take a long time to bear fruit (one only needs to think of the Lisbon indications regarding the information and knowledge-based society). In order to address the problem of the dramatic gap that exists between objectives and results, the Union must equip itself with adequate instruments and streamlined and efficient procedures.

With regard to social policies, unanimity is required only for decisions having to do with the right of migrants to be given access to current social services in their place of work (article 42 TEC, on matters specifically identified by article 137(3) (social security and pensions; the protection of the unemployed; collective representation in defence of workers' interests; the working conditions of non EU immigrants legally resident in the community; contributions for job creation and increasing employment), decisions relating to specific actions in the field of economic and social cohesion that are not already provided for by the existing Structural Funds (article 159(3)) and when defining priorities and objectives and (re-) organising the Structural and Cohesion Funds, and regulations and rules guaranteeing coordination between the Funds and the other existing financial instruments. In my opinion, there is no economic reason for retaining these procedures; moving to a qualified majority co-decision procedure would only bring benefits in terms of the

ability to act promptly and reduce rent-seeking activities due to the privilege granted by the right of veto.

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?

In the same way that the Italian constitution provides that the social partners (in particular, trade unions) are only recognised if they have an internal democratic structure, the European social partners, which are already expressly referred to in articles 136-145 of the TEC should, *a fortiori*, be mentioned in the future constitutional Treaty.

