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**COVER NOTE**

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from:	Secretariat
to:	Convention
Subject:	<b>Contribution from Ms Anne Van Lancker, member of the Convention: socio-economic governance in the constitutional treaty</b>

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The Secretary-General of the Convention has received the attached contribution from  
Ms Anne Van Lancker, member of the Convention.

**Note to the Convention****A social contract for Europe<sup>1</sup>  
Socio-economic governance in the Constitutional Treaty****Why do we need social integration at European level?**

The Eurobarometer survey clearly indicates that the citizens of the Union fully expect the EU to help tackle social problems: no fewer than 90% of people named unemployment as one of the social problems most in need of being addressed, while poverty also scored highly at 89%. It is therefore important to demonstrate why and how the Constitutional Treaty can meet these expectations, without overlooking the fact that no one expects Europe to develop a uniform social model, people quite rightly preferring their own national models of social welfare, public service and social dialogue.

The European Union has no shortage of competences when it comes to social policy and employment policy. While they are part of these fields – the Union is able to in the fields of equal opportunities and non-discrimination, labour regulations, workers' rights, health and safety and social exclusion. The current Treaty also imposes ambitious objectives for the Union in terms of social policy.

The problem is two-sided. First, the social objectives of the European Union are subject to completion of the common market and economic and monetary union. Social policy is thus reduced to an internal market 'adjustment', and aspects of social policy, such as measures concerning employment, training funds, supplementary social security schemes and services of general interest risk being subject to the logic of the market. Second, in view of the centralised monetary policy based on the Euro, co-ordination of the socio-economic policy of the Member States is crucial if we are to avoid social dumping and achieve the strategic objectives as defined in Lisbon.

These challenges are even more evident in the context of enlargement. Moreover, the European Union can only ensure a European social model at an international level if the Union and Member States work together.

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<sup>1</sup> See annex for actual proposals.

The principle of subsidiarity is all too often used as a pretext for putting a brake on European social policy. A positive interpretation of the principle of subsidiarity means that the European Union is committed to ensuring that the Member States and their regions regain the room for manoeuvre that they surrendered in return for a globalised economy. The Union must ensure that Member States and their regions are able to exercise their powers over services of general interest, social welfare, employment and taxation.

<b><u>What kind of social integration?</u></b>
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### **1) The Charter of fundamental rights as the basis for the Constitutional Treaty**

**Incorporation of the Charter of fundamental rights in the Constitutional Treaty** with reference to European Union policy should enable the European Union and the Member States to help realise these rights. This will send out a strong political signal: the Union and the Member States are reiterating their commitment towards respecting these fundamental rights in all areas of competence.

The Charter represents a unique set of conventional human rights, social, economic and consumer rights. It is the product of a difficult compromise reached in the earlier Convention. Reopening the debate over its content would be unwise, even though monitoring and updating procedures still have to be agreed. The incorporation of the Charter in the Constitutional Treaty can neither be an alternative to **Union support for the European Convention on Human Rights (ECHR) or any other international legal instrument.**

### **2) Making the social objectives a central feature of the European Constitution**

A true social Europe presupposes that social objectives are not subordinated to the economic objectives. **This is why, in the basic articles of the Constitutional Treaty, we need to clarify the fact that the common market and economic and monetary union (EMU) must also serve social objectives such as full employment, a high level of social welfare, equality and quality of life.**

Social objectives must cover all Union policy, as is already the case for sustainable development and environmental protection. Social objectives cannot be confined to employment policy or to the social provisions of the Treaty. Furthermore, the provisions relating to services of general economic interest

must be extended to all services of general interest.

Alongside the definition of minimum and threshold standards, European legislation is still necessary to prevent social dumping, to ensure a 'level playing field' and to address cross-border problems such as guaranteeing social rights throughout the Union. This is why codecision, linked with majority Council decisions, should become the norm for any legislative process, in particular in the fields of social policy and taxation. Wage policy and the right of association should no longer be excluded from the competencies of the Union. Equality between men and women and 'gender-mainstreaming' should be guaranteed across the board (across all competencies of the Union). Furthermore, the principle of non-discrimination should have direct effect.

### **3) Socio-economic government**

There is an clear imbalance between exclusive European competence over monetary policy and the lack of effective co-ordination of economic and budgetary policy, employment policy and social policy of the Member States. Current procedures, introduced since 1997, fall short of addressing this imbalance.

Strengthening socio-economic governance could be the key to resolving these problems. Current coordination procedures for economic and employment directives and the open coordination of social security must be integrated; all institutions and authorities concerned must be able to take part in the development stage to the same degree.

When appointed, the Commission should present its 'programme for economic, social and employment policy' to the European Parliament and Council. The national and regional parliaments also have to discuss this programme, although it would be up to the Parliament and Council to approve it. The programme would form the basis for the Commission's drafting of annual Broad Economic and Employment Policy Guidelines (BEEPG), which must also lay down the objectives for social policy and sustainable development. These would be approved by the Council (in a format which reflects the economic and social component), and by the European Parliament on the occasion of the spring summit, following discussion by the national and regional parliaments. The Council should evaluate the work of the Member States and the mutual cohesion of their policy with the broad guidelines based on Commission reports. The European Commission may if necessary issue warnings to Member States.

Like economic policy, social policy must also be defined in the Treaty as a matter of common concern and Member States must coordinate social policy with a view to attaining the social objectives of the Union. **The open method of coordination must be incorporated into the Treaty.** To ensure the democratic legitimacy of this process, the national parliaments, regional parliaments and social partners in the Member States must be involved in the fields and at the levels that concern them.

As for monetary policy, the mandate of the European Central Bank must be complemented by objectives regarding full employment, sustainable development and social cohesion. This requires rearrangements to the stability pact to enable an active investment policy promoting employment and social cohesion to be implemented. The macro-economic dialogue must be reinforced by the creation of a **Tripartite Committee for Social Dialogue on Growth, Employment and Social Cohesion.**

#### **4) A real European social dialogue**

Management and labour are largely responsible for the success of economic, social and employment policy. Social dialogue therefore deserves a prominent place in the Constitutional Treaty.

The social partners could agree a **work programme for collective agreements** at the beginning of each new legislative period, based on the programme for economic, social and employment policy. Social dialogue must be extended to all relevant fields, such as education, economic policy, non-discrimination and pay agreements. To improve management of the European social dialogue, a **European (Bipartite) Labour Council** could be set up, possibly within the framework of a new economic and social committee. The procedures for the binding (erga omnes) declaration must be simplified.

A **European social ombudsman [mediator]** scheme would help settle industrial disputes.

The Tripartite Committee for Social Dialogue on Growth, Employment and Social Cohesion must involve management and labour in an appropriate fashion in macro-economic policy.

#### **5) A place for European civil society**

The Constitutional Treaty must also expressly provide for recognition and involvement of the civil

society in the drafting and implementation of policy in such a way that the civil society is consulted on all matters that concern it.

Anne Van Lancker

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7 June 2002

## 1. HOW TO STRENGTHEN THE SOCIO-ECONOMIC INTEGRATION OF THE UNION<sup>1</sup>

### **1. The European Charter of Fundamental Rights**

Although it is not perfect, the European Charter of Fundamental Rights constitutes the most elaborate expression till now of the common civil, political, economic and social rights and freedoms of the Member States. It must guide and orient the work of the Union and the Member States when implementing Community law.

The Charter must be incorporated into the Constitutional Treaty of the European Union as a strong political message, attesting to the commitment of the Union and Member States to respect these rights and values in all fields of activity. Incorporating the Charter in this way would provide legal guaranties as to the compatibility of Community legislation with fundamental rights. Yet the incorporation of the Charter in the Constitutional Treaty raises several other issues, which also need to be addressed.

- The Charter is not perfect. At times, the rights that it establishes fall short of rights established in other international texts, largely ratified by Member States. However, it would be unwise for its content to be re-examined at this juncture. The Charter is the result of a legitimate procedure within the framework of a Convention. It reflects the best political consensus possible at this time. To reopen the debate over its content would only serve to dilute the rights that it seeks to establish. Instead, we would be better advised to make provision for a dynamic monitoring procedure geared towards building upon and improving the Charter. This procedure could resume the basic principles of the current open method of coordination, including multilateral surveillance.
- Incorporating the Charter in the Constitutional Treaty should be aimed not only at protecting fundamental rights from any threat levelled by the action of the Union and Member States, but also at making provision for a positive commitment towards implementing such rights gradually through the adoption of measures that render them effective. It is not enough just to include the text of the Charter in the Constitutional Treaty; there must also be a reference to the implementation of, and respect for, the Charter as one of the objectives of the Union.

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<sup>1</sup> References to articles of the EC treaty are merely intended as illustrative, since a new draft of the Treaties should provide the European Union with a single Treaty.

- Incorporating the Charter in the Constitutional Treaty cannot be viewed as an alternative to Union support for the European Human Rights Convention (EHRC) or any other international instrument. It is not justified that the transfer of powers from Member States to the Union constitute a weakening of the international obligations of the Member States because the European Union is not party to these international instruments. Furthermore, incorporating the Charter could give rise to a conflicting interpretation of the EHRC in the case law of the European Court of Human Rights on the one hand and the European Court of Justice on the other; a conflict which cannot be sanctioned directly if the Union is not a party to the EHRC.

Even though the European Union already has the power to act at an international level, explicitly recognising the international legal personality of the Union would be a potent statement.

- The Union falls considerably short of protecting the fundamental rights of its citizens particularly by restricted access to the European Court of Justice. This deficit could be addressed in one of two ways: either by extending the right of individuals to file an application to cancel a Community legislative act, or by providing for applications to cancel in the collective interest, initiated by a representative body

## **2. Anchoring the European social model**

Strengthening social Europe is a prerequisite for building a stronger Europe. The conclusions of the European Council in Lisbon set a new strategic objective for the Union: *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.*

In a truly social Europe, there would be no hierarchy of Union objectives and social and economic objectives would be given equal consideration. However, it is clear that, till now, social Europe has been subordinated to economic Europe.

Although one of the objectives of the European Community is to promote high levels of employment and social welfare and improve the level and quality of life, the imbalance between the objectives of the common market and the rules of competition, on the one hand, and the principles of the European social model, on the other, is becoming increasingly apparent. In fact, in the fields of healthcare, (supplementary) social security schemes or services of general interest, application of the rules of the



common market and the rules of competition risk making it increasingly difficult to safeguard the principles of solidarity, universality, equity, quality and accessibility.

Only if the Union pays more attention to social security and public services will Member States regain in part the powers of action that they lost upon entry to the free market.

- Any rewriting of the general principles of the European Community, as defined in Articles 2 and 3 of the TEC, should convey the idea that the social dimension is an integral part of the Union. The wording of these principles could be based on the Community Charter of Fundamental Social Rights for Workers or even on the common objectives which subject the coordination of employment or social policy to consensus. Article 2 should stipulate that full employment is one of the objectives of the Union, and that its economic policy should be based on the principle of a social market economy rather than an open market economy (Articles 4 and 105).
- Alongside existing provisions concerning the environment, public health and consumer protection, Articles 6 and 95 of the TEC should make provision for embedding the essential and common principles of the 'European social model' in the Constitutional Treaty.
- A measure must also be introduced providing for excluding of the rules of competition from agreements made between management and labour in accordance with the social objectives (Article 81), as well as extending to any service of general interest the provisions limiting the application of the rules of competition (Article 86.2).
- It might also be worth expanding the field of application of the provision on services of general 'economic' interest (Article 16) to all services of general interest in order to ensure the proper functioning of social services and supplementary social security schemes.

### **3. Social and economic governance**

In order to function properly, EMU relies on coordination of the economic policies of the Member States by means of the Broad Economic Policy Guidelines (BEPG) and the multilateral surveillance procedure. Since the Treaty of Amsterdam and the Luxembourg Process, the Union has achieved its own employment policy. The Lisbon Summit introduced a coordination strategy for economic, employment, social and sustainable development policies. New policies have been developed in the fields of social exclusion and social welfare, founded on the new open methods of coordination introduced in Lisbon. However, coordinating and balancing these leaves much to be desired, and there is a considerable democratic deficit.

Increased socio-economic governance should make it possible to rebalance monetary policy and the coordination of economic and budgetary policy with the coordination of employment and social policy. The Commission's role in socio-economic governance should be strengthened. Involving social partners and the European Parliament as well as the relevant authorities at a national and regional level should lead to the democratisation of socio-economic governance and to maximum allowance being given to national and regional diversities.

A true balance between the economic, social and employment sides of this equilateral triangle can only be achieved if we identify suitable procedures for implementing socio-economic governance.

To do this, we propose consolidating the procedures for coordinating economic, employment and social policy into a single procedure:

- Each new Commission would present its own 'five-year programme for economic, employment and social policy' as a programme of socio-economic governance. This programme would be discussed in national and regional parliaments and approved by the Council and European Parliament. Based on this programme, the Broad Economic and Employment Policy Guidelines (BEEPG), including social and environmental policy objectives, would be drawn up by the Commission. These would then be ratified by the Council, the make-up of which would reflect its economic and social components, and by the European Parliament at the spring summit, following discussion by the national and regional parliaments. Based on European Commission reports, the Council would evaluate developments in Member States and whether the policy is consistent with the broad guidelines. The Commission could then, if necessary, issue warnings to Member States.
- In order to increase the input of social partners into (macro-) economic policy, employment policy and the coordination of social policy, the macro-economic dialogue should be formalised within the framework of a Tripartite Committee for Social Dialogue on Growth, Employment and Social Cohesion by the spring summit at the latest.
- Social policy should be presented as a matter of common interest, in accordance with the provisions for economic policy (Articles 98 and 99); a new Article should require Member States to coordinate social policy in order to help achieve the European social objectives.
- To respect the competences of the Member States and the regions in this area, the coordination procedures could strengthen the role of the national and regional institutions and management and labour at a national level.
- The objectives of the European Central Bank (ECB) (Article 105) should be supplemented in order not only to maintain price stability, but also to promote sustainable economic growth, full

employment and social cohesion. This would require changes to the stability pact to enable an active investment policy promoting employment and social cohesion to be implemented. The ECB should also operate in a more transparent fashion and should democratically accountable to the European Parliament.

#### **4. Strengthening the regulatory framework**

The Laeken Declaration recommends that the institutions should be more transparent and the decision-making process simplified.

Under the current Treaties, the Union has far-reaching legislative and conventional competences in the social domain and in terms of labour regulations. Although the social provisions clearly indicate that the role of the Union is above all to facilitate and support the social policy of Member States, the provisions are sweeping and cover a wide range of Community measures. Alongside the open method of coordination, the steady development of a regulatory framework in the social domain, and of minimum standards in particular, is crucial in preventing social dumping and insuring that all Member States benefit from a level playing field. Procedures should therefore be rendered more democratic and opportunities for political blocking manoeuvres abolished.

- We must define a single decision-making procedure for the legislative framework: codecision between the European Parliament and the Council, subject to qualified majority<sup>1</sup>, even in social matters and taxation.
- The Treaty denies the Union any competence in respect of wage policy, even though the Union has exclusive competence for defining monetary policy, which ultimately influences the definition of wage policy and the corresponding negotiations. It would therefore be wise, while respecting the autonomous position of management and labour, to concede the possibility of management and labour negotiating wage agreements at a European level. The exclusion of Community competence, particularly over pay, the right of association and the right to strike, must thus be abolished.

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<sup>1</sup> From the point of view of competences in respect of employment and social affairs, this applies to social security within the framework of the freedom of movement of workers, an area that should also cover non-EC migrants (Article 42), taxation (Articles 95 and 175), social security and the social protection of workers, the protection of workers in the event of termination of employment contracts, representation and collective defence of the interests of workers and employers (including participation), terms of employment for third country nationals who are regular visitors to the Community, financial contributions aimed at promoting employment (Article 137), social and economic cohesion (Articles 159 and 161) and measures combating all forms of discrimination (Article 13). Codecision should also be provided within the framework of competition policy (Articles 83 and 89), transport policy (Article 71) and trade policy (Article 157), subject to a qualified majority vote of the Council and consultation of the European Parliament.

## **5. Ensuring equality between men and women in all areas and combating all forms of discrimination in the Union**

For years the Union has had a pioneering role in promoting equality between men and women. The Union's work in the field of equal treatment, initially inspired by economic objectives, has gradually been developed from the point of view of social justice.

The Treaty of Amsterdam significantly increased the Union's room for manoeuvre in this area. Equality between men and women has become one of its objectives, while the abolition of inequality and the promotion of equality are widely sought.

However, to enable the Union to promote equality between men and women in all fields, the Treaty needs to equip it with more ambitious powers and instruments.

- The Constitutional Treaty should make provision for a coherent legal basis so that concrete measures can be taken to promote equality in all areas, not only in the fields of employment and professional life, but also in areas such as decision-taking.
- The principle of 'gender-mainstreaming' should also be applied to foreign and defence policy and to the concept of the Union as an area of freedom, security and justice.

Community initiatives to combat all forms of discrimination should also be increased. This would require a ban on discrimination to be directly applicable. In any event, these measures should be subject to the qualified majority vote of the Council and to codecision with the European Parliament.

## **6. Strengthening the role of management and labour**

Management and labour play an important role in the development of social and economic policy. The Maastricht Treaty assigns the social partners the role of co-regulators via collective bargaining at a European level. The Constitutional Treaty must recognise and strengthen the autonomy and role of social partners at every level and contribute towards the development of a true system of industrial relations in Europe.

- The Treaty assigns responsibility for promoting social dialogue to the Commission. This obligation should be strengthened. A distinction must be made between three types of dialogue: tripartite social dialogue (cf. preparation for the spring summit, macro-economic dialogue), social dialogue as co-legislator, which requires a procedure for binding (erga omnes) declarations, and social dialogue of autonomous partners.

- Social dialogue should not be just confined to the fields covered by the social chapter, but could also cover initiatives to combat discrimination, education and vocational training and aspects of immigration policy. A 'blanket' article in the Constitutional Treaty should enable the Commission to consult management and labour on any matter that concerns them and to promote social dialogue. As co-legislators, management and labour would determine legislation based on the 'programme for economic, social and employment policy', and the aspects of the programme that they wish to implement through collective bargaining in particular (e.g. a work programme for collective agreements).
- To facilitate social dialogue, an independent bipartite social dialogue committee (a 'European Labour Council') should be created (cf. proposal of the 'High level group on industrial relations'). The creation of a European Works Council should be discussed within the framework of the future role of the Economic and Social Committee (ESC).
- The method for implementing European collective agreements needs to be reviewed by granting the Commission the power to monitor democratic legitimacy (if the agreements cover all sectors and the partners concerned by the agreement).
- A genuine system of industrial relations should also allow for recourse to mediation and arbitration procedures.

## **7. Dialogue with the civil society**

Dialogue with the civil society, with NGOs and associations representing citizens in various fields, is the cornerstone of participatory democracy. Social NGOs also have a role to play in framing and implementing social policy. Recognition and enhancement of this dialogue require the creation of a legal basis in the future Treaty.

- The Commission should be given the task of promoting civil dialogue with the representative NGOs, such that the civil society has a role in guiding Union actions in the relevant areas.
- A new article in the chapter on social policy should make provision for a structured dialogue with players in the social domain, including representative NGOs. This dialogue should allow them to contribute to the formulation, implementation and monitoring of actions within the framework of social policy.

Anne Van Lancker

7 June 2002