

CONV 351/02

WG II 15

NOTE

from :	Secretariat
to :	Working Group II
Subject :	Summary of the meeting on Monday 7 October 2002 chaired by Commissioner Antonio VITORINO

The sixth meeting of Working Group II (Charter/ECHR) was held on 7 October 2002 between 10.00 and 16.30, and was chaired by Commissioner Antonio Vitorino.

1. Modalities and consequences of possible accession by the EC/EU to the ECHR

The Chairman introduced this item by stating that his draft of the Group's report would follow the lines given in his oral statement to the plenary on 3 October. In particular, he proposed underscoring in the report the following two points:

- Accession to the ECHR would not result in any change to the allocation of competences between the Union and the Member States. The Group might recommend the use of certain tools to ensure this result, such as the insertion of clarification along these lines in the legal basis authorising accession and a provision or declaration on the limited competences of the Union to be included in the accession treaty. The result would be that the "scope" of accession would be confined to the sphere of the Union's current competences, and that any "positive obligations" could stem from the ECHR only within those limits.

- Accession would not affect Member States' national positions within the Strasbourg system. This would be guaranteed by a "step", whereby the Convention would discuss only the constitutional authorisation for accession, while leaving it to the Council, acting unanimously, to decide on the modalities of accession, on the moment in time for acceding to additional protocols and on any reservations by the Union. Reservations by Member States would continue to be unaffected by the Union's accession, as the latter would take effect only within the framework of Union law.

The Group expressed its agreement with the approach outlined by the Chairman.

2. Modalities and consequences of possible incorporation of the Charter into the Treaties

– examination of certain technical adjustments to the horizontal provisions of the Charter

The Chairman submitted to the Group his compromise proposals (see WD 23) concerning technical adjustments to the horizontal articles (Articles 51 and 52) of the Charter, on the assumption that the Charter would be incorporated as a binding text.

A large majority of speakers congratulated the Chairman on his compromise proposals. These speakers noted the great clarity and precision of the technical adjustments proposed, which would be such as to remove the legal ambiguities of the Charter hitherto criticised by some. At the same time, they pointed out that these adjustments would involve no change to the substance of the Charter. Several members pointed out that it would be much easier for them on this basis to convince their respective national governments and parliaments about incorporation of the Charter into the Treaties. Some members stressed that, from the viewpoint of the candidate countries which had not participated in the previous Convention, the proposed amendments would be of great assistance to those countries' national courts for future interpretation of the provisions of the Charter, should the latter become legally binding.

One member of the Group was opposed to the adjustments proposed by the Chairman, on the grounds that they would not respect the working method approved by the Group not to touch the text of the Charter, that they would not really add any useful legal points and that some of the clauses proposed, notably rules of interpretation, would not have their place in a constitutional text. The Chairman pointed out here that the examination of technical amendments to the horizontal provisions of the Charter had been understood from the outset as indeed being included in the Group's mandate.

Following some drafting work, based in particular on certain proposals for amendments made by one member, the members of the Group attending the meeting, with the exception of one member who upheld a reservation, agreed on a slightly amended version of the drafting adjustments to Articles 51 and 52 of the Charter as well as on some explanations of those adjustments to be included in the report. These adjustments would be recommended to the plenary in the form of an Annex to the Group's report.

The members of the Group also agreed that the explanations given in the Group's report concerning these adjustments should be added to the "Explanations" of the Praesidium of the previous Convention in order to have available "preparatory work" for the Charter as a whole.

– *The question of Article 6(2) of the EU Treaty in its present version*

Most of the speakers emphasised that at this stage, before having further details of the future structure of the Treaty, it was premature to give a final assessment of whether or not it was useful to retain the references to the two sources of inspiration as currently made in Article 6(2) TEU. The discussion showed that opinions, as already voiced at the Group's second meeting (see CONV 203/02 WG II 07), differed over this matter. The Group decided to refrain from making concrete recommendations on this matter, but to point this out to the plenary, which should discuss the matter together with the concrete form of incorporating the Charter.

3. Possible points for the Group's draft final report

The Chairman gave a detailed oral presentation of the points which he intended to include in his final report. The Group held a discussion during which members expressed their agreement to the inclusion of the points, provided some clarification of them and raised further points to be added to the report.

It was agreed that the Chairman would circulate his draft report to the Group by 16 October at the latest (but would do his best to do so by 15 October), and that members could forward their written reactions until 17 October. On the basis of those reactions, the Chairman would revise his draft and submit it for adoption at the meeting on 21 October.