

Working Group XI

Working Document 45

Working Group XI “Social Europe”

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

Members of Working Group XI on “Social Europe” will find hereafter WD 045 Comments on the Revised Draft Report (WD 038)

I. SOCIAL EUROPE WORKING GROUP

COMMENTS FROM UK GOVERNMENT REPRESENTATIVE PETER HAIN ON HEALTH-RELATED ASPECTS OF THE FIRST REVISED PRELIMINARY DRAFT REPORT
27 JANUARY 2003

Please find below my initial comments on the first revised Preliminary Draft Report of the Social Europe working group. My comments at this stage concentrate on references in the report to **health care and health protection**. I intend to follow up this note with more comprehensive comments on the revised report. However it is worth noting at this stage that I consider the revised report to be an improvement on the earlier draft.

On the issue of health care and health protection, I have some general observations, which underpin my more detailed comments below.

- I accept that there may be a case for enhancing Community activity in certain health protection areas (such as communicable disease) and for rationalising existing powers to deliver objectives more effectively (such as on tobacco control). However further discussion of specifics is necessary before accepting the case for an extension of Community competence in the health field.
- The term “Health Protection” is preferred to “Public Health” because the former reflects current Treaty language. Also the term “Public Health” can cause confusion in some languages, where it may be deemed to include health services or may blur the distinction between health protection and health services.

A. OBJECTIVES

Para. 9: The report records the majority view of the working group that “a high level of public health” should be one of the objectives of the Union. I agree with the general point made, but would suggest amending the third and fourth sentences of paragraph 9 to: “There are, however, a number of important developments where Member States acting alone may not adequately meet the challenge, and where it is worth considering whether existing action at EU level needs to be focussed more effectively on these developments, e.g. on communicable diseases, bioterrorism, quality and safety for blood, tissues and organs, and International Health Regulations.”

Para. 10: As suggested in my general comments above, I would propose amending “public health” to “health protection”.

B. COMPETENCES OF THE UNION

Para. 9: The paragraph recommends strengthening EU competences in the field of public health. In line with the first general comment made in the introduction above, I would suggest the paragraph be amended from “the group agreed...” to “the group agreed that consideration be given to strengthening the levers available to the Community to deliver its public health objectives, as current Article 152 of the EC Treaty does not constitute a sufficient legal basis for action on, e.g., tobacco control, and possibly communicable diseases. The same arguments apply to the issue of bioterrorism.” I consider that the final two sentences of paragraph 9 should be deleted.

Para. 15: I suggest amending the final sentence to “Furthermore, current Article 152 should be adapted as to give the Union the levers it needs to ensure its public health objectives”

CONVENZIONE EUROPEA

Gruppo di lavoro “Europa Sociale”

CONTRIBUTO DELL'ON. CRISTIANA MUSCARDINI

Bruxelles, 28 gennaio 2002

La considerazione fatta da alcuni che potrebbe essere superfluo o ripetitivo inserire nel Trattato costituzionale i punti che identificano la politica sociale europea sarebbe errata ed oltremodo scorretta. Ci sembra necessario infatti individuare le regole che devono guidare i campi di intervento dell'Unione, rispetto a problematiche di tipo economico, culturale, civile e sanitario nel settore sociale, anche se, sul piano dei principi, queste regole fossero già inserite nella Carta dei Diritti fondamentali. La Carta, infatti, rappresenta un vasto e complesso corpo a sé, peraltro incompleto in alcuni punti, e non identifica gli strumenti per arrivare ad un miglioramento dei rapporti sociali essendo un'indicazione di principi e non di politiche attuative.

Il gruppo di lavoro dovrebbe proporre alla Convenzione uno specifico articolato per definire gli obiettivi sociali che devono essere raggiunti dall'Unione nel suo complesso, al di là di quanto realizzato o realizzabile dalle politiche nazionali. A titolo di esempio ricordo la richiesta delle diverse associazioni che si occupano dei diritti dei bambini ospedalizzati e che, riunite nella EACH, in un incontro avvenuto al Parlamento europeo nello scorso novembre, avevano sollecitato il completamento di quanto previsto nella risoluzione del P.E. del 1986 (Risoluzione sulla Carta europea dei diritti dei bambini ospedalizzati).

La politica sociale europea non può prescindere dal prendere in considerazione i cittadini più deboli, quali i bambini, gli anziani, i portatori di *handicap*, le donne sole, i nuovi poveri, gli emigrati e coloro che di fatto risultano emarginati. Una politica a favore dei più deboli si identifica con il grado di civiltà di una comunità umana e con l'esigenza di combattere l'esclusione e la marginalizzazione di cittadini che si trovano in difficoltà, temporanea o permanente. La lotta all'esclusione sociale potrebbe essere favorita dall'applicazione del “metodo di coordinamento aperto” (come indicato dal documento 15 del Gruppo VI).

La politica sociale europea dovrebbe inoltre tendere all'obiettivo della partecipazione dei lavoratori dipendenti ai benefici e ai risultati dell'impresa. E' dal 1992 che il Parlamento europeo si è espresso

a favore della proposta di raccomandazione del Consiglio sulla promozione della partecipazione dei dipendenti ai profitti ed ai risultati dell'impresa. Nel definire i suoi obiettivi sociali, l'Unione dovrebbe tener conto, tra l'altro :

1. Di questo parere del PE sulla proposta della Commissione sulla promozione della partecipazione dei dipendenti ai profitti e ai risultati dell'impresa (GU C 125 del 18 maggio 1992)
2. della risoluzione riguardante PEPPER II del 1996 (COM(96)0697, C4-0019/97),
3. della Comunicazione della Commissione relativa al "Quadro per la promozione della partecipazione finanziaria dei lavoratori dipendenti" COM(2002)364 del 5 luglio 2002.
4. della relazione della commissione per l'occupazione e gli affari sociali (A4-354/97 – Relazione Davignon)

In sintesi riteniamo che l'Unione europea si debba dotare, in questa materia, di regole "quadro", lasciando agli Stati membri il diritto-dovere di applicarle, tenendo conto dei diversi contesti socio-economici esistenti. L'Europa dovrebbe, ad esempio, stabilire il criterio secondo il quale ciascun Paese debba prevedere un salario minimo che non sia inferiore al reale costo della vita. Questo deve valere anche per le pensioni o per i sistemi di previdenza sociale e sanitaria. E' evidente tuttavia che la definizione della politica sociale è strettamente collegata alla politica economica. Essendo quest'ultima di competenza degli Stati membri, che accettano il coordinamento dell'Unione, anche le politiche sociali dovrebbero essere coordinate in modo più efficace, tanto da stabilire una maggiore coerenza tra i due coordinamenti. Gli indirizzi per le politiche economiche, infatti, dovrebbero tenere in maggior conto gli obiettivi in materia sociale, tanto più che, con le variazioni dovute alle culture tradizionali e alle stesse differenze climatiche di ciascun Paese, il rapporto tra economia e socialità è necessariamente funzionale.

Cristiana Muscardini

Preliminary draft report of WG XI, Social Europe

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

10. 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: ... **promotion of efficient and high-quality services of general interest whose organisation is the responsibility of individual Member States, and is consistent with 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.

5. With regard to the relevance of the scope of the current competences set out in the Treaty, the Group was divided. While all members felt that social matters should remain **mainly** an area of shared competence, opinions differed on possible extensions or reductions of the current scope. [Explanation: Article 137.1 (j) and (k) cannot be regarded as shared but **complementary competencies as well as Article 149]**
15. The Group considered that, in general, the range of competences available at European level were adequate. However, better clarification of the scope of European action could be envisaged, which in turn might make easier the 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, should primarily concern areas of action closely linked to the functioning of the internal market, preventing distortions of competitions, and/or areas with a considerable cross-border impact. Consideration should also be given in the final structuring of the Constitution to ensuring the visibility of articles relating to social policy. Furthermore, current Article 152 should be adapted as to give the Union more **complementary competences (or assisting powers)** in the field of public health.

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

11. The method would in principle be implemented each time by decision of the Member States meeting within the Council on the basis of **the conclusions of the European Council and on a proposal from the** European Commission, with notification of the European Parliament. ...

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

3. Most members of 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. A number of members of the Group therefore recommended that this phrase be amended appropriately. **The others were opposing this amendment.**

Submission by the Earl of Stockton MEP
Convention Working Group XI 'Social Europe'
Further remarks on the draft mandate

Negotiation of agreements is not the same as consultation

Management and labour together do not comprise a balanced, inclusive social and economic partnership

At the Social Affairs working group yesterday, a number of constructive, useful points of view were expressed concerning each part of the draft report.

A significant part of the discussion centered on the question of the role and value of 'social partners'. With regard to this issue, I have a number of concerns.

We wish to begin with an important point of clarification: concerning the framework social agreements negotiated between management and union representatives (for instance concerning parental leave, part-time work, fixed-term contract, etc...), I fully support the view that a very limited number of representative bodies should be involved on each side of the negotiating table. We see no justification to add to, or change the composition of the bodies - at European level - involved in such negotiations at the present time.

However, we fundamentally object to the description of such a limited number and type of bodies as '*the* social partners'. While such a description might have been valid at the time of the industrial revolution, or at some time in the past when management and the unions represented all that was of concern in an enterprise, that is no longer the case today.

To suggest these two opposing industrial relations bodies accurately describe the full spectrum of European social partners is to reflect a step back in time to an outdated and worn out view of our economic life.

As economic and political thinking has matured, as the open method of coordination under the

Lisbon process has evolved, as the importance of effective regional SME representation is welcomed, as social policy is perceived as complementary with economic policy, it is now accepted that a wider number of stakeholders are affected by, and concerned with, the state of our enterprises and the state of our society.

We strongly urge the Social Affairs Working Group to exclusively use the more specific term 'management and labour' - rather than the less accurate and confusing term 'social partners' - when describing the bodies involved in negotiating framework social agreements, as set out in paragraph 1 of part VII of the draft report.

We also urge the Group to accept that the role of 'social partners' as it could appear in Title VI of the draft Treaty should include consultations with a wider, more representative group of economic and social partners.

In other words, we propose that Title VI should include reference to 'social partners', but that it should be mentioned that such a description includes two separate and distinct parts:

- 1. Management and union representatives involved in collective negotiations on social issues.**
- 2. A wider group of social and economic stakeholders (NOT to be confused with civil society at large) involved in consultations with the European institutions on macro-economic issues.**

For instance, paragraph 5 states: '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.'

I have two concerns about this paragraph:

Firstly, while the term used has now changed to 'social partners', it is not clear if the bodies being discussed are the same management and labour representatives described in the

previous paragraphs. For, what is now being suggested is a significant expansion of their negotiating role, including – ‘macro-economic consultations’... In this regard, it is impractical to foresee the exclusion of *inter alia* Chambers of Commerce and Industry from such consultations, and we suggest that a number of other major and legitimate economic stakeholders would share the same view. **I ask the Working Group, when compiling its final report, to be careful not to confuse the process of negotiating social agreements, with the process of consultation on wider economic issues.**

Secondly, the meaning of the very last phrase in the paragraph is unclear – ‘*no consensus could be reached*’. Does this refer to the strengthening of the role of social partner (first sentence of the paragraph), or to the deletion of the provisions of the Treaty (second sentence), or to both?

It could be taken to mean that there was consensus on the need to strengthen the role, but no consensus on how that was to be achieved. However, it could also be taken to mean that there was no consensus on either the strengthening process, or on the deletion of the Treaty provisions.

In summary, I strongly urge the Working Group

- **To reiterate its support for the management-labour process of negotiations on social agreements to be recognised, facilitated and enhanced,**
- **To support the call for a wider group of European economic and social bodies to be consulted on macro-economic and other issues,**
- **To include both parts in the definition of ‘social partners’ inserted in Title VI of the preliminary draft constitutional Treaty.**

Specifically, this could be achieved by adapting paragraph 4 of part VII in the following manner:

4. The question of defining the social partners more precisely was raised on various occasions, but the Group did not adopt this approach. Instead, while endorsing the specific role of management and union bodies in negotiating pan-European social agreements, the Working Group recommended flexibility in the definition of ‘social partnership’ to include a wider

relevant stakeholder group in all other social and economic consultations where negotiated agreements are not at issue.

And by adapting the final indent of the conclusion about social partners in the following way:

- Distinguishing it from the role of ~~social partners~~ management and labour in industrial bargaining, the Treaty ~~could~~ should recognise a ~~certain~~ targeted and structured consultative role for the ~~civil society~~ wider group of social partners, especially in view of the increasingly active involvement of NGOs these stakeholders in most areas of social and economic policy.

In such a way, the principles of democracy, efficiency, transparency and inclusion are all respected.

Comments and amendments on Working Document 38 REV 1

from Helle Thorning-Schmidt

27 January 2003

Introduction:

The following sentence should be added to the introduction:

"The EU shall not tolerate harmonisation at a lower level than today and future decisions should not undermine the existing social legislation."

II. Social objectives

The reference 'to the relations to the developing world' on page 5 of the report should be followed by a concrete reference on page 8. I suggest that we add the following to the objectives:

"Promotion of a sustainable economic and social development in the developing world".

VII. The role of social partners

On page 23, there is a reference to the agreement on teleworking. I wish to underline that this agreement is the first example of a real transnational agreement and it has never been transformed into a directive.

Finally, on page 23, paragraph 5 it is described how to strengthen the role of the social partners. One of the suggested actions is to strengthen the role of the social partners by 'giving force of law to all European collective agreements.' This wording is a bit unclear and should be backed by a recommendation, which clearly strengthen the collective agreements and the role of the social partners. I have made two alternative suggestions for a wording, which I ask the Working Group to consider:

a) "the Constitutional Treaty shall encourage European collective agreements and promote mechanisms for conciliation and settlement of disputes".

b) "the Constitutional Treaty shall ensure the effective exercise of the European partners' right to bargain and conclude enforceable voluntary collective agreements
