

CONV 364/02

CONTRIB 126

COVER NOTE

from Secretariat

to The Convention

Subject : **Contribution by Mr. Caspar Einem, member and Ms Maria Berger, alternate member of the Convention:**

"Working towards Social Union (2) Social Security, Social Policy, Subsistence"

The Secretary-General of the Convention has received the contribution annexed hereto from Mr. Caspar Einem, member and Ms. Maria Berger, alternate member of the Convention.

**Contribution
By**

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Convention

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**Working towards Social Union
(2) Social Security, Social Policy, Subsistence**

A. The Convention on the Future of Europe has provided the opportunity to take the European Union one step further, after fifty successful years as a key factor in peace and stability throughout our continent, to become a European Union of the citizens. For this, it will require on the one hand to adopt a clear basis that places European citizens in the centre and must on the other hand develop corresponding policies and strengths that will help to make it evident that the European Union is an effective political body that is capable of finding real solutions to the challenges and problems faced by the people of today in the same way as their nation states.

B. In order to gain the trust and respect of the citizens of Europe, the EU will need to begin by ensuring that the most basic interests and concerns of these same citizens, i.e., essentially employment and social security, are suitably dealt with in its policies. This second proposal aims to deal above all with the following essential issues: protecting collective contracts against the laws of competition, protecting services that are of general economic or social interest from the laws of competition, further reinforcing the content of the basic principles of social union and strengthening the dialogue between management and labour at a European level.

C. This proposal is the second in a series of related proposals. It is based on the Treaty on European Union (TEU) and on the Treaty establishing the European Community (EC Treaty) as well as proposals made by a host of institutions and experts. It also contains suggestions for a new order of the different topics dealt with in view of a new future constitutional structure. But of course, the fusion of the previous three treaties into one single treaty would in any case require an entirely new order of the individual articles and a brand new layout. Our proposal therefore does not deal with the form of the treaty, rather its content. For example, should Article 2 of the EC Treaty require to be rewritten for the new Constitutional Treaty in a more succinct manner, then this should be done on the basis of the amendments and additions to its content proposed here and modified to that extent allowed by the time needed to draw up new legislative texts.

D. Essentially, the Constitutional Treaty would begin with the basic principles and undertakings, i.e., the values on which the Union is based, as well as the provisions governing citizenship of the Union. At this stage the legally binding and fully applicable Charter of

Fundamental Rights would also be included. It would seem logical to provide for further sections on the issues of “Competencies” and “Instruments”. Any further provisions applicable to its actual content would follow the Constitutional Treaty per se. The order of the chapters would indicate the shift of focus towards the citizens of the Union.

E. Suggested texts¹ referring to the principles and undertakings of the Union

1. Article 2 of the Treaty establishing the European Community (EC Treaty) should be rewritten in accordance with proposal CONV 232 and the following text should be added to the second and fourteenth sub-points of paragraph 2:

“PRINCIPLES

Article 2

(1) The Community shall have as its objective to guarantee for the citizens of the Union a life of freedom, safety, security and prosperity free from economic and social need and poverty.

(2) For these purposes it shall establish and guarantee an economic, monetary and social union and shall guarantee throughout the Community and through the implementation of the common policies and measures outlined in Articles 3 and 4

- *a harmonious, balanced, [...] sustainable and ecologically sound development of economic activities,*
- ***general and non-discriminatory access to services that are of general interest,***
- *full employment based on good quality of work and providing a minimum living income,*
- *a high level of social protection and security,*
- *equality between men and women in all areas of life,*
- *smooth relations between the generations,*
- *sustainable and non-inflationary growth,*
- *a high degree of competitiveness and convergence of economic performance,*
- *sustainable environmental development and*
- *a high level of protection [...] of the environment and*
- *improvement of the quality of the environment,*
- *the raising of the standard of living and quality of life,*
- *economic and social cohesion,*
- ***the right to information, consultation and co-decision of employees in all issues that concern them,***
- *solidarity among Member States and*
- *solidarity among the citizens of the Union.”*

Services that are of general economic or social interest and equal access to these is a common value shared by all European societies. This should also be clearly stated as one of the objectives of the European Union.

¹ Amendments made to the texts of the applicable Treaties, i.e., the EC Treaty and the TEU, are written in bold with the exception of those amendments already outlined in the initial proposal (CONV 232).

2. Article 2 of the Treaty on European Union (TEU) should be amended as follows, over and above the suggestions outlined in the initial proposal:

“Article 2

The Union shall set itself the following objectives:

- *to promote economic and social progress, to achieve full employment **and a high level of social protection and social security** and to achieve balanced and sustainable development...*
[further as before]

This proposal intends to make it clear as early on as in the basic principles that the EU is to and indeed wishes to become both an economic and social union.

3. Over and above the amendments to Article 3 EC Treaty outlined in proposal CONV 232 and making reference to an employment and social union, the following text should be added as point jj):

“1) For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

...

...

- i) *a common macro-economic policy with the aim of achieving full employment,*
- ii) *ensuring the high quality of the work on offer and that it provides a minimum living income,*
- iii) *development of a European employment strategy;*
- j) *a policy in the social sphere based on full employment ensuring the high quality of the work on offer together with a high degree of social protection and security, all of which supported by a European Social Fund;*
- jj) *a policy of equality that is effective in eliminating all discrimination **on the basis of the reasons given in Article 13 of the EC Treat.***”

Furthermore, the following text should be added to paragraph 2:

“For all of the activities outlined in this Article, the Community shall ensure that all inequalities are eliminated, shall promote equality of men and women and shall take into account the requirements of social protection and social security, in particular in terms of promoting generally accessible and financially sustainable services of a high quality and based on the principle of solidarity.”

4. Article 6 of the EC Treaty should be inserted as the third paragraph of Article 3 of the EC Treaty for reasons of consistency.

5. The following text should be added to the principles on which the Union is founded and that are outlined in Article 6 of the TEU:

*“1) The Union is founded on the principles of liberty, democracy, **social security**, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”*

Contrary to the proposal made by the leading German social insurance associations, we believe that the basic principle outlined should not be “social justice”, rather the much more easily understandable and feasible principle of “social security”.

6. The following text should be added as a new Article 6:

“Article 6

(1) The Union and the Member States shall ensure within the framework of their individual areas of competence, that the citizens of the European Union are provided with services that are of general and in particular economic, social, and cultural interest.

(2) In view of the value of these services as outlined in the European Union Charter of Fundamental Rights and in order to promote social and territorial cohesion, the Union and the Member States shall take all of the necessary measures within their individual areas of competence to ensure that the following principles and requirements are upheld with reference to these services: general and non-discriminatory access, transparency, proportionality, quality, security, durability, assessment, and further development based on need.

(3) The Union shall uphold, above all when applying Articles 73, 81, and 83 to 97, the right of the Member States and of their individual territorial units to either provide services of general interest themselves in accordance with general economic principles or to commission public-sector bodies or other establishments to provide these services and finance them. The Union shall issue a European Law or Framework Act for this purpose.”

In this way the content of Article 16 EC Treaty is amended and the emphasis is placed more clearly on the basic overall aims. The previous Article 16 would be removed. The demands of EPSU, ETF, ETUCE and UNI Europa should be taken into account when introducing this new wording and new provision.

Detailed provisions governing specific exemptions from competition or financial assistance law should be outlined in an executory act referring to this (future) constitutional provision.

F. Suggested texts for Community (Union) Policies

Proposed changes to:

Title VI: Competition

7. A fourth paragraph should be added to Article 81 EC Treaty as follows:

“(4) Paragraph 1 does not apply to agreements reached as part of collective bargaining negotiations between management and labour and concerning issues related to social policy.”

This additional text should ensure that (national) collective agreements are not later made subject to competition law by the ECJ.

8. After letter a) in the list of incidents of abuse given in Article 82(2) a new letter b) should be introduced as follows, and the remaining points should be labelled c) to e):

“b) directly or indirectly imposing inadequate salary or social conditions on employees;”

This makes it clear that not only consumers and competitors are exposed to the risk of unfair behaviour, rather that employees are also.

9. The following text should be added to Article 86(2):

“(2) Undertakings that provide services in the sense meant by Article 6 EC Treaty or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules of competition in accordance with Article 6, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them...” [further as before]

10. After Article 86(2) the following new paragraph 3 should be introduced and the current paragraph 3 would then become paragraph 4:

“(3) The Commission shall ensure the application of the provisions of this Article and shall, where necessary, propose legal provisions and shall address decisions based thereon to the Member States.”

11. In Article 87(2) EC Treaty, the following text should be added after letter c):

“d) aid granted to businesses or establishments by local communities where these local communities own said businesses or establishments, insofar as the services they provide are of general economic interest.”

The aim of these new provisions is to entitle local communities to subsidies for their services without the need to provide notification thereof and in such a manner that this does not infringe competition provisions.

Within the framework of the new order of the financial and legal provisions outlined in CONV 232, the following changes should be made under

Title I Economic and Social Union

- Institutional Provisions

12. The following changes should be made to Article 114: paragraph 3 should be removed entirely, paragraph 4 should then be renumbered as paragraph 3 and the third sentence of paragraph 2 should read:

“The Member States, the Commission and the ECB shall each appoint at most two members of the Committee, whereby the ECB shall also represent the central banks within the ESCB that are part of EMU. Those Member States that are not part of EMU may appoint representatives of their national central banks as members of the Committee.”

Article 114(3) leaves the composition of the most important economic and political committee to a qualified majority decision by the Council acting on a proposal from the Commission. Since 1998, before the start of the 3rd phase of EMU, all of the central banks of the Member States have been represented within the Economic and Financial Committee alongside the ECB, even though as of 1 January 1999 they ceased to operate any monetary policies of their own. This has led to an imbalance of power in the hands of the central bank representatives and to the detriment of the government representatives. It is for this reason that we would propose a provision under primary law such as the above.

Continuing in the same vein as the new organisation concept proposed in CONV 232 and in addition to the modifications already suggested therein, the following changes should also be made:

Title I Economic and Social Union

- ...

- Employment policy

13. The provisions of Article 129 should be strengthened as follows:

“The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, **management and labour representatives** and the Committee of the Regions, shall decide on incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.”

The aim of this proposed change is to ensure that the Council is involved in every case and consults management and labour representatives when drawing up concepts.

14. So as to strengthen the position of both the European Parliament and management and labour representatives within the Employment Committee, the second sub-point of Article 130 should be amended as follows:

*“- without prejudice to Article 207, to formulate opinions at the request of either the Council, the Commission or **the European Parliament** or on its own initiative **after consulting management and labour representatives**, and to contribute to the preparation of the Council proceedings referred to in Article 128.”*

Under the current

Title IX Commercial policy

the following changes are proposed:

15. As even existing commercial policy is required to take into account any possible consequences in terms of employment or social policy, we would suggest making the following modifications to Article 133:

*“(1) The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies, **as well as in regard to anchoring world trade and investment arrangements in internationally recognised social and environment standards. The Member States and the Community shall act in all matters of commercial policy in compliance with the principles set down in Article 2 of this Treaty and shall promote the efficient and sustainable use of resources.***²

*(2) The Commission shall submit proposals to the Council, **after consulting the European Parliament, the Economic and Social Committee and management and labour representatives**, for implementing the common commercial policy.*

*(3) Where agreements with one or more States or international organisations need to be negotiated, the Commission shall, **after consulting the European Parliament, the Economic and Social Committee and management and labour representatives**, make recommendations to the Council, which shall authorise the Commission **in co-decision with the European Parliament** to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council*

² Reference is made here to the principles set down in Article 2 of the Treaty so as to ensure that the Principle of Subsistence, for example, cannot be called into question by international trade agreements.

and the European Parliament to assist the Commission in this task and within the framework of such directives as the Council and European Parliament may issue to it.”

These proposed changes to Article 133 are based overwhelmingly on suggestions made by the *Deutscher Gewerkschaftsbund* Federal Board. These modifications would on the one hand overcome the current practice of secret negotiations through the involvement of the European Parliament, thus increasing democratic transparency. On the other hand, they would introduce qualitative criteria into the basic principles of EU commercial policy, such as through the reference to Article 2 intended to protect the principle of services of general economic interest, or the “subsistence” principle in short, from excessive trends towards liberalisation.

In line with the new structure suggested in proposal CONV 232, the following changes should be made to:

Title I Economic and Social Union

CHAPTER 3: Social policy

16. The text of Article 136(1) EC Treaty should be amended as follows:

“The Union and the Member States ... shall have as their objectives the achievement of full employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, a high level of social protection and social security, dialogue between management and labour...” [further as before]

In the future, the issue should no longer simply be “proper social protection”, but much more, i.e., a high level of social protection and social security that best protects the interests of those concerned. The amendments proposed above are also intended to make it clear that the focus of EU political efforts is on the citizen.

17. The following paragraph should be added to Article 136:

“The Union recognises and respects existing national differences between social security systems used to protect different societies and that are characterised by the values of solidarity and social justice.”

The system of self-administration of social insurance arrangements has proven itself to be efficient and cost-effective. The involvement of the parties concerned in determining their own arrangements should be continued and indeed upheld by the EU. The wording “recognises and respects” links this text to various parts of the EU Charter of Fundamental Rights.

18. The text of Article 137(2) EC Treaty should be amended as follows so as to strengthen its overall effect:

*“To this end, the Council **adopts** by means of directives, minimum requirements for gradual implementation...”*

The aim of this provision is to ensure that the Council is involved in every case.

19. Following Article 139(1) a new paragraph 2 should be added as outlined below and the current paragraph 2 should be renamed paragraph 3 and amended as follows.

„(2) Agreements concluded at European level by management and labour associations concerning the remuneration or social framework conditions of their members, e.g., European Collective Agreements, shall, insofar as they are not based solely on the legal relationship between these associations, be legally binding with immediate effect in all of their areas of application, whether in terms of specialisation, area and persons concerned. This legal validity shall also apply to employees whose employers are part of the collective agreement system, but who have remained outside the agreement. The Council shall issue more detailed provisions in this respect with the assent of the European Parliament and acting on a proposal by the Commission. The Council shall act by qualified majority. Paragraph 3 applies until such time as this paragraph is fully applicable.

*(3) 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, **including remuneration, the right of association, the right to strike and the right to lock-out**, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The Council shall act by qualified majority.“*

The aim of this proposal is to enable management and labour associations to decide independently at European level on those areas of responsibility in which they wish to negotiate. The use of the qualified majority decision procedure by the Council serves to strengthen social dialogue at European level.

However, a basis should also be created in primary law for all binding collective agreements reached at European level and with the third type of effect. The paragraph 2 proposed above furthermore requires additional study by both the Council and the EP.

20. The following text should be added to Article 140(2):

“To this end, the Commission shall act in close contact with the Member States **and social insurance organisations** by making studies, delivering opinions, and arranging consultations both on problems arising at national level and on those of concern to international organisations. **With the aim of reaching the objectives outlined in Article 136 the Union shall work in close cooperation with social insurance organisations.** Before delivering ...” [further as before]

The process of European unification must uphold the existing social and cultural diversity of individual state systems of social protection and develop these further in a cautious manner as part of a common European future. Direct dialogue between national players in the social insurance sector and the EU bodies is a condition for this.

21. An Article 144a should be added after Article 144 as follows:

“For those matters governed by Article 137(1)(j) and (k), the Council shall, in line with the consensus of the Member States, on the basis of a proposal by the Commission that takes into account the opinions of the Committee for Social Protection and following consultation with the European Parliament and management and labour representatives
- produce jointly established objectives and indicators and
- where necessary provide guidelines to be followed by the Member States in their policy-making and
- issue reports on the implementation of a cooperation procedure.
The results of this procedure shall be included in the basic characteristics of the economic policy of the Member States in accordance with Article 99 of this Treaty.”

The aim of this new provision is twofold. On the one hand, it clearly states the methods for open coordination as part of the Treaty. On the other hand, it also makes known that these methods are to be used for two quite specific policy areas only, namely the modernisation of social protection and the fight against social exclusion. Such open coordination is not intended to replace hard EU law and shall bring obligations of its own, essentially through the reference to Article 99 and its albeit somewhat weak system of sanctions.