

Working Group XI

Working Document 42 REV 1

Working Group XI “Social Europe”

Subject: **Comments on the Preliminary Draft Report**

Members of Working Group XI on “Social Europe” will find hereafter WD 042 Comments on the Preliminary Draft Report (WD 038)

On the Preliminary Draft Report of the Working Group XI “Social Europe”

Following our debates on 21-22 January 2003 I would like to submit the following proposals to the preliminary draft report of the Working Group XI “Social Europe”:

1. I suggest that in addition to human dignity, fundamental rights, democracy, the rule of law, tolerance, respect for obligations and for international law the values of the Union contained in Article 2 of the preliminary draft Constitutional Treaty also include:

- **social justice,**
- **solidarity,**
- **equality, in particular equality between men and women,**
- **equal opportunities.**

2. The general objectives of the Union contained in Article 3 of the preliminary draft Constitutional Treaty should include the following social objectives:

- **full employment** instead of promotion of a high level of employment or promotion of full employment. In my opinion there is a substantial difference between the objective of full employment and the objective of promotion of full employment. I therefore, suggest including the former.
- **social market economy**, rather than other suggested options like European social model or open market economy.
- **high degree of social protection,**
- **social inclusion,**
- **equality between men and women,**
- **universal access to efficient and high-quality services of general interest,**
- **high level of public health.** In view of modern-day challenges I would be willing to support action at the EU level in two specific health-related areas: protection against communicable diseases and bioterrorism.

3. After hearing the arguments of several members of the working group, I think that **the exceptions of Article 137(6) TEC** concerning the exclusive competence of the members states to regulate pay, the right of association, the right to strike, the right to impose lock-outs **can be stricken out**. Indeed, they are obsolete and their absence in the Treaty seems to make no effect on the distribution of competences between the EU and the member states.

I am also in favour of regrouping the current Treaty provisions related to social matters and concentrating them in a **single chapter on the Union's social policy**. Placing such a chapter next to the chapter on Union's economic policy would give it an appropriate weight and visibility.

4. I agree with the predominant majority of the members of the group that a provision on **the open method of coordination** should be inserted in the Constitutional Treaty and suggest following Prof. Frank Vandenbroucke's formula in doing so.

5. As to the coordination of economic and social policies, I support Mr. Adrian Severin and other colleagues in the working group who advocate for a **provision on structured social dialogue at the EU level and formalising of the social tripartite summits** prior to the spring meetings of the European Council.

6. As to **the extension of qualified majority voting (QMV)**, I agree with Prof. Frank Vandenbroucke's proposals to apply QMV to the technical coordination of social security systems and to the declaration of all European collective agreements as legally binding.

22 January 2003

Le 22 janvier 2003

CONTRIBUTION ÉCRITE DE PERVENCHE BERÈS
AU PROJET DE RAPPORT DU GROUPE DE TRAVAIL EUROPE SOCIALE

I. Les valeurs essentielles de l'Union

- page 4, paragraphe 4 :

Il est essentiel que la **justice sociale** soit intégrée parmi les valeurs de l'Union. Il s'agit d'un signal fort en direction des opinions publiques qui soupçonnent l'Europe de vouloir sacrifier la protection sociale et les mécanismes de solidarité au profit du marché unique et de la loi de la concurrence. J'estime par ailleurs qu'il faut tenir le plus grand compte de la mise en garde de Madame Genowefa Grabowska, s'agissant des craintes qui se manifestent dans les anciennes démocraties populaires où la justice sociale a été préservée jusqu'à récemment.

- page 4, paragraphe 5 :

(...) It was furthermore **requested** that the wording dignity of the person should be employed instead of human dignity **at least in the languages where there is no genderisation terminology**
(...)

II. Les objectifs de l'Union

- Les services publics, ou services d'intérêt général, sont des outils incontournables pour maintenir la cohésion sociale et territoriale. La sauvegarde de ces missions, dans leur accès, leur efficacité, et leur viabilité financière peut être assurée dès lors qu'il est confié aux organes de l'Union la charge de s'assurer, par ses propres actions ou celles de ses Etats membres, un développement doté d'un niveau d'homogénéité et de cohérence économique et sociale sur l'ensemble de son territoire.

Proposition de rédaction :

*L'Union veille à ce que l'exercice des droits fondamentaux de la personne soit garanti et s'assure de sa **cohésion économique, sociale et territoriale**.*

- Je suis fermement opposée à l'utilisation de la formule "paix sociale", qui recouvre une réalité floue et qui présente le risque d'une interprétation abusive pouvant conduire à interdire, en cas de conflit social, la grève et l'action collective des salariés.
- Les différents éléments énoncés parmi les objectifs sociaux de l'Union constituent ensemble son modèle social. Il serait donc impropre d'introduire dans ce chapitre la notion même de "modèle social européen", conformément à sa vocation englobante. En revanche je soutiens les très nombreuses voix qui se sont prononcées en faveur de **l'économie sociale de marché**.
- La recherche d'un **haut niveau de santé** doit figurer parmi les objectifs essentiels de l'Union. Il n'est pas concevable qu'un secteur qui touche au plus près la vie des citoyens soit traitée comme une donnée émanant du marché unique (libre-circulation des médicaments, etc...). La santé nécessite au contraire une approche spécifique permettant la pleine réalisation des objectifs sociaux qui en découlent.

III. Compétences de l'Union

L'enjeu est non seulement de préserver les compétences actuelles de l'Union dans le respect du principe communautaire mais aussi de lui donner les moyens de mettre en œuvre les objectifs qu'elle s'est fixés. L'argument du caractère intouchable de l'équilibre atteint à Nice n'est pas recevable car sinon il n'y aurait pas eu besoin d'organiser une Convention.

- Respecter le principe de subsidiarité en matière sociale doit conduire à exprimer avec fermeté une **clause de non-recul des normes sociales** nationales là où par ailleurs existe ou existera une compétence européenne de manière à garantir les avancées acquises dans chacun des Etats-membres. M Kristensen notamment l'a rappelé au cours de notre dernier échange.
- La mise en œuvre des objectifs fixés au chapitre précédent appelle la reconnaissance d'un droit d'**action publique** de l'Union, conformément aux principes de subsidiarité et de proportionnalité. Si l'action publique est déjà possible par voie législative pour la réalisation de certains objectifs, d'autres au premier rang desquels **les services d'intérêt général** nécessitent

l'ouverture d'une capacité de l'Union à agir, y compris pour soutenir des SIG nationaux et locaux, voire européens dans le cadre des compétences partagées, c'est à dire de l'article 11 du projet du présidium.

Proposition de rédaction :

"L'Union est compétente pour créer et organiser les SIG nécessaires à la cohésion sociale et territoriale de l'Union dans le respect des principes d'égalité, de continuité, de qualité, d'adaptabilité, d'accessibilité et d'évaluation démocratique".

- La mise en oeuvre des objectifs fixés au chapitre précédent appelle également et forcément :
 - la reconnaissance d'une compétence de l'Union en matière de **santé** ;
 - la reconnaissance de la compétence de l'Union pour fixer des **standarts sociaux minimums**.

Ces dispositions auraient idéalement leur place à l'article 137.1.

- Je renouvelle mon souhait de voir les exceptions prévues à **l'article 137.6 supprimées**.

VI. La relation entre la coordination des politiques économiques et la coordination des politiques sociales

Le projet de rapport propose des pistes de réflexion pour une rationalisation et un rééquilibrage de la coordination des politiques économiques et sociales, au stade de son élaboration. En revanche il n'est fait aucune mention des modalités nécessaires au contrôle du respect de ladite coordination par les Etats membres. A cet effet notre groupe de travail devrait s'inspirer de l'acquis du groupe de travail "gouvernance économique" qui, pour le respect de pacte de stabilité et de croissance, recommandait de *"permettre à la Commission d'adresser directement à l'Etat membre concerné un premier avertissement"*, et soutenir la proposition de certains membres de ce groupe prévoyant que *"dans les étapes suivantes, le Conseil statue par un vote à la VMQ sur base d'une proposition de la Commission, en excluant toujours du vote l'Etat membre concerné"*.

La prise en compte des éléments de coordination des politiques économiques et sociales par les Etats membres appelle également l'association étroite des parlements nationaux au stade de leur

élaboration, afin que ces derniers en tiennent compte pour définir leur politique économique et plus particulièrement au moment de l'adoption du budget de leur Etat.

VI. Procédures : le vote à la majorité qualifiée

Je soutiens les très nombreux collègues favorables à l'extension du VMQ au Conseil, et je souligne que les conclusions de notre groupe doivent être en phase avec ce qui est déjà acquis, à savoir l'application de la co-décision et du VMQ sur « les choix politiques de base ». Cela doit nous conduire à proposer le VMQ et la codécision à l'ensemble des questions sociales et plus particulièrement :

- l'article 13 : à tout le moins, je demande que le point 6 du chapitre VI du projet de rapport soit biffé ;

- l'article 42 : afin que puisse être affirmé le principe de continuité des droits à la retraite, indifféremment des Etats membres où l'activité professionnelle a été effectuée et que les bénéficiaires de cet article soient les citoyens et pas uniquement les travailleurs ;

- l'article 137 : à l'exception des régimes de sécurité sociale.

VII. Le rôle des partenaires sociaux

S'agissant du rôle des partenaires sociaux, je plaide pour que soient traitées la question de la représentation des organisations de retraités qui représentent une très forte part de nos concitoyens, et un secteur transversal où les répercussions sociales sont majeures.

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 of the 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.~~ "The Treaty of 1957 already included a chapter on Social Policy (Part III, Title III, Chapter I) as well as a chapter on the free movement of workers (Part II, Title III, Chapter I). On this basis already in 1958 the Council adopted regulations on the free movement of workers (No. 15) and on the coordination of social security of workers (No. 3 and 4); in 1967 a Directive in the field of occupational safety and health (Directive 67/548/EEC was adopted. -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 program worked out in consequence. 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 labor and increasing participation of social partners in the economic decision making of the Community and of working personnel in the development of their enterprises. After the Paris summit, in implementing the Commission action programme,

several directives in the field of occupational safety and health and of labour law were adopted. This important, though limited in scope (as it does not at all touch on social

security) agenda reflects the vast efforts deployed over two centuries in Member States in the area of social policy, culminated in the modern European welfare State, an achievement common in each and every European nation, and indeed one of the finest flowers of modern European civilization.

- 4 The Working group had [5] meetings during which it examined the seven questions set out in its mandate. It heard the following experts : Mrs 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 of the TEC and Articles 1 and 2 of the TEU set out the overall values and basic objectives of the Community and the Union. The values expressed herein 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 the 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 prominently expressed already 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 the equality between men and women being 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 would not be limited to equal opportunities between men and women, but that it should be interpreted in its broadest sense so as to cover also race, sexual orientation and disability. Some proposed that not only equal opportunities but also equal treatment should be included, but 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 its multicultural and multiethnic character of the 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 rather 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 vs. 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 L'article 136 TCE, qui indique les objectifs de la politique sociale de la Communauté fait référence aux droits fondamentaux, "tels que ceux énoncés dans la charte sociale européenne signée à Turin le 18 octobre 1961 et dans la charte communautaire des droits sociaux fondamentaux des travailleurs de 1989". Dès lors que la Charte des droits fondamentaux contient de nombreuses dispositions en matière sociale, le groupe recommande que référence y soit faite dans la disposition du traité constitutionnel qui succèdera à l'actuel article 136 TCE.

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 which 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 of the 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 objectives of the Community in social policy, 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. Article 136 of the EC Treaty indicates the objectives of the Community in social policy, 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 over the objective of full employment. Members of the Working Group noted that according to Eurobarometer measurements 90% of the public expects Europe to take up action on liquidating 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 to express them in the second part of the Treaty, which will deal with the 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 existing article 3 TEC.
- 5 In relation to employment goals, some argued, without expressing an 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 large trend in favour of inscribing 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 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 to the central place of equal opportunities between men and women among the objectives, some also suggested to refer to equal treatment. Other suggestions which received the 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 their inclusion among the objectives included the 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 the 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 formulations in the current Article 16 TEC and guarantee the access to and thus the 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 the 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. Opportunité de définir les compétences actuellement attribuées à l'Union/Communauté en matière sociale. Compétences nouvelles éventuellement attribuées à l'Union/Communauté en matière sociale, et catégorie de compétences dans lesquelles placer celles-ci le cas échéant.

- 1 Les objectifs poursuivis par l'Union en matière de politique sociale figurent à l'article 136 du TCE : "la Communauté a pour objectifs la promotion de l'emploi, l'amélioration des conditions de vie et de travail permettant leur égalisation dans le progrès, une protection sociale adéquate, le dialogue social, le développement des ressources humaines permettant un niveau d'emploi élevé et durable et la lutte contre les exclusions".
- 2 L'article 137¹ précise comment les atteindre : "En vue de réaliser les objectifs fixés à l'article 136, la Communauté soutient et complète l'action des États membres dans les domaines suivants:
 - a) amélioration, en particulier, du milieu de travail pour protéger la santé et la sécurité des travailleurs,
 - b) les conditions de travail,
 - c) la sécurité sociale et la protection sociale des travailleurs,
 - d) la protection des travailleurs en cas de résiliation du contrat de travail,
 - e) l'information et la consultation des travailleurs,
 - f) la représentation et la défense collective des intérêts des travailleurs et des employeurs, y compris la cogestion,
 - g) les conditions d'emploi des ressortissants des pays tiers se trouvant en séjour régulier sur le territoire de la Communauté,
 - h) l'intégration des personnes exclues du marché du travail,
 - i) l'égalité entre hommes et femmes en ce qui concerne leurs chances sur marché du travail e le traitement dans le travail,
 - j) la lutte contre l'exclusion sociale
 - k) la modernisation des systèmes de protection sociale".
- 3 Seuls les domaines visés au paragraphe a) à i) peuvent faire l'objet par voie de directive, d'adoption de normes minimales. Cette adoption se fait à la majorité qualifiée et en codécision

¹ Texte de l'article 137-1 tel qu'issu du traité de Nice

avec le Parlement sauf pour les points c), d), f) et g) qui relèvent de l'unanimité et de la consultation du Parlement européen.

- 4 Enfin, le traité exclut à l'article 137-6 toute intervention communautaire dans les domaines des rémunérations, du droit de grève et le droit de lock-out.
- 5 Le groupe s'est interrogé sur la pertinence du champ des compétences actuelles figurant dans le traité et tout particulièrement sur les domaines où actuellement toute intervention est exclue selon l'article 137-6 du traité
- 6 Le groupe est apparu divisé sur cette matière. Si tous les membres ont estimé que le domaine social devait rester un domaine de compétence partagée, les opinions ont divergé sur de possibles extensions ou réductions du champ actuellement couvert. Plusieurs membres ont souhaité que l'ensemble des dispositions ayant trait de près ou de loin aux questions sociales soit regroupé dans un seul chapitre (notamment par le rapprochement des articles 136 et 137 des dispositions des articles 13 (non-discrimination), 16 (services d'intérêt généraux) et 42 (sécurité sociale dans le cadre de la libre circulation des travailleurs).
- 7 S'agissant des exceptions figurant à l'article 137 paragraphe 6, le groupe a constaté l'absence de consensus pour leur modification. En effet, un certain nombre de membres du groupe ont estimé qu'elles étaient obsolètes et pouvaient être supprimées. Ainsi, à propos du paragraphe 6 de l'article 137 TCE, il a été relevé qu'il prévoit que les dispositions de cet article ne s'appliquent pas aux rémunérations. Si ce paragraphe vise à exclure l'adoption de prescriptions minimales uniformes pour les États membres dont le contenu est essentiellement la fixation du niveau et le mode de détermination des rémunérations, telles que, par exemple, la fixation d'un salaire minimum garanti, il n'exclut pas, par contre, la possibilité d'adopter des mesures ayant pour objet l'amélioration du milieu de travail pour protéger la santé et la sécurité des travailleurs, les conditions de travail, l'information et la consultation des travailleurs ou l'intégration des personnes exclues du marché du travail, même si elles peuvent avoir une incidence sur les rémunérations. Il en résulte que de nombreux instruments communautaires contiennent des dispositions relatives aux rémunérations.
- 8 En sens inverse, un nombre important de membres du groupe ont en effet marqué leur attachement à ses limites fixées à l'action européenne. Ils ont notamment fait valoir qu'il

s'agissait en effet de domaines dans lesquels les particularités de chaque État membre sont très importantes.

- 9 D'autres ont fait valoir que le champ couvert par les dispositions de l'article 137-1 était trop vaste alors qu'il était parfois difficile d'envisager quelle initiative législative l'Union pourrait prendre dans certains domaines (l'alinéa 137-1 f a été cité à cet égard). Or cette situation faisait redouter à certains États membres une action législative soutenue dans les domaines considérés, les conduisant pour s'en prémunir, à conserver la règle de l'unanimité. Selon cette argumentation, une meilleure définition du champ de l'action communautaire pourrait aller de pair avec une généralisation du vote à la majorité qualifiée (cf. point 6 du mandat).
- 10 A propos des services d'intérêt général, l'accent a été mis sur le fait qu'ils étaient liés à l'accès aux services de base (santé, éducation,...) pour tout citoyen qui devait figurer selon de nombreux membres parmi les objectifs. Les services d'intérêt général sont, selon eux, un moyen afin de réaliser cet objectif.
- 11 L'article 16 actuel du TCE traite des services d'intérêt général en reconnaissant leur légitimité mais en précisant qu'ils doivent être gérés sans préjudice des articles 86 et 87 TCE (droit de la concurrence et régimes d'aides d'état). L'article 86, paragraphe 2 TCE prévoit cependant que "les entreprises chargées de la gestion des services d'intérêt économique général (...) sont soumises aux règles du (...) traité notamment aux règles de concurrence, dans les limites où l'application de ces règles ne fait pas échec à l'accomplissement en droit ou en fait de la mission particulière qui leur a été impartie".
- 12 L'article 16 TCE est cependant de nature essentiellement déclarative et ne permet pas de fonder une véritable législation européenne des services d'intérêt général. Certains membres ont dès lors souhaité que le traité constitutionnel contienne une disposition permettant à l'Union de légiférer en matière de services d'intérêt général au niveau européen. Others considered the existing competences to be sufficient.
- 13 Le groupe ne recommande donc pas de modification dans le partage actuel des compétences mais souhaite que l'ensemble des dispositions relatives aux questions sociales soit regroupé dans un même titre de la future constitution. Une meilleure clarification du champ d'action européen pourrait être envisagée permettant ainsi une généralisation du vote à la majorité

qualifiée. L'action européenne pourrait notamment se porter en priorité sur les domaines d'action étroitement liés au fonctionnement du marché intérieur et/ou qui ont un fort impact transfrontalier ainsi qu'en matière de droits fondamentaux.

IV. Le rôle de la méthode ouverte de coordination ~~et sa place dans le Traité constitutionnel~~

- 1 Après les groupes de travail gouvernance économique et simplification, qui ont tous deux recommandé avec majorité de donner rang constitutionnel à la méthode ouverte de coordination, le groupe est revenu sur cette question.
- 2 La méthode ouverte de coordination a été créée par le Conseil européen réuni à Lisbonne les 23 et 24 mars 2000. Il s'agit d'une nouvelle forme de coordination des politiques nationales.
- 3 Suivant de près le modèle tracé en matière de coordination des politiques de l'emploi (articles 126 et 128 TCE), le Conseil européen a défini cette méthode comme suit : *"permettant de diffuser les meilleures pratiques et d'assurer une plus grande convergence au regard des principaux objectifs de l'UE et conçue pour aider les États membres à développer progressivement leurs propres politiques, [cette méthode] consiste à*
 - définir des lignes directrices pour l'Union, assorties de calendriers spécifiques pour réaliser les objectifs à court, moyen et long terme fixés par les États membres;*
 - établir, le cas échéant, des indicateurs quantitatifs et qualitatifs et des critères d'évaluation par rapport aux meilleures performances mondiales, qui soient adaptés aux besoins des différents États membres et des divers secteurs, de manière à pouvoir comparer les meilleures pratiques;*
 - traduire ces lignes directrices européennes en politiques nationales et régionales en fixant des objectifs spécifiques et en adoptant des mesures qui tiennent compte des diversités nationales et régionales;*
 - procéder périodiquement à un suivi, une évaluation et un examen par les pairs, ce qui permettra à chacun d'en tirer des enseignements.*
 - L'approche retenue sera totalement décentralisée, conformément au principe de subsidiarité; l'Union, les États membres, les collectivités régionales et locales, ainsi que les partenaires sociaux et la société civile seront activement associés dans diverses formes de partenariat. Une méthode d'évaluation des meilleures pratiques en matière de gestion des*

changements sera élaborée par la Commission européenne en coordination avec différents prestataires et utilisateurs, à savoir les partenaires sociaux, les entreprises et les ONG."
(Conclusions de la Présidence, Conseil européen de Lisbonne, 23 et 24 mars 2000, point 37).

- 4 A Lisbonne, le Conseil européen a ainsi marqué sa volonté d'étendre la méthode ouverte de ~~inscrite dans le titre Emploi du TCE~~ coopération à d'autres domaines, tels que la société de l'information et la politique de recherche, la politique d'entreprise, la politique en matière d'éducation et de formation professionnelle, la lutte contre l'exclusion sociale et la protection sociale.
- 5 Une approche empirique a été utilisée pour développer et adapter cette méthode aux caractéristiques particulières de chaque domaine d'action. La méthode est donc appliquée de manière différente selon les domaines d'actions spécifiques, une procédure ad hoc étant à chaque fois dessinée. C'est pourquoi, on parle parfois de méthodes ouvertes de coordination, au pluriel.
- 6 Le groupe a salué l'utilité et l'efficacité de la méthode qui permet aux États membres, au sein de l'Union de créer des synergies afin de traiter ensemble des matières d'intérêt commun.
- 7 Un consensus s'est dégagé, à l'exception de quelques membres restés sceptiques, quant à l'insertion dans le traité d'une disposition de caractère horizontal définissant la méthode ouverte de coordination et sa procédure et précisant que cette méthode ne peut être appliquée qu'à défaut de compétence de l'Union inscrite dans le traité ainsi que dans les domaines autres que ceux où la coordination des politiques nationales fait l'objet d'une disposition particulière du traité définissant la coordination (en matière économique (Article 99) et dans le domaine de l'emploi (Article 128), notamment). En effet, ces procédures de coordination inscrites dans le traité sont obligatoires et permettent aux institutions de l'Union d'adresser des recommandations aux États membres et, même d'infliger des sanctions aux États membres ne suivant pas la ligne qu'ils se sont fixés. Cependant, la méthode ouverte de coordination pourrait être appliquée aux domaines où une coordination des politiques nationales est prévue au traité sans cependant que celui-ci n'en définisse les modalités, notamment en matière de réseaux trans-européens (art. 155 TCE), de politique d'entreprise (art. 157 TCE), de recherche et le développement technologique (art. 165 TCE).

- 8 La disposition du traité relative à la méthode ouverte de coordination devrait être introduite dans le Traité Constitutionnel, sous le Chapitre concernant les instruments de l'Union parmi les mesures non-législatives.
- 9 Cette disposition devrait définir les objectifs de la méthode ouverte de coordination, à savoir définir au niveau de l'Union des objectifs communs dans une matière donnée à réaliser concrètement au niveau national, fixer un calendrier d'action et des indicateurs de résultat permettant d'évaluer si les actions nationales sont à même de réaliser les objectifs, et organiser l'échange d'expériences entre États membres
- 10 La portée et les limites de la méthode devront également être précisées en indiquant que la méthode ouverte de coordination est un instrument, afin de réaliser des objectifs de l'Union, qui ne peut être mis en œuvre qu'en l'absence de compétence législative de l'Union et de compétence de celle-ci en matière de coordination sectorielle inscrite dans le traité (articles 99, 104 et 128) ou lorsque l'Union n'a compétence que pour définir des normes minimales, afin d'aller au-delà de ces normes. La méthode ouverte de coordination constitue en effet un instrument complétant l'action législative de l'Union mais ne pouvant en aucun cas s'y substituer. Elle permet de soutenir et compléter les actions des États membres.
- 11 L'inscription de la méthode ouverte de coordination dans le traité devra cependant, tout en permettant de conserver la souplesse de l'instrument, contribuer à en améliorer la transparence et le caractère démocratique, en définissant sa procédure et en désignant les acteurs et leur rôle respectif. A cet égard, la méthode serait mise en œuvre à chaque fois par décision des États membres réunis au sein du Conseil sur base d'une proposition de la Commission européenne, avec information du Parlement européen. Les parlements nationaux et les autorités régionales ou locales pourraient être consultés au cours de la mise en œuvre, ainsi que les partenaires sociaux lorsque la méthode ouverte de coordination est appliquée au domaine social. La société civile pourrait éventuellement être consultée lorsque la matière faisant l'objet d'une coordination s'y prête. La Commission serait chargée d'analyser et évaluer les plans d'actions décidés dans le cadre de la méthode ouverte de coordination. Le résultat de l'analyse de la Commission pourrait faire l'objet de débats au sein du Parlement européen et des Parlements nationaux. La Commission aurait le pouvoir d'adresser des recommandations aux gouvernements des États membres et d'informer directement les parlements nationaux de leur avis afin de déclencher une procédure de "peer review" et de susciter un débat national,

l'objectif étant de permettre aux États membres dans le cadre de l'Union de se fixer des objectifs communs tout en conservant la flexibilité nationale dans leur réalisation.

- 12 Bien que quelques membres du groupe aient souhaité que la liste des matières auxquelles la méthode ouverte de coordination pouvait être appliquée devrait figurer dans le traité, le consensus qui s'est dégagé au sein du groupe va à l'encontre d'une telle liste mais préconise l'insertion d'une clause horizontale telle que décrite ci-dessus.
- 13 Des domaines dans lesquels la méthode a vocation à s'appliquer ont été mentionnés au sein du groupe, tels que l'éducation, la protection sociale, l'harmonisation fiscale et la définition de minima sociaux.

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. Some members of the group recommends that this procedure should be formalised in the Constitutional Treaty.
(From the German point of view the formalisation in the treaty is not necessary since the EC

in Sevilla already confirmed the coordinating role of the General Affairs Council for the European Spring Council.)

- 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. Germany does not consider a change as necessary. BEPG and the Employment Guidelines have already been synchronised in order to avoid any subordination of one policy area to another.
- 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. Germany prefers the BEPG and the Employment Guidelines to remain separate. Rather should there be a clear distinction concerning the priorities of each process. E.g. the BEPG should mainly deal with macroeconomic aspects as well as medium term structural issues of economic policy – the employment guidelines should give specific recommendations on employment and social policies. 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). Germany favours separate responsibilities for economic and social issues in the commission in order to match the division of responsibility at council level (ECOFIN – Council ESPHCA). -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 Les procédures : extension éventuelle de la codécision et du vote à la majorité qualifiée à des matières pour lesquelles l'unanimité est actuellement exigée.

- 1 La situation actuelle a été rappelée notamment au regard des modifications apportées par le traité de Nice qui entrera en vigueur le 1er février 2003. Dans le domaine social, le Conseil agit en adoptant des directives en codécision avec le Parlement européen. Ces directives fixent des règles minimums.
- 2 Le Conseil se prononce pour l'adoption de prescriptions minimales à la majorité qualifiée à l'exception de quatre domaines pour lesquels la règle de l'unanimité s'applique avec consultation du Parlement européen :
 - la sécurité sociale et la protection sociale des travailleurs (article 137-1 c),
 - la protection des travailleurs en cas de résiliation du contrat de travail (article 137-1
 - la représentation et la défense collective des intérêts des travailleurs et des employeurs, y compris la cogestion (137-1 f),
 - les conditions d'emploi des ressortissants des pays tiers se trouvant en séjour régulier sur le territoire de la Communauté (137-1 g)

Il a été rappelé que le traité de Nice prévoit qu'à l'unanimité, pour trois des matières mentionnées ci-dessus - alinéas d), f) et g) - le Conseil pouvait, sur proposition de la Commission et après avis du Parlement européen étendre à l'unanimité le recours à la codécision avec le Parlement et le vote à la majorité (application de l'article 251).

Les États membres conservent la possibilité d'appliquer des normes plus protectrices des travailleurs (137-5).

Enfin, plusieurs Conventionnels ont fait valoir que les dispositions de l'Europe sociale ne se limitaient pas aux articles 136 et 137 mais concernaient également les articles 13 (non discrimination), 42 (régime de sécurité sociale), et 93, 95 et 175 (fiscalité). Le débat devait également porter sur leur éventuel passage à la majorité qualifiée.

- 3 Le groupe a longuement débattu de la perspective de modifier ces dispositions en élargissant le champ du vote à la majorité qualifiée.

Les Conventionnels, membres du groupe, se sont répartis en deux catégories d'inégale

importance :

- selon une active minorité, comprenant un certain nombre de représentants des gouvernements, il convenait de ne pas rouvrir les débats qui avaient eu lieu à Nice concernant l'extension du champ de la majorité qualifiée. L'équilibre atteint alors était satisfaisant. Les dispositions actuelles devaient donc demeurer inchangées. En outre, le traité de Nice étant seulement sur le point d'entrer en vigueur, il paraîtrait peu approprié d'envisager dès à présent sa modification alors que ses dispositions, en particulier celles rendant possible une extension de la majorité qualifiée, n'avaient pas eu encore la possibilité de montrer leur efficacité ;

- à l'inverse, pour les autres membres du groupe, il était possible d'ores et déjà d'envisager des améliorations par rapport au dispositif existant. Ils ont notamment souligné que la perspective de l'élargissement les rendait indispensables : le statut quo conduirait dans la pratique à l'impossibilité pour l'Union d'adopter des réglementations dans les domaines couverts par l'unanimité. Certains ont souhaité une généralisation totale du vote à la majorité qualifiée couvrant non seulement l'article 137-1 mais également les articles 13, 16, 42, 95 et 175 du traité. D'autres ont envisagé une extension limitée. Lorsqu'une extension limitée du vote à la majorité qualifiée a été évoquée, les dispositions les plus souvent citées comme devant rester à l'unanimité ont été celles qui portent sur les régimes de sécurité sociale ainsi que sur les conditions d'emploi des ressortissants des pays tiers.

- enfin, certains ont repris l'argumentation développée sous point III ci-dessus et selon lequel si les compétences étaient mieux définies, l'acceptation du vote à la majorité qualifiée en serait facilitée

- 4 En fonction des débats au sein du groupe, il apparaît qu'une généralisation du vote à la majorité qualifiée sera difficile à envisager. En revanche, certains progrès pourraient être envisagés comme le passage à la majorité qualifiée des alinéas d), f) et g) du présent article 137-1. Une telle perspective étant déjà ouverte par le traité de Nice, à des fins de clarification et de simplification, elle pourrait être appliquée dans la future constitution. Il en est en effet difficilement envisageable que l'on ne puisse déterminer, à la seule lecture du texte constitutionnel, si telle ou telle matière relève de telle ou telle procédure d'adoption (majorité qualifiée ou unanimité). Or tel serait bien la situation si l'article 137-2 issu de Nice était repris sans changement dans le traité constitutionnel.

- 5 Seules les dispositions relatives aux régimes de sécurité sociale continueraient donc à relever de l'unanimité. Certains ont fait valoir que la coordination des régimes de sécurité sociale était essentielle dans la perspective d'un véritable marché unique. Si la totalité du champ ne pouvait être couvert par la majorité qualifiée, les mesures techniques de coordination devraient à tout le moins pouvoir faire l'objet d'une adoption à la majorité qualifiée. Cette piste mériterait sans doute d'être explorée.
- 6 S'agissant des demandes tendant à l'adoption à la majorité qualifiée des dispositions prévues à l'article 13, il ne semble pas qu'un consensus puisse se dégager pour modifier la situation présente.
- 7 **The group supports qualified-majority voting as the general rule, though exceptions should remain possible.** ~~Le groupe recommande que le passage à la procédure de l'article 251 (majorité qualifiée et codécision) pour les articles 42, 137-1 d), f) et g), prévu par le traité de Nice, soit d'application dans la future constitution. L'alinéa 137-1 e) continuerait de relever de l'unanimité tandis que la disposition de type "passerelle" introduite à 137-2 serait supprimée.~~

VII. Le rôle des partenaires sociaux tel qu'il pourrait figurer dans le Titre VI de l'avant-projet de Traité constitutionnel traite de la vie démocratique de l'Union

- 1 Les traités actuels accordent un rôle spécifique aux partenaires sociaux dans le domaine de la politique sociale. L'article 138 porte une disposition générale sur ce type de consultation et donne à la Commission obligation de consulter les représentants des employeurs et ceux des employés avant de présenter des propositions dans le domaine social. L'article 137 dispose que les États membres peuvent confier la mise en œuvre de certaines directives aux partenaires sociaux. L'article 139 ouvre la possibilité d'établir des relations conventionnelles, y compris des accords, entre la Communauté et les partenaires sociaux. Tout accord cadre entre les partenaires sociaux intervenu sur la base de l'article 139 peut conduire, sur proposition de la Commission, à l'adoption par le Conseil de directives qui sont l'exacte reproduction de l'accord intervenu. Six accords, dont deux sectoriels, ont fait l'objet de cette procédure, à savoir :
- l'accord sur le congé parental,

- l'accord sur le travail à temps partiel,
- l'accord sur les contrats à durée déterminée,
- l'accord sur l'organisation du temps de travail des travailleurs mobiles dans l'aviation civile,
- l'accord sur l'organisation du temps de travail des travailleurs en mer,
- l'accord sur le télétravail.

- 2 De plus un rôle important des partenaires sociaux a été reconnu dans le « processus de Lisbonne ». Il a pris la forme de « sommets sociaux » réguliers à l'occasion des Conseils européens de printemps qui donnent aux partenaires sociaux l'occasion de donner leur point de vue sur les questions traités par le Conseil.
- 3 Le groupe de travail a unanimement salué le rôle des partenaires sociaux et l'importance du dialogue social en Europe. Il a généralement été de l'avis que ce rôle des partenaires sociaux, déjà inclus dans les traités, devait être reconnu, facilité et autant que possible, renforcé. Un accord est apparu pour que ce rôle soit spécifié au titre VI de la Constitution, et il a été indiqué que ce rôle devait être distinct de celui joué par la société civile organisée, qu'il conviendra également de reconnaître.
- 4 La question d'une définition plus précise de ce que sont les partenaires sociaux été évoquée à différentes reprises, sans que toutefois le Groupe ne retienne cette approche.
- 5 Il a été souvent souligné que les partenaires sociaux devaient être consultés dans tous les domaines qui les concernent et un nombre significatif de membres du groupe ont émis des propositions pour que le rôle des partenaires sociaux et du dialogue social puisse être renforcé, en particulier dans la concertation macro-économique, la création de législation et pour que soit facilitée la négociation au niveau européen, en donnant force de loi à toutes les conventions collectives européennes. La suppression à cet égard des dispositions du traité qui limitent l'étendue des négociations a été à différentes reprises proposée sans qu'un consensus puisse être établi.

Certains membres ont toutefois considéré que l'autonomie des partenaires sociaux devait être respectée et que la réussite du dialogue social rendait souvent la législation superflue.

Le groupe de travail a également manifesté sa satisfaction de l'importance croissante prise par dialogue social et souligné le rôle majeur que pourra jouer l'organisation des sommets sociaux tripartites à la veille des Conseils européens de printemps. Un certain nombre de membres se sont prononcés en faveur de la formalisation et/ou de l'institutionnalisation de ce processus, par son inscription dans le Traité constitutionnel. D'autres ont estimé qu'il convenait de préserver un caractère flexible à ce dispositif.

Enfin des observations ont été faites quant à la reconnaissance du rôle de la société civile et la reconnaissance d'un statut européen des associations.

En conclusion, un consensus s'est établi au sein du Groupe pour que :

- le rôle des partenaires sociaux soit reconnu explicitement au titre VI du projet de traité,
- leur consultation soit prévue dans tous les domaines qui les concernent,
- le traité dispose que l'Union encourage et promeut le dialogue social,
- la procédure concernant les accords collectifs telle qu'elle est prévue à l'article 139 TCE soit maintenue.

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The European Convention

Working Group XI “Social Europe”

Submission on Preliminary Draft Report (WG XI / WD 38)

Proinsias de Rossa, Member of the Convention

I wish to make the following comments on the draft report which I welcome as a comprehensive and balanced reflection of the debate within the Working Group.

II. Introduction

This is a useful statement of the background. I particularly appreciate the reference to the seminal Paris Summit of 1972 which highlighted the importance of social progress on the eve of the first enlargement of the EEC. It is appropriate to restate that commitment as we prepare for the latest, historic enlargement.

III. I. Basic Values

Solidarity and Equality are key values. I would support inclusion of Social Justice as a value. I note that the values of Human Dignity and Tolerance are already contained in the ‘skeleton’ paper.

Equality between Men and Women and Equal Opportunities may more correctly be considered as Objectives.

I can accept the inclusion of a reference to the Charter on the lines proposed in paragraph I.6.

IV. II. Objectives of the Union

I support the references to Sustainable Development, Promotion of Full Employment, Social Inclusion, a High Degree of Social Protection and Equal Opportunities. As indicated above I consider that Equality between Men and Women should be included among the Objectives of the Union. Equal Opportunities must not be limited to the gender question but should be interpreted

to cover race, sexual orientation and disability.

I am not convinced that Employability – with the associated issues of education and Training - should be considered an Objective of the Union though it is an important issue which should be picked up in Part Two of the Constitutional Treaty.

I wish to insist on the reference to access to services of general interests but would prefer the sentence to read “access to universal, affordable, efficient and high-quality services of general interest whose operation are facilitated by competition and internal market rules.”

V. III. Competences

I agree in general terms that there should be no change in the current distribution of competences but have sympathy with the Commission proposal for a limited ‘opening’ on public health (epidemics and bio-terrorism).

Regrouping of references to social provisions could be appropriate and could strengthen the treaty’s social emphasis but this reorganisation of the text should be approached on a logical basis so as not to gain clarity in one section at the expense of another.

I favour a reference to the Social Market Economy and would suggest that the second indent of Article 3 of the preliminary draft Constitutional Treaty should be redrafted as “ promotion of economic and social cohesion within the social market economy.”

Paragraph III.13 is confusing, containing three separate concepts. The second sentence, which requires clarification, should become a separate paragraph. The last sentence should be deleted.

What is most important is the degree of political will with which the Union acts in implementation of its existing competences. For example, at Nice, the European Council adopted a Social Policy Agenda which aims at providing a comprehensive and coherent approach to confronting new challenges across a range of policy areas – full employment, modernising social protection, promoting gender equality and combating poverty. The commitment of the EU institutions and of the Member States to fulfilling this agenda will be a critical indicator of the priority accorded to

social progress.

IV. Open Method of Co-ordination

Any reference to the Open Method should be short and general in nature. The proposals in paragraphs IV.3 – 13 are too detailed. A horizontal clause along the lines of the Penelope text may prove acceptable.

VI. V. Economic Policy Co-ordination and Social Policy Co-ordination

I agree with the section as drafted. The roles of the General Affairs Council and of the European Parliament in this area must be emphasised.

VII. VI. Qualified Majority Voting

Effectiveness in an enlarged Union requires greater use of QMV in the social field. The proposals in paragraph VI.7 should be clarified. The current exclusions in Article 137.6 are obsolete and should be removed

It has been convincingly argued that Article 137 as a whole should be revisited in the light of current realities.

VII. Role of the Social Partners

I refer to my separate submission on Questions 4-7 of the Mandate.

It is important to recognise that the roles of the Social Partners and of Civil Society organisations are separate and distinct.

Suggestion from MEP, Lone Dybkjaer to formulation of article 2 on values in the constitutional treaty:

"Human dignity, solidarity, equal opportunities, [including in particular] equality between men and women"

The ideal solution would be without the brackets, but this could be a relevant compromise.

SOCIAL EUROPE WORKING GROUP
COMMENTS FROM UK, POLISH AND ESTONIAN GOVERNMENT
REPRESENTATIVES ON THE PRELIMINARY DRAFT REPORT
23 JANUARY 2003

We welcome this report, which we believe provides a good basis for a step forward for European social policy. This is important – the EU cannot be a credible force for good in the wider world if it is indifferent to questions of social justice in European society or how its citizens are treated at work. Indeed we believe that the introduction to the report should acknowledge this precise fact.

I. VALUES

Para. 5: We are pleased with the Treaty values proposed, in particular those on “equal opportunities”.

Para. 6: The working group agreed at the outset that the Charter was outside its remit – and so we consider that the working group should not decide whether to include a reference in the Treaty to the Charter. We would like paragraph 6 to be deleted on this basis.

II. OBJECTIVES

Para. 6: The report records the view that a reference to the “European social model” should be included in the objectives of the Union. The European social model comprises diverse social systems with diverse and specific solutions. The working group’s report should recognise that this diversity should be treated as an asset and a source of strength. The Treaty should respect and nurture a Europe of diverse social systems, but one with shared objectives and values.

Para. 9: We agree with the proposed Union objectives of “the promotion of full employment” and “equal opportunities between men and women”. We note that, following comments by members to the Social Europe working group meeting of 22 January, Chair Georges Katiforis has proposed to drop his proposed Treaty value of “promoting a high level of employability”.

We would question whether “access to basic and continuous education” should be a core Treaty

value, as the Community has limited competence to act in this field.

We acknowledge that high quality public services are fundamental to Europe's values, and feel that services of general economic interest are well covered by the existing Treaty. However, in order to reach an acceptable compromise on whether or not to include services of general economic interest (SGEI) in Union objectives, we suggest that any reference to SGEI in the Constitutional Treaty should acknowledge that these services are subject to the existing Articles 12 and 81 to 89 and especially the European competition rules; and that responsibility for their organisation is a Member State issue. We therefore suggest replacing the final clause of para. 9 with ("...high quality public services whose organisation is the responsibility of individual Member States, and is consistent with the rules of the internal market. Organisation of public services on a European level should respect the specificities of national systems").

III. COMPETENCES OF THE UNION

Para. 2: The final point (k) is incomplete. Please add the Nice Treaty text "without prejudice to point (c)" to this point.

Para. 7: We are firmly of the opinion that the exceptions in Article 137.6 should continue to apply.

The final sentence in paragraph 7 of the report states that "many Community instruments contain provisions on pay". However in the opinion of the UK Article 137 does not cover pay – and on legislation brought on part-time and fixed-term work the UK made statements to the Council minutes to this effect. The UK does not accept that the exclusion of "pay" in Article 137.6 only relates to methods of calculating pay.

The other legislation and instruments on pay which are referred to were all brought under other Articles of the Treaty. We suggest that this fact could be clarified by removing the text of the paragraph from (and including) "intended to improve the working environment..." and replacing it with "under other parts of the Treaty".

Para. 12: As stated above, the UK, Polish and Estonian Governments recognise the importance of high quality public services in Europe, but considers that responsibility for their organisation should remain with individual Member States. We therefore disagree with some of the members of the

Social Europe working group who said that the Treaty should contain a provision enabling the Union to legislate on services of general economic interest.

Para. 13: We endorse the conclusion that there should be no extension of Community competence in the social field at the present time. We also strongly agree with the view expressed by several members of the Social Europe working group at its meeting of 22 January that careful consideration should be given to the legal consequences of any regrouping of the social provisions of the Treaty, if this is to be done.

IV. THE OPEN METHOD OF CO-ORDINATION (OMC)

Para. 7: We agree with the conclusion that the OMC could be incorporated into the Treaty. We support the view that any Treaty reference to the OMC should enable flexible application of the OMC.

Para. 9: We agree with many of the points made by members at the Social Europe working group meeting on 22 January that any Treaty reference to the OMC should respect the fact that the use of the OMC varies depending on the policy area to which it is applied. We therefore suggest that the first two sentences of paragraph 9 be amended to “This provision should define the aims of the open method of co-ordination and the basic elements which will be applied. These will include, the identification of common objectives, establishing a timetable for action as well as, where appropriate, outcome indicators...” We also suggest adding at the end of the paragraph, “The precise nature of a given Open Method of Co-ordination procedure will be guided by the nature of the issue involved, rather than being specified in the Treaty.”

Paras. 10-11: We are interested to see comments on the possible future development of the OMC. As outlined in the comments on paragraph 9 above, there is no single variant of the OMC – each OMC process is different. To remain a useful tool, the OMC should be applied flexibly. If OMC is incorporated into the Treaty then over-prescription and over-harmonisation should be avoided. The definition of the OMC should be consistent with the Lisbon Council conclusions. National Action Plans should be drawn up on a case-by-case basis, depending on the policy area.

Para 13: We do not consider that the OMC is suited to fiscal harmonisation and the definition of social minima.

V. THE RELATIONSHIP BETWEEN ECONOMIC AND SOCIAL POLICY CO-ORDINATION

Para 3: We believe that existing procedures provide the best means of co-ordination of economic and social policies. These procedures could be improved, for example through the integration of social and employment objectives into the Broad Economic Policy Guidelines.

We consider that no changes are needed to Article 128.2. The present requirement that the Employment Guidelines be “consistent” with the Broad Economic Policy Guidelines (BEPGs) does not imply any subordination to the BEPGs. It is a common sense requirement that guidelines which are concerned with the promotion of employment growth should be consistent with those that are concerned with the promotion of economic growth. The fact that from now on the guidelines will be agreed by the European Council highlights the need for them to be consistent. As only four members of the working group spoke in favour of a specific textual amendment to Article 128.2, We suggest that the report should be amended along the lines of “a number of members supported amendment of Article 128.2”. The second sentence of this paragraph should also be amended to reflect the fact that this was a view of some of the members of the working group, rather than a consensus position.

VI. QUALIFIED MAJORITY VOTING (QMV) AND CO-DECISION

Para. 1: We suggest that the following wording is added to the end of paragraph 1: “The group recognised that it was necessary to modernise and improve Community rules for the protection of the social rights of workers who exercise their right to mobility.”

Para. 5: We do not consider that QMV can be extended to “technical co-ordination measures” in social security. Existing processes relating to Regulation 1408/71/EEC already provide for technical co-ordination of social security systems. Therefore the report should make it clear that the view expressed in the final two sentences of this paragraph, that technical co-ordination measures could be covered by QMV, is a view of only some of the members of the Social Europe working group.

Para 7: There is no consensus in the working group on whether to extend QMV in the social field (including Articles 13, 42, 63.4 and 137), and so the report should make that fact clear. Even those in the working group who did state that they favour an extension of QMV usually gave at least one area where unanimity should still apply.

Our objections to the extension of QMV in the social field are based on the need to respect national social systems, which vary enormously between EU Member States. We agree on the need for action to facilitate labour mobility in the Union, but in the field of social security, we do not believe that such action could be ring-fenced so as to maintain our ability to determine a national social security policy in line with individual Member States' needs. The report should note that the extension of QMV in social affairs could damage the competitiveness of converging economies. Harmonisation should not be taken to the level where social costs cannot be serviced by the state budget. European social policy making must take into account the different solutions in different Member States.

On the particular issue of Article 137.1(f) para. 9 of Section III on competences makes clear that this provision is unclear, yet Section VI on QMV proposes that QMV should apply. This seems inconsistent.

We suggest that the report should acknowledge that the Nice settlement has not yet been tested. The Nice settlement opens up the possibility for qualified majority voting, where the Council agrees in specific areas where it agrees unanimously. Before we try to extend QMV we should see how this provision operates in practice. This position is based on the belief, shared by many Member States, that the diversity of national social systems in EU Member States must be respected and maintained otherwise we may fail to achieve the objectives which we wish to see the EU set itself.

We would therefore like to propose the following wording for paragraph 7: "The group recognised that while QMV in European policy making should be the norm, for reasons of national diversity based on the particular traditions and cultures of Member States, it should not automatically be extended to social security and employment relations where Member States have different systems. What works well in one country may not be appropriate in another. The group re-affirmed the Nice settlement, which gave the Council the option to decide unanimously to move to qualified majority voting in some areas of the social field, if it so chose, following a proposal from the Commission and consultation of the European Parliament. The working group urges the Council to consider

how to address issues of cross-border mobility in the social field.”

It would also be appropriate to move the first sentence of paragraph 4 in Section VI to the end of the same paragraph, as we believe that this sentence well reflects the overall position in the working group. Also the report could be clearer in paragraphs 4 and 5 that comments in favour of extending QMV in the social field were not by any means shared by all members of the working group.

VII. THE ROLE OF THE SOCIAL PARTNERS

Para. 3: We agree in principle that the role of the social partners should be recognised in Heading 6 of the Constitutional Treaty.

Para. 4: We do not believe that the Treaty needs to define the composition of the social partners. It is already clear which organisations are represented in the social dialogue.

Para. 5: We would not wish EU collective agreements to be given the force of law, as some members have suggested. Social partner agreements should only have legislative or legal force, and thus bind those not party to their signature, if they have been endorsed by the Council of Ministers who are accountable to electorates.

Comments from Mr. Esko HELLE

Comments of Mr Esko Helle on the preliminary draft report of the Social Europe working group:

1) The draft report considers that services of general interest should be subject to the rules of the internal market (page 8). Also basic services such as health and education are mentioned in this context (page 7).

It is not acceptable that the rules of internal market are applied to such basic services of welfare state. It belongs to the competence of individual Member States to decide the organisation of these services.

2) With the exception of working conditions of 3. country citizens and the social security of workers, the qualified majority voting should be applied as a general rule. The decision making will be blocked due to the enlargement, if the QMV is not widely used.

3) In spite of the existense of the internal market, free movement of services, capital etc. the right to strike has not been recognized at the EU level. The article 137.6 in the Treaty, excluding also the right to strike, should be deleted.

The Treaty should shelter the the right to negotiate and conclude collective agreements (Albany principle) and the right to strike from economic freedoms. A clause, modelled according to article 2 of the so called Strawberry Regulation 2679/98, should be included in the new Constitution.

Comments by **Mr. JACOBS**

A. Note on the preliminary draft report of WG XI

1. **General comment on the report**

The report does not always convey accurately areas where there was “consensus” vs “large support” vs “different views expressed” and could be shortened.

2. **Specific comments**

Introduction (page 2):

Paragraph 3 gives an outdated description of the development of European social policy. It simply refers to the Paris summit of 1972 and says nothing about what has happened since then (successive extensions of EU competences in social policy in Single European Act, Maastricht treaty, Amsterdam treaty and Nice Treaty). It is also silent about the fact that social Europe does not develop from a “tabula rasa” . We support Ms Kauppi’s suggestion to make clear from the outset that the main responsibilities for social policy remains national.

This paragraph should either be expanded to give an accurate description or be deleted.

Values (pages 3-5)

Paragraph 5 on page 4 recommends that the values of solidarity, equality between women and men and equal opportunities be added to article 2 of the constitutional treaty can be supported.

Two questions arise:

- Why limit values of equality to gender perspective only ?
- Paragraph 6 page 5 suggests adding a reference to the charter of fundamental rights in the article replacing article 136 of the TEC. This disregards the fact that the charter of fundamental rights contains many fundamental rights which do not fall in the scope of social policy. A reference in a more general article of the Treaty would be more appropriate.

Objectives (pages 5-8)

Paragraph 2 on page 5 recalls that Article 2 of the TEC includes some “social” objectives next to economic objectives. Since the recommendation of the draft report essentially focus on “social” objectives, it should state clearly that its recommendations have to go hand in hand with economic objectives (e.g. competitiveness, economic growth, etc.).

Paragraph 3 on page 6 (sentence before the last one) refers to a consensus on the notion of “full employment”. This is not accurate and is contradictory with the more accurate report of views expressed reported in paragraph 5. The last 2 sentences of paragraph 3 should therefore be deleted from paragraph 3.

Paragraph 6 on page 7 refers to the notion of “social market economy”. The report should explicitly mention the views of those who were against the use of this expression which does not exist in all EU languages and is only clearly understood in 2 or 3 member states (Germany and France essentially).

Competences (pages 8-11)

Paragraph 6 on page 9 refers to proposals made to re-group all matters relating directly or indirectly to social issues into a social chapter of the Treaty. They notably advocate including article 16 on services of general interests into the social chapter of the Treaty. UNICE is opposed to this. Moreover, we support the views expressed by Mr van Dijck that careful consideration should be given to the legal implications of moving the places of article 13 (anti discrimination) and article 42 (social security for workers making use of their right to free movement) in the social chapter of the Treaty would not entail a significant change.

Paragraph 8 page 10 refers to the views of those who opposed deleting article 137.6 of the Treaty (which says that wages and strikes are outside EU competences). This paragraph is crucial for UNICE, which does not accept the arguments of those who argue that this article is obsolete.

Paragraphs 8 and 9 page 10 refer to the areas subject to unanimity. They are crucial for UNICE and reflect employers' views, i.e;

- unanimity should remain for those areas because of national specificities,
- if QMV was generalised, then EU competences in sensitive areas should be excluded or significantly reduced.

The general recommendation of the group is that:

- the current division of competences between the EU and national players should not be modified,
- clarification of the scope of action could be envisaged to allow for a generalisation of QMV (the EU action should focus in priority on what is necessary for the functioning of the single market and transnational issues as well as fundamental rights).

UNICE fully agrees with the first point but believes that the second point should be redrafted to say that EU action should focus in priority what is necessary for the functioning of the single market and transnational issues as well as preventing discriminations. The reference to fundamental rights go well beyond EU competences in social policy (as shown notably in the text of the Nice charter on fundamental rights).

Open method of coordination

After the group on economic governance and the group on simplification recommended to give constitutional recognition to the open method of coordination, the draft report of the group on social Europe states a consensus (with a few exceptions) in favour of inserting a horizontal reference to the open method of coordination but only applicable in those areas where the EU has no competences to act and in areas where there is no formal

coordination procedure foreseen in the Treaty.

The formulation used in paragraph 7 on page 13 does not reflect the emerging consensus. UNICE could consider positively acknowledging in the constitutional treaty cooperation or coordination of national policies in specific fields clearly defined in the Treaty but not in the way it is drafted in the report. Paragraph 7 on page 13 should be redrafted to say that the horizontal reference to the open method of coordination should only be applicable to those areas where the EU has at least supporting competences and subject to modalities defined in specific provisions in part 2 of the Treaty.

Similar remarks apply to paragraph 12 page 15 on the same subject;

Paragraphs 9 to 11 page 14 set out unnecessary details about the open method of coordination would need to be either deleted or fundamentally redrafted. It is outside the remit of the group to make general considerations on the open method of coordination. The group should concentrate on saying whether, to what extent or how it sees the need for treaty modifications on the open coordination in areas of its competences (i.e. employment, social protection, etc.).

Relationship between economic policy coordination and social policy coordination (page 15-16)

Paragraph 2 stresses the importance of ensuring coherence between economic policy and social policy coordination while having distinct processes. It rightly sees the Spring European Council as the place to achieve this. However, UNICE has doubts about two points:

- the suggestion on the role of the General Affairs Council as sub-coordinator under the European Council,
- the suggestion that the procedure should be formalised in the Treaty (these details should not be in the treaty but in other texts).

Moreover, contrary to what is suggested in paragraph 3 page 16, UNICE is not in favour of amending article 128 of the TEC to delete references saying that employment guidelines

should be consistent with the Broad Economic Policy Guidelines. Indeed, the BEPG are the basis for sound economic growth without which there cannot be employment on a durable basis.

Extension of QMV (pages 16-19)

Paragraph 3 on page 17 another formulation than an “active minority” should be used to describe the group opposed to an extension of QMV (see joint contribution of UK, Spain, Poland and Estonia to which Ireland and German representatives said they could join in supporting most of the arguments presented).

UNICE agrees with the report when it says that a generalisation of QMV is difficult to envisage (paragraph 4 page 18). However, it strongly objects to the suggestion that QMV could be envisaged for some areas currently decided by unanimity (e.g. protection against dismissals and co-determination). The arguments for keeping unanimity for decisions on social security are also valid for the other areas currently subject to unanimity under article 137. By contrast, UNICE would support extension of QMV to article 42 of the treaty (social security coordination linked to free movement of people). Paragraphs 4 on page 18 and 7 on page 19 should be amended to reflect the existence of these views.

Role of social partners (pages 19-21)

No remarks on the draft report which reflects fully the views of the social partners and reflect the emerging consensus in the group.

Comments on the Preliminary Draft Report of WG XI

- 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?**
5. ... 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 and social justice~~.
- 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**
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 ~~f~~, and access to efficient and high-quality services of general interest ~~whose operations are subject to the rules of the internal market~~ the raising of the standard of living and quality of life.
- 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.**
4. Lastly, in Article 137 (6) the Treaty rules out any Community intervention in the fields of pay, the right of association, the right to strike and the right to impose lock-out.

Comment: The citation of the relevant article was not complete!

7. The Group was ~~unable to reach a consensus~~ **divided** on **the question of** amending the exceptions in Article 137 (6). A **large** number of Group members felt that these were obsolete and could be deleted. [...]

8bis. However, regarding the reference of Article 139 (2) to all matters covered by Article 137, including the exception by Article 137 (6), the group suggests - as a compromise and in line with a proposal made by the expert Vandenbroucke - an amendment to Article 139 (2) as followed:

"Agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 137, **paragraph 1**¹, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission."

12bis. Some other members of the group suggest to amend Article 86 (2) TEC as followed:

"Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue producing monopoly shall ***not*** be subject to the rules contained in this 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.***~~ The development of trade must not be affected to such an extent as would be contrary to the interests of the Community."

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. **The services of general interests should no longer be subject to the rules on competition and on internal market.**

¹ According to the Treaty of Nice.

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

Comments:

Concerning question 4 (point 7 to 13), I would like to underline that I do not see any reason to insert a horizontal provision about the open method of co-ordination into the Treaty. There is a need for co-ordination of national economic policies with the procedure defined in Article 99 TEC, and there is a need for co-ordination of national employment policies with the procedure defined in Article 128 TEC. There is also a need to co-ordinate the national policies on social issues, especially as mentioned in Article 137, paragraph 1, (j) and (k) TEC. But there is no need to create an horizontal provision for a procedure that will be applied only in that single policy area.

In that context I would like to advert that the description of the scope of application of the OMC in Point 7 and in point 10 each is contradictorily. It is not clear whether the open method of co-ordination shall be applied (besides the areas of member states competencies) in all areas, where the Union has legislative competencies (point 7), or only in those areas, where the Union has legislative competencies for defining minimum rules (point 10).

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

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.
5. It was ~~recommended by a number of members of~~ **consensus within** the Group that the European Parliament should be given a greater role in the economic and social policy coordination processes, **that means the assent procedure has to be applied.**

5bis. In conclusion, the group recommends that the close relationship between economic and social policies needed to be reflected in the Treaty. That means among other things to formalise the procedure for the Spring European Council as described above in the Treaty, secondly to change the subordination of the employment guidelines by amending Art. 128, 2 and thirdly to strengthen the role of the European Parliament by enshrining the assent procedure in the relevant treaty articles on economic and social coordination.

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

2. ...

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 94** and 175 (tax). The debate should also relate to their possible transition to qualified majority voting.

3. ...

- 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 93, 94** 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.

Comments of Mrs Piia-Noora KAUPPI and Riitta Liisa KORHONEN to the draft report of the working group on Social Europe

Introduction

- The way in which the evolution of European social policy is explained is too narrow focusing mostly on events of 30 years ago. A more comprehensive introduction should be included to show the entire evolution of this field or alternatively the confusing parts should be deleted completely from the report. In its current form the text is misleading concerning the development of Social Europe.

I. Basic Values

- It should become apparent from the report that there was no serious objections to the values that are expressed in the current Treaties and that in general they were regarded satisfactory. A number of members expressed they're content to simply reorganising the current articles without having to reopen the values.
- In paragraphs 3 and 6, when referring to the Charter on Fundamental Rights, it should be noted that the working group on the Charter and the Convention plenary agreed a consensus that was depended on 1) no new competencies being added along with the Charter 2) the Charter should in no way interfere with national arrangements on basic rights. The text should not present the view that the Charter is accepted as such. In paragraph 6 it should also be noted that the outcome depends on the final legal status of the Charter.

II. Objectives

- The term full employment should always be accompanied by: "the promotion of" full employment.
- The Working Group was unanimous that the objectives should be short and sweet.

III. Competences

- A total consensus existed in the Working Group that the main responsibility for social affairs lies in the Member States and that it should remain that way.

IV. Open Coordination

- There was no consensus in the working group until now about the role of the Open Method of Coordination in the new Constitution.

V. Policy coordination

- The notion that employment guidelines must conform with economic guidelines should remain. The Working Group did not agree on the view expressed in paragraph 3. This does not weaken employment guidelines but rather strengthens them.

VI. The Procedures

- The provisions of the Nice Treaty on QMV are sufficient. The Working Group should recommend that the Nice Treaty provisions remain in the Constitution as such.
- The text must reflect that there was broad opposition to extending QMV beyond Nice.

VII. The Role of Social Partners

- It was unanimous in the Working Group that the so called "civil dialogue" is totally different from social dialogue. Therefore it should not be included in this section. The question 7 in the Working Group mandate does not cover these matters - which as agreed does not play a part in social dialogue. Question 7 was not about civil society consultation, but exclusively about the role of the social partners.

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 have been built around three several themes: supporting economic growth and the construction of the Single Market, 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.

Justification

In general, the introduction is too long and in some points, it is not written in a politically neutral

way. Progression of the European social policy is described in a selective way giving the impression that not much has happened in the last thirty years. That is why, we propose that the references to the 1968 Council decision and 1972 Paris Summit are deleted. Alternatively the entire text of the introduction should be written in a comprehensive way to cover all elements of the evolution of the Community social policy.

- 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?**
2. 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 as proposed by the Working group on Charter which noted, that the Charter should not be reopened and it should not create new competencies for the Union (especially on social issues) and it should not infringe the workings of the national systems of fundamental rights. The working group however suggests, but that a clear link or reference to the Charter could be established in the Article on basic ~~values~~.

4. Many members expressed their content with the way the current Treaty Preambles and Articles define values of the Union and support that the present balance of economic and social values is preserved in the Constitution. However, ~~There~~ 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, while majority of members emphasized that this should be considered as an objective. With regard to equal opportunities, ~~some majority of~~ members 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 not only gender equality, but also for example 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 this would rather to be considered as an objective. 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 depending on the final legal status of the Charter.

[This chapter should be transferred to be before the conclusions]-

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 promoting 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.) [This sentence is unclear and confusing.]
5. In relation to employment goals, some argued, without expressing opposition to the objective of promoting full employment, that a high level of employment is a better formulation and that it should be kept in the Constitution, because it is ~~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 the promotion of 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 promoting full employment. ~~Several~~ Some 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~~ Some members also pointed to the need to strive not only for promotion of full employment or a high level of employment but also to strive to ensure the quality of jobs. Some members underlined that all of these could be regarded as means rather than objectives and should therefore not be included in the general objectives.
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, competitivity, 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 while there was some members who think that the present Treaty reference to the concept of open market economy is better and should be given preference.

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. [There was no proper discussion concerning the services of general interest, so it should not be mentioned in the Report. On the other hand, this is a horizontal issue, since it concerns also other services, not only social services. In this respect, it goes beyond the mandate of our working group.]~~
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~~

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,
 - (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".

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

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.

4a (New)

A total unanimity existed in the Working Group that the main responsibility for social affairs lies in the Member States and that it should remain there.

JUSTIFICATION: This is an important point that was made by the Working Group and should not be overlooked or taken for granted.

5. ~~The Group~~ Some members 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). 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.
6. 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). ~~Some 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.) .[What is the relevance of explaining the definitions of pay in the report, since the Group did not find consensus in this matter?]

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~~some 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.~~

Justification:

There was no proper discussion concerning the services of general interest, so it should not be mentioned in the Report. On the other hand, this is a horizontal issue, since it concerns also other services, not only social services. In this respect, it goes beyond the mandate of our working group.

13. The Group ~~does not therefore~~ recommends ~~that any change in~~ the current distribution of competences should remain unchanged, but would like all social provisions to be regrouped under a single title of the future Constitution for the purpose of simplification. 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~~ Some members ~~underlined, 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). However, some members remained sceptical about the usefulness of including this method in the Constitution. 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 Some members suggested that 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.

Justification:

There was no consensus about this in the working group until now.

9. If there would be a provision in the Treaty, it ~~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. At the same time, t~~The~~ scope and limits of the method ~~will~~ would 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 not only to include the method into the Constitution, but also 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.~~

Justification: This is a practical matter not of constitutional importance. The group did NOT agree to make such recommendations.

- ~~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.~~

Justification: There was NO consensus on this matter. Employment guidelines can not be in contradiction with the BEPG. This does not weaken employment guidelines but rather strengthens them.

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. If the Council will so decide, oOnly 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-remain an option 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 group strongly stressed that any reference to or development of a civil dialogue most not in any way effect the status of social dialogue. There was a consensus that civil society is a totally separate issue. 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 independent 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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Comments by Mr Sören Lekberg, Swedish member of the Convention, to the Preliminary Draft Report of Working Group XI "Social Europe"

Stockholm 22nd January 2003

Please find below my comments to the Preliminary Draft Report of the Working Group XI "Social Europe". My comments mainly relate to those paragraphs, where I see a need for amendments, deletions or clarifications. Paragraphs not referred to are acceptable as they stand.

Introduction

Para 3

The paragraph provides an incomplete and incorrect overview of the history and impact of EU social policy, suggesting that the European welfare state is a product of the European Union itself. The last sentence of the paragraph should be deleted.

I have the following proposal for a new text to replace the last sentence of the paragraph

"The Amsterdam Treaty became a watershed in the development of social policy competences. The new Treaty gave a new impetus, providing a new title on employment coordination as well as a new revised Social Chapter, thereby facilitating efforts to expand and strengthen EU social policy, while at the same respecting the principle of subsidiarity".

Basic values

Para 4

The term "race" should be replaced by "ethnic origin".

Para 5

I would prefer the neutral term “gender equality” instead of “equality between men and women” (see also para 9 under “social objectives”).

Para 6

I am not inclined to accept the idea that a special reference should be made to the EU Charter of Fundamental Rights in an article under the Social Chapter. My opinion is that the social provisions of the Treaty should stand on their own. The Charter should be included as an Annex or a Protocol to the Treaty, taking due regards to the principle of subsidiarity. The incorporation of the Charter, as stated in the report of working group II, is to be seen as a complementary to an EU accession to the EHCR, and should in no way modify the competences between the Union and the Member States.

Social objectives

Para 3

The last sentence is unnecessary and should be deleted, as it is unclear whether there is a cause and effect-relation between this statement and the previous text. In addition, there must be a presumption that all our proposals can, when needed, be backed up by evidence.

Para 9

I would prefer the following amendments and deletions to the list of social objectives referred to in the paragraph:

*“...: sustainable development, promotion of full employment **and quality in work**, social inclusion, a high degree of social protection, **equality between men and women, equal treatment, regardless of ethnic origin, sexual orientation and disability, promotion of children’s rights** (and access to*

efficient high-quality services of general interest, whose operations are subject to the rules of the internal market)”.

The suggested wording “*promotion of employability and access to basic and continuous education*” ***should be deleted***, as they cannot be considered objectives but rather means to achieve full employment and growth.

Competences

Para 7 and 8

I wish to refer to the majority view of the group that the respect of the autonomy of the social partners and the national differences of the collective agreements systems should be maintained. I would prefer that this position is explicitly reflected in the report, especially in the discussions concerning article 137. 6. In my opinion the provisions in article 137. 6 should remain unchanged.

A new para 12 bis

With reference to recent EJC decisions concerning internal market regulation having consequences for health care, brought up by Minister Frank Vandenbroucke in the hearings on January 21st as well as by a number of the group members - referred to in the minutes of the meeting of 11 december - I would recommend an insertion of the following text in the report, tentatively as a new article:

“Several members advocated that due to the shortcomings of the present regulation in article 152 the Constitutional Treaty should have a wording incorporating the development of case law within the health care field”.

Open method of cooperation

Para 7

Having no objections to the general conclusion to formalise principles of the open method of coordination in the Constitutional Treaty, while maintaining the flexibility of the method, I am, however, sceptical to the formulations in the paragraph indicating that the method should, in all instances, be accompanied by sanctions. First of all, the meaning of the wording is unclear. Secondly, sanctions as a general instrument in all cases is not preferable, as the open method of coordination should be applied with flexibility (as indicated in para 11) and differently in various social policy areas. Thirdly, for the time being there are neither any real possibilities nor any real desire to resort to legal sanctions within the framework of any of the processes where the method is applied.

Para 11

I question the notion to give the Commission a right to consult the national parliaments when to apply the open method of coordination. The method is per definition an intergovernmental cooperation and thus based on the assumption that the Member States pursue a policy approved and entrusted by their parliaments. At the same time I take note of the idea that the Commission should establish direct contacts with the national parliament to launch a peer review or stimulate a national debate. According to my interpretation this seems to be in line with the recommendation by the Working Group IV to codify in the Constitutional Treaty a wording promoting the active involvement of national parliaments in European affairs.

Para 12

A list enumerating the policy areas where to apply the open method of coordination has no merit and provides no added value, as the allocation of competences is already enshrined in the Treaty. In addition, such a list will undermine the flexibility of the method.

The relationship between economic policy coordination and social policy coordination

Para 2

Having no problems with the general view to synchronise the relationship between the economic and social policy coordination processes as well as the idea that each Council formation should be responsible for its respective contribution and the proposal to give the General Affairs Council an overall coordinating responsibility, I am, nevertheless, hesitant to codify this procedure in the Constitutional Treaty. This proposal would restrict the possibility for future reorganisations of the Council formations.

Para 3

There is no need to amend article 128.2, as the wording and message therein are clear enough. The economic and social policy coordination processes should be coordinated and consistent. At the same time I wish to underline the necessity of streamlining both processes and make them equally important to achieve the overarching objectives of the Union.

Para 5

I am doubtful whether the European Parliament should be given greater influence in the economic and social policy coordination processes. The reason for my position is the fact that the main responsibility for these policy domains lies within the competence of the Member States. A co-decision procedure might also run the risk of increasing the administrative burden with extended periods of negotiations.

Social partners

Para 5

Fully sharing the conclusions of the group I would like to reiterate my position that the right of trade unions to take sympathy action across national borders should be guaranteed by the Constitutional Treaty. With this in mind I wish to inform you that Sweden will shortly submit to the Convention a document containing a draft text on this specific issue.

Sören Lekberg

Änderungsvorschläge zum Preliminary Draft Report AG XI , Working Document 38 vom 21.1.2003, eingebracht von Eva Lichtenberger, Marie Nagy, Johannes Voggenhuber

Die unterzeichneten Mitglieder der AG Soziales Europa übermitteln hiermit ihre Änderungsvorschläge zum heute diskutierten Preliminary Draft Report .

Wir beschränken uns dabei auf jene Forderungen die wir übereinstimmend als einen Konsens in der AG betrachten. Unter Konsens verstehen wir dabei Ergebnisse, die von einer breiten Mehrheit unterstützt werden und auf keinen vehementen Widerstand oder nur auf den Widerspruch einzelner Mitglieder stoßen.

1. Wir unterstützen alle Anregungen, den Text zu kürzen, die Konklusionen zusammenzufassen und sie dem Text voranzustellen.
2. Bei den "Werten der Union" soll sich der Bericht entsprechend dem Mandat der AG auf die sozialen Werte konzentrieren.
3. Ein breiter Konsens besteht nach unserer Einschätzung über die Aufnahme der Solidarität, der sozialen Gerechtigkeit und der Gleichheit (insbesondere von Mann und Frau) als die sozialen Werte der Union in die Verfassung.
4. Ein ausdrücklicher Verweis auf die Grundrechtecharta und die darin enthaltenen sozialen Rechte, die sich aus der Würde des Menschen ergeben, sollen in den Bericht aufgenommen werden.
5. Wir unterstützen nachdrücklich die Forderung der breiten Mehrheit der Mitglieder der AG die vorgeschlagenen Ziele des Draft Reports um die "soziale Marktwirtschaft" zu ergänzen. Mit zahlreichen anderen Mitgliedern schlagen wir vor auch das "Europäische Sozialmodell" in die Ziele der Union aufzunehmen.
6. Eine aktive Politik der "Gleichstellung der Geschlechter" soll Ziel der Union sein, wie es ebenfalls von einer klaren Mehrheit der Mitglieder gefordert wird. Wir befürworten darüberhinaus die Aufnahme des "gender mainstreaming" unter die Ziele.

7. Als den zentralen Konsens der AG betrachten wir den Vorschlag, die qualifizierte Mehrheit im Rat als allgemeine Regel vorzusehen. In dieser Frage betonen wir besonders, dass es dagegen zwar heftige aber nur vereinzelte Widerstände gibt, die nach unserer Auffassung einen breiten Konsens der AG nicht in Frage stellen können.
8. Wir unterstützen alle Forderungen nach einem institutionalisierten Dialog mit der Zivilgesellschaft, dabei jedoch auch einer spezifischen Rolle der Sozialpartner.
9. Öffentliche Dienste von allgemeinem Interesse bzw. das Recht auf Daseinsvorsorge müssen verfassungsmaessig geschützt werden.

Amendments to the Preliminary Draft Report WG XI, WD 38 of 21.01.2003

Submitted by Eva Lichtenberger, Marie Nagy, Johannes Voggenhuber

The aboved mentioned Members of the WG Social Europe hereby submit their amendments to the preliminary Draft Report as discussed today 22.02.2003.

We have limited ourselves to those demands, which we consider to have a consensus in the working group. With consensus we refer to results that are supported by a broad majority and do not meet with fierce resistance or opposition of single members.

1. We support all suggestions to shorten the text, to summarise the Conclusions and to place them at the beginning of the text.
2. Under "basic values of the Union" the report should concentrate, as stipulated in the mandate of the WG, on the Social Values.
3. In our opinion, a broad consensus exists on the integration into the Constitution of Solidarity, Social Justice and Equality (especially between man and woman) as the Social Values of the Union.
4. An explicit indication of the Charta of Fundamental Rights and explicitly its social prerogatives, resulting from the dignity of humanity, should be integrated into the report.
5. We specifically support the request of the broad majority of Members of the WG to complement the proposed objectives of the Draft Report with the "Social Market Economy". Along with numerous Members we propose to integrate into the objectives of the Union the "European Social Model".
6. Active politics for the "equal status of genders" should be an objective of the Union, as demanded by a clear majority of the Members. Furthermore, we endorse the integration of "gender mainstreaming" as an objective..
7. We consider the proposal to apply a qualified majority in the Council as a general rule, as the main consensus of the WG. In this context we would like to stress the fact that there is heavy,

though isolated opposition on this issue, which, however, will in our opinion not jeopardise the broad consensus of the WG.

8. We support all requests for an institutionalised dialogue with the Civil Society including a specific role for the Social Partners.
9. Public services of general interest respectively the right of government services for the public must be protected by the Constitution.

Bruxelles, le 22 janvier 2003

Comments by Mr. Louis MICHEL

Monsieur le Président,

Cher Collègue,

Faisant suite à l'audition des experts et à nos débats de ce 22 janvier 2003, je vous serais gré de vouloir bien tenir compte des remarques qui suivent en vue de la rédaction du projet de rapport final.

1. Au point IV .3. relatif à la définition de la Méthode ouverture de coordination, je vous propose de remplacer la définition indiquée dans le document WD 38 par celle qui figure dans la contribution écrite WD 26 REV que j 'ai déposé le 16 janvier 2003 (page 81).

Cette suggestion me paraît pouvoir être soutenue compte tenu des propos exprimés tant par les experts et repris par certains membres de notre groupe de travail.

2. Je souhaiterais en outre, que le rapport final mentionne la référence dans le futur Traité, au Sommet Tripartite comme indiqué dans la contribution précitée, et ce dans le respect des conclusions du Conseil européen de Laeken

Je vous prie d'agréer, Monsieur le Président, cher collègue, l'assurance de ma considération distinguée.

Louis MICHEL

Amendements et commentaires de Madame Marie Nagy au document 38 du 17.01.2003

1 - Valeurs

Nouveau paragraphe 7 : Conclusions

Dans les ajouts, il faudrait préciser que la solidarité s'entend comme la solidarité entre les personnes, entre les générations et entre les Etats.

2 - Sur les objectifs (Sociaux)

Paragraphe 9 : Conclusions

Accord pour une formulation incluant le développement durable et les services d'intérêt général.

On peut se référer à une formulation telle qu'esquissée dans "Pénélope"(art.9) :

"l'union s'attache à promouvoir le modèle européen de société par le développement durable des activités économiques et sociales, par ... , par la promotion de services d'intérêt général, par ..."

Cf. Conv.468, et Conv.498.

3 - Sur l'introduction d'une clause horizontale

L'article 7 du projet du présidium fait référence aux "principes de l'action de l'Union" qui doivent guider la définition et la mise en œuvre des politiques de l'Union ; la contribution de F. Van Den Broucke fait référence à l'acquis communautaire en la matière.

Le Groupe devrait défendre dans ses conclusions une clause générale de "cohérence" ("consistency") entre les objectifs, compétences et politiques de l'Union (définition et mise en

œuvre) et une clause spécifique relative à la politique sociale similaire à celle qui existe actuellement pour la politique de l'environnement (art.6 TEC)

4 -

Donner une base juridique à la capacité de l'U.E. de légiférer dans le domaine des SIEG- (art.16 reformulé)

Cf. Proposition. Conv 468, pg4.

Nous proposons également que dans la 2ième partie du traité Constitutionnel, il y ait un chapitre spécifique sur les SIG et SIEG.

Cf. Conv 468 pg.5 et 6.

III

Paragraphe 13 - les conclusions doivent être reformulées - "le groupe confirme que la politique sociale est du domaine des compétences partagées, que les dispositions de l'art. 137,6 (TEC) doivent être levées, qu'un meilleur équilibre dans la mise en œuvre des différentes politiques de l'Union doit être garanti en termes de compétences, d'instrument et de procédures".

La dernière phrase de l'actuel paragraphe 13 devrait être supprimée.

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.

[A paragraph should be inserted here to explain the benefits of including health as an objective]

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,
 - (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) excludes the adoption of minimum requirements in the fields of the Treaty rules out any Community intervention in the fields of~~ pay, the right of association, the right to strike and the right to impose lock-out.

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

5. ~~With regard to 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 Although~~ Article 137(6) TEC ~~stipulates that the provisions of that Article shall not apply to pay. Although the purpose of the paragraph is to~~ rules out the adoption of uniform minimum requirements ~~on pay, 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 considered that, in general, the range of competences available at European level were adequate, 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. ~~However, b~~ Better clarification of the scope of European action could be envisaged, which in turn might make easier the in order to enable generalised use of qualified-majority voting. In this regard, the Group believes that European action, which should support and supplement the activities of the Member States, eshould primarily concern areas of action closely linked to the functioning of the internal market, preventing distortions of competition, and/or areas with a considerable cross-border impact as well as those relating to fundamental rights. Consideration should also be given in the final structuring of the Constitution to ensuring the visibility of articles relating to social policy.

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.
 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.
- ~~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~~

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~~not~~ be applied in cases where the Union's objectives could better be achieved through legislation ~~only where no Union competence is enshrined in the Treaty~~ and only 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's objectives could not better be achieved through legislation~~~~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. . Members of the Group thought social protection was particularly well suited to this approach, and considered that a specific reference as to how the open method could be applied in this case could be inserted into the Constitution, building on the description of the role and functioning of the Social Protection Committee (as established under article 144 of the Nice Treaty).

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.

6 The Group considers that the starting point for a possible consensus could be that the ~~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. This would leave ~~Subparagraph 137(1)(c) would continue to require~~ still subject to unanimity. ~~while~~ The "bridging" provision introduced in 137(2) would be deleted.

7A In addition, better clarification of the scope of European action could be envisaged in order to facilitate general use of qualified majority voting. In this context, the scope and language of Article 137 could be updated and modernised, in particular as regards matters currently falling under the unanimity rule, in order to address the specific concerns which some argue require the continuation of unanimity. This task should take place when the Convention comes to consider Part II of the Preliminary Draft Constitutional Treaty.

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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22 January 2003

Comments by Mr. Antti Peltomäki, Alternate Member of the Convention

To the Working Group on Social Europe

"Preliminary Draft Report", Working Group XI, Working Document 38, Brussels 17th January 2003, The European Convention/The Secretariat

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

Position: The proposal is basically acceptable.

We can also consider the proposal, put forward by Mr. Danny Pieters, on adding to Article 2 the value equality with specification: equality, such as equality between men and women.

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.

Position: The proposal is mainly acceptable.

The objectives should be amended to include the aim of achieving "a high level of public health".

The text "not least through access to basic and continuous education" should be barred from the recommendation included in item 9 due to its obscure meaning and incompatibility with a juridical text.

We do not support the proposal regarding the services of general interest and, therefore, the text at the end of item 9 with its unclear references should be removed.

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

Position: The proposal is mainly acceptable, as it does not introduce changes to the present delimitation of competences. It is not, however, appropriate to make a compilation of the justifications relating to competence, e.g., in the fields of non-discrimination, services of general interest or migrant workers' social security, as they are highly divergent in nature.

Provisions on tobacco and alcohol: the ways to provide a sufficient legal basis for health oriented tobacco and alcohol legislation should be considered.

We are ready to support the proposal, put forward by the Commission's representative, on the need to assess the provisions regarding the promotion of public health, which states that: "In addition, we need to assess what may be necessary in the text of the Constitution to achieve this objective, and in particular how far Article 152 should be adapted accordingly".

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

Position: 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.

V: The relationship between **economic policy coordination** and **social policy coordination**

Position: Finland's position remains unchanged based on the fact that it is appropriate that Union-level cooperation be separately defined in each individual case due to its varying nature. In this manner, the independent status of economic

policy coordination, employment strategy and cooperation on social protection should be secured in the future as well.

On the basis of the aforementioned position, the working group proposals included in the first and last sentence of paragraph two in Chapter V should be eliminated. It is not reasonable to attempt to formalise ongoing processes, and their interrelations, with detailed precision in the Treaty.

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

Position: The proposal is acceptable. **The exigency for unanimity with regard to work permits is excluded from the proposal and therefore to be re-claimed. 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.**

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

Position: The proposal is acceptable.

The motion was initiated by Danny PIETERS (indep) and bears the co-signatures of:

Karel De Gucht (lib)

Esko HELLE (left)

Anne VANLANCKER (soc)

Eva LICHTENBERGER (greens)

We have the honour of submitting the following text to the Convention:

“Considering the Charter of Fundamental Rights of the European Union and especially its articles 34 relating to Social Security and Social Assistance, and 35 relating to Health Care,

Considering the need to give a substantial and not a merely symbolic content to the social dimension of the European Union,

Considering that the open method of co-ordination applied in the social area cannot be the only way to give substance to the European social model,

Considering the importance of social protection standards both in the present and the applicant member states,

Considering the necessity to create the conditions for a level playing field throughout the whole Union, maintaining high standards of social protection,

We propose the Convention to decide to include in the Constitutional Treaty

the following competence of the Union, in accordance with the general set up of the Constitutional Treaty to be developed:

With respect for the choices of the Member States concerning the organisation, administration, structure and financing of their social protection, the Council may adopt in accordance with the procedure referred to in Article 251 (present) EC Treaty, the legislative measures necessary for establishing minimum standards of social protection in the following areas:

- social security benefits and social services providing protection in cases such as old age, incapacity for work, maternity, unemployment and dependency;
- social and housing assistance needed to ensure a decent existence for those who lack sufficient resources;
- health care.

The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing a social protection at a higher level.

Comments by Mr. D. ROCHE

22 January 2003

Mr Giorgos Katiforis
Chairman
Working Group XI – Social Europe
European Convention

Dear Giorgos

Re: Working Group XI – Social Europe: Comments by Mr Dick Roche, Member of the Convention,
on the preliminary draft Final Report

I wish to thank you and the Convention Secretariat for the fine work in preparing the preliminary draft Final Report. I welcome the report and believe that the Group is destined for a successful outcome.

May I also apologise for not being in a position to attend today's meeting due to other Ministerial commitments.

I am aware that you have requested that Members forward comments on the draft final report and I am enclosing these so that they may help inform your deliberations on the revised draft.

I look forward to reading the revised draft and to considering it at the final meeting of the Working Group on 27 January.

Yours sincerely

Dick Roche

22 January 2003

Working Group XI – Social Europe

**Comments by Mr Dick Roche, Member of the Convention, on the preliminary
draft Final Report**

Question 1 Article 2 of the preliminary draft Constitutional Treaty sets out to define 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?

Article 2 of the new Constitutional Treaty should be short, sharp and concise. The current preliminary draft recommends that that 'solidarity, equality between men and women and equal opportunities' be added to Article 2.

I believe that the Group discussed this matter in great detail at today's meeting. I understand that a consensus existed to include the values of 'social justice', 'human dignity', and 'solidarity'. While the original recommendations were welcome, I would fully support the inclusion of these values. I am also aware of the discussion on the issue of equality and would support either a direct reference to 'equality between men and women' or to 'equality', with a reference to gender equality being included perhaps in parentheses to signify its tremendous importance as an issue.

Paragraphs 5 and 6 should be reversed to ensure that the recommendation is the last paragraph of this Section.

Question 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 report recommends that sustainable development, the promotion of full employment, promotion of employability, not least through the access to basic and continuous education,

social inclusion and a high degree of social protection, equal opportunities between men and women be included as objectives in the new Treaty.

I welcome this recommendation but would like to make some brief points. I am happy to see the inclusion of “promotion of full employment”. While the use of the term “promotion of” offers some reassurance that the objective will not be interpreted in too restrictive a way, I would also like to see some language in the general body of this section of the report recognising this. I also feel that promotion of employability is already covered by the term “full employment” and that this objective could be deleted. I understand that a number of speakers made a similar point at today’s meeting.

In addition to the objectives referred to in the draft report, I would also welcome the inclusion in the objectives of the Union the term “high level of human health protection”.

I note that the report suggests that “access to efficient and high quality services of general interest whose operations are subject to the rules of the internal market” be made an objective of the Union. I believe that the current Article 16 TEC already makes sufficient provision for services of general interest and I would not support the inclusion of a reference to these services in the objectives of the Union.

Question 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?

I believe that the report is an honest reflection of the different strands of thought in the Group on this issue. I believe that it is correct to say that there was no consensus on the Group on any change to Article 137-6 and would recall that I favour no change. I understand the desire to create coherence in the social field by grouping all areas of Union action in a single title, but this should not be at the expense of creating incoherence in other areas. I understand that you propose to bring forward new language in this area seeking to overcome this concern and I look forward to considering this. I am also willing to look at the possibility of re-drafting Article 137-1 if some believe it is unclear, but without

prejudice to my views on QMV and co-decision, which I shall outline in my comments on Question 6.

With regard to services of general economic interest, I note that the views of those seeking action at a European level are recorded. As I outlined in my comments on the previous question, I believe that the current Article 16 adequately deals with this issue. I would wish to see the views of those, including myself, against the inclusion of such a provision included in paragraph 12 of Section 3.

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

In my written contribution to the Group I noted that the greatest appeal of the Open Method of Coordination is its informality and its flexibility to respond and develop in different ways depending on the subject at issue and that if it is to be inscribed in the Treaty it should be done so on a broad basis, without being prescriptive as to its extension to other areas or as to its detailed method.

In the event that a Treaty base for OMC is agreed, it is important that it remain a matter for the Council, in conjunction with the Commission, to determine the area of application and precise configuration of the process taking account of the nature of the policy area to be covered. I can accept the involvement of national parliaments and the European Parliament, although I would repeat my comment at the last meeting of the Working Group that the open method of coordination has not been lacking in transparency or accountability up to now.

I believe that the order of paragraphs 12 and 13 should be reversed. The current paragraph 12 contains the recommendation and should come last in this section.

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

I welcome the recommendation 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. I would, however, welcome recognition of the role of ECOFIN in preparing the BEPGs in this context. I can support the recommendation that this procedure be formalised in the Constitutional Treaty.

The suggestion that the phrase in Article 128.2 (Employment Guidelines being “consistent” with BEPGs) be amended is not in keeping with the views of ECOFIN. I would prefer that this Article remain unchanged.

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

In my written contribution to the Group, I made clear that I felt that there had already been lengthy consideration of the issues of QMV and co-decision in the negotiations on the Amsterdam and Nice Treaties. I am pleased that my views and those of a number of other Government representatives and others are recognised in this respect in paragraph 3. I, however, believe that those who do not wish to see a further extension of QMV at this time constitute more than an “active minority” and would prefer to see this term replaced by the term “significant minority”.

I welcome the recognition that areas concerned with aspects of social security should remain subject to unanimity. However, I do not believe that the recommendations to move to QMV in the areas suggested represent a consensus, although I do accept that a majority favoured this view. Accordingly, I would wish to see recognition in paragraph 7 that a number of members opposed this recommendation.

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?

In my comments on this issue, I was concerned that the definition of social partnership should be sufficiently flexible so as to ensure sufficient representativeness and scope for new partners as appropriate. I am pleased that the report does not seek to offer a precise definition of social partnership. The report suggests that there was consensus on a

strengthened role for social partners and that this role be recognised in the new Title VI, that the social partners be consulted in all areas that concern them, that the Treaty make clear that the Union encourages and promotes social dialogue and that the procedure concerning collective agreements in Article 139 TEC be maintained. I welcome the consensus in the Group on these issues.

Contribution for the Working Group Social Europe written by Mr. Adrian Severin, MP (Romania), Brussels, January 2003

The present European treaties define generous values and ambitious objectives (even if there is room for improvements) in the social area.

The European Community is committed to the social policy. Shared competences in the social area were conferred on the European Communities (the right of the Community to adopt minimum requirements for a limited number of areas defined in the Treaty, still with different procedures).

However, despite the constant improving of the instruments concerning the social policy, one can notice that, in the last years, in the EU, the cohesive forces have been less active than those which work against cohesion have. The asymmetry of these forces has been imposed by the subjective parameters of globalisation (those determined by a certain political/ideological option, against those objective parameters which are determined by the technological progress, notably in communications and IT) which shape the present global socio-economic regime. This regime has created an increasing asymmetry of the competitiveness/solidarity ratio in favour of the former.

For this reason, no matter how efficient in the EU are the programs and the instruments for social policy, they cannot change substantially the effects of the new global economic regime, which has made inequalities larger both between states and within the states. The theory in fashion says that if business does well, all others will also do well. In other words, the economic efficiency will lead automatically to the social efficiency. Nobody can argue against the economic efficiency as a prerequisite of the social efficiency. But the economic efficiency is not enough. The income (re)distribution is also important in achieving social efficiency. Therefore, the negative externalities induced by the free market should be attenuated/eliminated through the intervention of the different levels of governance.

For the EU the globalisation challenge comes out at the same time with the enlargement challenge, which raises the issue of solidarity test, taking in consideration that the newcomers are less developed than the present Members States. The EU will have to deal with this development/modernisation gap within its boundaries.

The evolution of the social dimension (the social Europe) should be followed on two levels:

1. The socio-economic regime on the whole and the relation with the outside world
2. The specific frame of the social policy within the EU which presupposes defining the instruments and the procedures used in this area.

For the first level, one can pose the question to what extent the EU as a global actor, may influence the global economic developments. The answer is done by the intensity of the political integration of the EU.

Yet one can pose the question whether the EU wishes to change the present global socio-economic regime or only to adapt to it. If one looks at the opinion polls, they show that the European citizens do not feel very comfortable with the new socio-economic regime. On the opposite if one looks at the political commitments undertaken by the European governments can notice that the EU is heading toward a model that seems to be rather a copy of a regime devised outside Europe.

Deciphering the Lisbon texts, despite linguistic finesse, one can confirm the political intention of the Members States' governments to rather adapt the EU to the global regimes than to try influencing them.

These different perceptions between those who govern and those governed represent, in fact, the main source of the democratic deficit.

The second level presupposes the creation of a European added-value in the social area perceived as such by the European citizens.

In this respect, the EU should pursue the goal of achieving the social cohesion within the Union as a whole, through the elimination of the poverty and social exclusion. It is not unacceptable to have inequalities, on the contrary, they are useful when praise different productivity among individuals. What seems unacceptable is the lack of / limited access of the individuals to resources, rights, goods and services. The genuine flexibility of the labour market cannot be achieved unless all the members of the society have equal access to the opportunities offered by the market. Therefore, it is necessary to be secured:

1. Adequate training/education for all the members of the society in order to allow them the access to the different opportunities on the free market
2. Appropriate environmental conditions
3. Health for citizens through the access to the appropriate health services

The concept of sustainable development presupposes a balanced progress of the three components: economic, social and environment.

As a matter of fact, the development of the social dimension of the European integration means:

1. The existence of the European standards in respect of the social, environmental, and economic aspects, as well as education and health services.
2. The support of the EU for the Members States in their policies aimed at attaining these standards.

The constitutional process can bring an important contribution in developing a social Europe (social dimension of the EU):

1. Firstly, defining values and objectives in the Constitutional Treaty, one can opt for a certain way of the European life.
2. Secondly, the Constitutional Treaty can establish necessary institutions to implement efficiently the objectives listed in the treaty.

Constitutional revisions

I would suggest at least some constitutional revisions:

- When the UE adopts minimum requirements in the areas listed in the Treaty, it should use QMV and co-decision.
- The Constitutional Treaty should stipulate the principle of the social and ecological responsibility of the European enterprises as a basis of the economic co-ordination.
- Broad Economic Policy Guidelines (BEPG) should become Broad Economic and Social Policy Guidelines (BESPG).
- The Constitutional Treaty should stipulate the role of the social partners.
- The open method of co-ordination in the social policy should be formally part of the Constitutional Treaty as a general technique The specific matters where the open method of co-

ordination is applied should also be mentioned to signal that it must not replace the "hard EU law". Therefore, in respect of the open method of co-ordination some clarifications should be made, as follows:

- ✓ one should make a distinction between co-operation and co-ordination
- ✓ co-ordination refers to:
 - i. implementation within the standards (which are to be considered as minimal)
 - ii. co-ordination of policies beyond the standards
- ✓ the method should be employed as a complementary one and not as a way to block the communitarisation; on the contrary it should be a catalyst for further communitarisation
- ✓ Implementation should lead to the definition of the EU specific instruments as well as to the establishment of a mechanism of solidarity in favour of those states which even they wish they cannot rise at the level of the standards. The Constitutional Treaty should stipulate the right of setting up the transborder trade unions in the EU.
- The Constitutional Treaty should stipulate that the social policy represents, along with the economic policy, a domain of concern for the European Union and the Members States. In this respect one should incorporate in the Constitutional Treaty the horizontal clause on the social value as recommended by Mr. Frank Vandenbrouke in his paper.

The link between economic policy and social policy

We cannot separate the economic policy from the social policy. An economic Europe makes sense only if it is, at the same time, a social Europe.

The European economic policy should have as goal the welfare of the European citizens and also the social cohesion of the national and European societies. At stake there are the very elements for European cohesiveness. Diversity is all right, but diversity does not mean disparity and from this point of view there are still ambiguities.

We are already facing a process of social fragmentation in our national societies with conflictual consequences; a united Europe should provide us the necessary instruments for restoring the national society's cohesion, while building up a cohesive European society. Therefore, we need equal economic opportunities, but coupled with equal opportunities for social inclusion.

An essential part of the concept of prosperity is the territorial development. It deals with ensuring a

balanced distribution of economic activities and resources among the member states. In this respect, Europe should preserve what has been done positive until now, as for instance the structural funds and the common agricultural policies as an expression of the solidarity policies and a source of European cohesion. At the same time it must establish appropriate institutional mechanisms for guarantying the balanced development of all territorial entities which will form the future Union **(the territorial cohesion)**.

The Commission should have the right of initiative concerning BEPG/BESPG and not only right of recommendation.

The Spring European Councils should be formalised in order to deal with the evaluation of the economic, social and environmental policies ("The Sustainable Development Councils").

All the decisions on the economic matters should take in account the probable social consequences of the undertaken measures (impact studies and the consent of the social partners should be considered).

The system of the transparency and accountability of the European social model

We all agreed on the assumption that it is impossible to ignore the diversity of the social models in Europe; however one should also build a tissue of common standards as well as a set of common instruments in order to promote a certain European model which should add value to what it is done at the national level, thus providing a specific element of cohesion for the Union.

Within the Constitution /The Constitutional Treaty we should define values to identify a specific European model. Taking values as references we should then define the objectives of the social Europe, objectives which are changing in accordance with the overall progress/evolution of the Union and the world. In order to reach the objectives/goals one has to build and to provide himself with instruments (procedures and institutions) and has to define and implement policies. We cannot define policies in a constitutional text, but what we can do and we must do is to define a system of transparency and accountability of the European social model. We need guarantees for the enforcement of the values and objectives and this system of transparency and accountability could be perceived by the citizens as a guarantee. Therefore, this system of transparency and accountability could very well replace the lack of precision in the constitutional provisions about

procedures and institutions, giving credibility to the constitutional statements concerning the values and the objectives.

Taking in account the above-mentioned considerations I would like to submit the following proposals:

1. **A European Council for Social and Economic Security (ECSES)** will be set up with the following competences:

- a) It will watch the evolution of the economic and social matters, processes and phenomena in the EU.
- b) It will make recommendations concerning the prevention or the management of the crisis in the social and economic field.
- c) It will watch the evolution of the social cohesion in the EU and it will propose the necessary measures in order to increase the level of the social inclusion.
- d) It will pursue the co-ordination of the European and national policies in the economic and social area.

The Commissioner for Employment and Social Affairs will chair the ECSES without right of voting.

2. **A European Social Forum (ESP)** will be set up with the view to organise the social dialog at the European level and to guarantee transparency and accountability in the area of social policy of the EU; namely those dedicated to promote the European social model.

3. **The ESP** will be composed by the representatives of the main EU institutions (the Council, the Commission, the European Parliament), representatives of the trade unions and of the employers' organisations. The ESP is convened every three months in ordinary sessions and, at request of a quarter of its members, in extraordinary sessions.

4. **The ESP** will:

- hear the reports of the Commission, the Council and the European Parliament concerning the progress in reaching the social goals of the EU and the implementation of the values of the European social model.

- propose legislation (standards) relevant for the Social Europe.
- propose and debate on policies which should lead to the increase of the employment and employability, to the guarantee of the equality of chances for social integration and to the improvement of the measures aimed to the social protection.
- propose measures to co-ordinate the national policies as well as the EU and national policies on the social matters.

5. **The European Parliament** will hear two times a year the reports of the Commission and the Council concerning the progress of the European social model and will adopt, subsequently to debates, the resolutions on the assessments and necessary recommendations.

**Comments from Helle Thorning-Schmidt
on the preliminary draft report**

Working Group XI 'Social Europe'

21 January 2003

General remarks

Our Working Group should stress that we wish to develop and protect a social Europe also in the future. Therefore, we should underline that we would not tolerate harmonisation at a lower level than today and that future decisions should not undermine the existing legislation on the social area.

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

No comments to the preliminary report.

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

Protection of children's rights has been touched upon very briefly in the first meeting of the working group. Furthermore, I have stressed in my written contribution to the working group that we need to have a reference *to protection of the interest of the child* in the new treaty. However, in the present draft report this point has not even been mentioned as a point of discussion. Therefore, I would like to stress again that the Constitutional Treaty ought to make a reference to the rights of the children along the following line:

"The Union shall take into account the best interests of the child in all actions within the existing competence of the Treaty"

I also regret that there is no reference to the EU and the relations to the developing world. As I suggested in my contribution, we should refer to the following:

"Recognition of the duties and responsibilities which the EU has to tackle in the developing world".

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

The importance of Services of General interests (SGI) should be stressed, and if possible, mentioned under a separate heading in the Constitutional Treaty. The EU should be able to promote and legislate on SGI at the EU level. Through our work we should ensure a better balance at European level between the rules regulating services of general interest and competition rules. SAMAK (the Joint Committee of the Nordic Social Democratic Labour Movement) has made a good contribution to the Convention on this issue, which we should take into account.

IV. The role of the open method of co-ordination (OMC) and its place in the Constitutional Treaty

I agree that the OMC should be written into the new Constitutional Treaty. However, I do not think that we need to define in which policy areas in the Treaty the OMC can be used. It is important that we keep the method as flexible as possible.

Furthermore, the European Parliament (EP) must be involved formally at all stages of the process and 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.

The OMC is of course mainly driven by the European Council. However, national parliaments and the social partners should also have a defined role in shaping the priorities when the OMC is used. This should be recognised in the Constitutional Treaty.

V. The relationship between economic policy co-ordination and social policy co-ordination

No additional comments.

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

The use of qualified majority voting should be extended to the provisions set out in Article 13 as well as Article 42 on the free movement of labour.

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

Taken into account that our Working Group has recognised that the social partners play a special role, there should be a clear reference to the social partners in Title VI of the constitutional treaty on the democratic life of the Union.

Remarques de Anne Van Lancker sur le projet de rapport du groupe 11 politique "Europe sociale"

Je voudrais d'abord remercier notre président et le secrétariat pour le rapport qui constitue une bonne base pour les conclusions de notre groupe de travail. Mes commentaires se réfèrent essentiellement aux paragraphes, qui constituent des éléments de conclusion.

I. Valeurs

- I 5. Je propose que la dernière phrase soit reprise comme conclusion de cette partie du rapport. J'insiste en particulier sur l'ajout de la "justice sociale", parmi les valeurs qui doivent figurer à l'article 2 de la Constitution.

II. Objectifs

je crois qu'il y a consensus sur l'insertion du "plein emploi", en combinaison avec la notion de "social market economy", mais pas en ce qui concerne l'introduction de la promotion de l'employabilité parmi les objectifs de l'article 3 de la Constitution.

Par ailleurs, beaucoup de membres ont insisté sur l'introduction d'un haut niveau de santé parmi les objectifs.

Je propose donc de rédiger le paragraphe 9 comme suite :

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 the 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]~~ **within the framework of the social market economy.**

Je propose que nous reprenons dans nos conclusions, la proposition concrète de Frank Vandenbroucke, professeur et ministre belge des affaires sociales et des pensions, pour une clause horizontale de nature sociale dans l'article 3 de la Constitution:

« Dans toutes les actions relevant de sa compétence, l'Union cherche à éliminer les inégalités, et à promouvoir l'égalité, entre les hommes et les femmes, et prend en compte les exigences liées à la réalisation du plein emploi ainsi que d'un niveau élevé de protection de la santé humaine, d'éducation et de formation, et à la garantie d'une protection sociale et de services d'intérêt général accessibles, financièrement viables, de haute qualité et organisés sur la base de la solidarité. »

III. Compétences

III. 13 Je crois qu'il serait faux de dire que le groupe ne recommande pas de modification dans le partage actuel des compétences. En effet, même si presque personne n'a demandé de nouvelles compétences, nous avons été plusieurs à insister sur la nécessité de donner une vraie compétence qui permette d'agir à l'union en matière de services d'intérêt général (article 16 est déclaratoire et ne présente pas de base légale pour une éventuelle directive cadre) et en matière de santé (art 152 étant maintenant très limité dans ses possibilités - cfr note O'Sullivan)

Je me rallie à ceux qui ont plaidé contre le regroupement de l'ensemble des dispositions relatives aux questions sociales dans un même titre de la future constitution. Les arguments du représentant de la Commission O'Sullivan sont à cet effet convaincants. Je propose donc de supprimer ce passage.

IV. Méthode ouverte de coordination.

IV 7 et 10 : c'est une erreur de dire que la MOC devrait seulement s'appliquer dans les cas où il n'y a pas de compétence de l'Union. En effet, L'UE a une compétence en matière de lutte contre la pauvreté, la protection sociale (même si cette dernière n'est pas utilisée à cause de l'unanimité) Ce que les membres ont voulu exprimer c'est que la MOC est un instrument utile dans les domaines qui ne peuvent pas être réglés par la législation.

IV. 11: Comme la MOC est une méthode flexible, il ne faut pas trop entrer dans les détails dans la disposition sur les instruments de la partie I de la Constitution. Je propose de maintenir la

première phrase du paragraphe et de reprendre en suite la contribution de Louis Michel, vice-premier ministre belge et représentant du gouvernement à la Convention:

« 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 ».

Ensuite, nous devrions proposer une base légale spécifique le domaine social, comme le propose Frank Vandenbroucke :

"Dans les domaines visés à l'article 137, paragraphe 1, points (j) et (k),
le Conseil,

sur la base des conclusions du Conseil européen,

statuant en vertu d'un consensus entre les États membres, sur proposition de la Commission qui prend en compte l'avis du Comité de la protection sociale, et après consultation du Parlement européen, des partenaires sociaux et du Comité de la protection sociale,

- adopte des objectifs communs et des indicateurs communs,

- élabore, le cas échéant, des lignes directrices dont les États membres tiennent compte dans leurs politiques,

- adopte des rapports sur la mise en œuvre de ce processus de coopération.

Les résultats de ce processus seront incorporés dans les Grandes orientations des politiques économiques."

IV. 13 Il faudrait donc ajouter "la lutte contre l'exclusion sociale" parmi les domaines d'application de la MOC.

VI. Procédures:

Il faut rappeler que la conclusion du groupe simplification (Amato) a été que la QMV devrait devenir la règle, sauf exception à motiver.

VI. 6 Je suggère de supprimer ce paragraphe. Je pense en effet que le sujet n'a pas été suffisamment discuter et approfondit dans le groupe de travail.

VI. 7 D'accord avec la conclusion. Il me paraît essentiel de bien faire la distinction entre la coordiantion des régimes de sécurité sociale (article 42) et la protection sociale (article 137,1,c). Pourtant en ce qui concerne l'article 137,1 c) on pourra prévoir également l'application de l'article 251 (QMV et codecision) à condition de clarifier que "le financement et l'organisation de la sécurité sociale et de la protection sociale des travailleurs" ne sont pas couvert par cet article.

VII. Partenaires sociaux.

VII. 5 dernier paragraphe "en conclusion..."

Il me semble utile de reprendre la conclusion que "le groupe a un consensus sur la nécessité de prévoir une base légale pour la reconnaissance de la société civile et la concertation avec la société civile, dont le rôle doit être distinct de celui attribué aux partenaires sociaux. "

Bruxelles, le 22 janvier 2003

by Mr. J. WUERMELING

Dear Giorgos,

For the draft report I would like to propose the following amendments:

- Before the paragraphs about the values and the objectives we could put in the following sentence:

„As far as the basic values and objectives are concerned, the working group did only consider proposals for items related to social policy. In this respect the working group did not reflect on the balance between these values and objectives and others which stem from other political areas.“

- To point II. 3.

I propose to delete the last sentence. The Eurobarometer Survey can be interpreted very differently. It should not be used as an argument for setting a specific objective. The answers of the public did not at all cover the difficult decision between responsibilities of Member States on the one hand and the European Union on the other hand.

- To point II. 5.

I am very much in favour of the employability-concept. Having heard your readiness to renounce any allusion to this term, I would like to encourage you to keep the notion, also in number 9.

- To point II. 9.

I think it is a good idea to focus on the „promotion“ of the mentioned objectives because this is indeed something the European Union can do. On the contrary it cannot take the overall responsibility for full employment, social protection, equal opportunities etc. Thus, this formulae

should also be applied to the education issue. The European Union is not able to guarantee „access“ to education. Therefore I recommend to replace this word by „promoting“.

- To point III. 12.

I share your proposal to give article 16 a more positive approach. In the proposed number 12. however, the approach is rather technical. We should at least indicate the intention of securing these services for the citizens.

- To point III. 13.

The reference to the fundamental rights seem to me quite ambiguous. Given that the Charter explicitly states that it does not change at all the repartition of competences between Member States and the Union, we should not argue with the fundamental rights, when defining the centre of gravity of community actions.

- To point IV.

I repeat my general concern about the inclusion of the open method of coordination in the Treaties. We mix up completely responsibility, competences and democratic accountability, if we open up this method for all areas of public action. Member States are always free to organise coordination and cooperation among themselves. There is no need to create a legal basis for this in the European constitution.

I could agree to the statement taht there is a need of further cooperation in particular fields. It should be left to the decision in the respective policy areas what should be done and which instruments out of the existing set are chosen.

- To point VI. 7.

To me point 7. is not quite clear. On one hand it is proposed to include the passerelle in the future constitution. On the other hand article 137 paragraph II. should be deleted.

Maybe we could hold as a common conclusion that the application of majority voting requires a tighter formulation of the respective competences in article 137 lit c, d, f, g and an extension of the safeguard-clause for national competences in article 137 paragraph 6.

- To point VII.

Regarding the written contributions and discussions we had in the working party, we should recommend also that the European Parliament as well as the Council has to give its consent to collective accords.

- Colleagues proposed to include also health as an objective. However, the instruments of the European Union to improve health are very limited. The few programmes for specific diseases and some elements of the internal market are quite too marginal. As a matter of fact health should be promoted on a national, on a regional and even on a local level. There is not much marge de manoeuvre for the Union to act. To mention health among the important objectives would create expectations by the public which the European Union is far from being able to meet. Therefore I recommend not to mention it.
