

CONV 203/02

WG II 7

**NOTE**

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from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting held on 12 July 2002 chaired by Commissioner Antonio VITORINO

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The second meeting of Working Group II (Charter) was held on 12 July 2002 between 14.30 and 17.30 under the chairmanship of Commissioner Antonio Vitorino.

*I. Timetable of meetings*

1. The following dates for forthcoming meetings were confirmed:

- 23 July (all day)
- 17 September (all day)
- 4 October (afternoon)
- 7/8 October (dates in reserve)
- 21 October as the date of the final meeting – instead of 29 October as originally planned; this would enable the Group to conclude its proceedings before the plenary session of the Convention at the end of October, with a view to the presentation of an initial architecture for the Treaty as announced by the Chairman of the Convention, Mr Valéry Giscard d'Estaing.

## *II. Procedures for and consequences of any incorporation of the Charter into the Treaties*

### *– Possible techniques for incorporation of the Charter*

2. The Chairman opened a preliminary discussion on the subject, stressing that the Group would return to this crucial issue during its proceedings. He also highlighted:

- the relationship between the idea of a basic treaty and its length, and the choice of options (as presented in CONV 116/02), none of them being *a priori* incompatible with this idea;
- the various possibilities for combining the options presented;
- the question of the preamble, which had to be borne in mind in this context.

3. A majority of speakers favoured the insertion of the full body of the Articles of the Charter in a new basic treaty (option (f)), particularly because of expectations concerning the visibility and transparency of the fundamental rights of the Union, as expressed in particular by civil society and by the Youth Convention; the fundamental importance of a catalogue of such rights at the beginning of a basic treaty or constitution; and the "normative" character of the Charter, drafted "as though" it were destined to appear in the treaty.

4. Other speakers variously pointed out that:

- the concern to abide by the fundamental rights which were already in existence and to preserve the position of the Member States were (given the Group's approach of not modifying the Charter) arguments in favour of options (a) or (b), and that the benefits of this text as a declaration should not be under-estimated;
- the final choice between these options would be a political decision to be taken later, but depending on the answers to certain technical questions to be examined by the Group;

- there might be possibilities for an intermediate solution, as for example a protocol (option (e)), combined with a reference to the Charter in an article of the basic Treaty;
- that the choice of technique should also respect the desire not to weaken the pan-European ECHR system.

5. A number of speakers stressed that the preamble to the Charter, which was an essential part of it, had been drafted in such a way that, besides fundamental rights, it more generally encompassed the values and foundations of the Union. In the opinion of these members, the preamble could therefore be used (possibly with additions) as the preamble to a new basic treaty.

6. The Chairman concluded by stressing that, when the choice of technique for incorporating the Charter was made, several concerns had to be addressed including the political visibility and importance of fundamental rights, and also legal certainty. He also reminded members of the two facets of the compromise concerning the Charter, pointing out that at the time of its adoption, consensus was reached on a political declaration, but that the text had a legal profile as it had been drafted "as though" it was to be incorporated into the Treaties.

- The question of the current Article 6(2) of the EU Treaty (relationship between the Charter and the ECHR on the one hand, and the common constitutional traditions on the other).

7. Some members of the Group were in favour of deleting of Article 6(2) of the EU Treaty if the Charter were incorporated as a fully binding text, given that the Charter included the rights in the ECHR and was already considered by the Court of First Instance as an interpretation of the common constitutional traditions; in any case it contained references to both these sources in its preamble. However, others were in favour of maintaining Article 6(2) of the EU Treaty or a similar provision. Those members pointed out that the Charter did not contain all the rights guaranteed in the ECHR and its protocols, and that a provision such as Article 6(2) could favour an interpretation of the Charter in the light of common constitutional traditions. What is more, it would make the system open to future developments, enabling the Court of Justice to take account of new constitutional features which might emerge amongst the Member States.

8. The idea was also put forward that since common constitutional traditions had served as a third major source for the Charter (besides the rights in the ECHR and the EC Treaty), the desire to establish harmony between these three sources argued in favour either of the addition of a horizontal provision on constitutional traditions similar to those relating to the other two sources, or of the addition in Article 6(2) of the Treaty of an element which met this concern. If such an addition were not made, there would be a risk that the incorporation of the Charter would give too much political power to the Community court. However, others remarked that the Court of Justice's margin of discretion was greater nowadays, in the context of a definition of Community fundamental rights purely through case-law. They added that it was very difficult to define common constitutional traditions and the Court would not necessarily be able to deduce rights identical to those existing in all the constitutions of the Member States, nor only retain the lowest common denominator.

9. Some members commented that the question of Article 6(2) of the EU Treaty should be revisited after the Group had discussed accession to the ECHR. The Chairman confirmed this approach, stating that he saw scope for maintaining the references in Article 6(2), but that in any case the impact of any decision on accession to the ECHR on their wording would have to be examined.

– *The Charter and the competences of the Union*

The Chairman introduced the debate, presenting his working document, and stated that he himself saw no contradiction between the Charter and the limited competences of the Union.

10. All speakers stressed the importance, already highlighted by the previous Convention, of the principle that the incorporation of the Charter should not affect the distribution of competences between the Union and the Member States, and welcomed the significant clarification contained in the Chairman's working document (WD 03) in this respect. It was noted that the previous Convention wanted to draft a complete list, in the desire to give visibility to all the common values of the Union, particularly in the context of its international relations.

11. Several speakers felt that editorial amendment to Article 51(2) of the Charter would be useful if option (f) were chosen, as suggested in the Chairman's working document (clarifying that the Charter, incorporated into the Treaties, did not modify the competences and tasks defined by *the other* provisions of the Treaties).

12. Following requests from the Group, the Chairman Mr Vitorino undertook to submit a working document on possible editorial amendments to Articles 51(2) and 52(2) of the Charter, and to the "replications" in the Charter.

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