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**Subject :       Contribution by Mr Emilio Gabaglio, Observer at the Convention:**  
**"A Constitutional Treaty for a Social and Citizens' Europe"**

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The Secretary-General of the Convention has received the contribution annexed hereto from  
Mr Emilio Gabaglio, Observer at the Convention.

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# **“A CONSTITUTIONAL TREATY FOR A SOCIAL AND CITIZENS’ EUROPE”**

## **ETUC contribution to the European Convention**

*(adopted by the ETUC Executive Committee, Brussels, 9<sup>th</sup>-10<sup>th</sup> October 2002)*

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## **“A Constitutional treaty for a social and citizens’ Europe”**

### **ETUC contribution to the European Convention**

The European integration process, albeit its shortcomings, remains a major historical achievement of the European people and nations, to which the trade union movement has effectively contributed from its very beginning, with the conviction that it has helped to promote peace and democracy as well as economic development and social progress.

Today however, Europe is entering a new phase: the continent will soon be unified through EU enlargement; globalisation needs to be governed to the benefit of all; working people and citizens at large expect their needs and aspirations to be met more effectively.

To this end, the European Union’s missions and goals must be reoriented and completed, its competencies redefined and its institutions reformed to gain stronger democratic legitimacy.

#### **I. The challenges for the treaty reform**

ETUC shares the view that it is now time to make a fundamental overhaul of the treaties developed step by step at consecutive IGCs. To a certain extent, this is a question of codifying, streamlining and clarifying the existing treaty provisions. But as reflected in the Laeken Declaration, the range of issues on the agenda of the Future of Europe treaty reform process will be much broader and more ambitious. A ‘constitutionalisation’ of the EU treaties and hence the foundation of the EU cooperation, its missions and “finality,” will be a key question.

ETUC endorses the need and the aim to agree now on an ‘**EU Constitutional Treaty**’, (as a historical step towards a genuine ‘Constitution’), reflecting the development of the Union according to a federally balanced scheme, simultaneously practising subsidiarity, complementarity, solidarity and social cohesion, and one which clearly defines the aims, jurisdiction, missions and competencies of the Union.

A key issue for the European Convention to address in preparing the 2004 IGC treaty reform will be the very vital challenge of bringing the Union closer to its workers and citizens. There is a clear need to increase popular backing of the European integration project. The inclusion of the EU Charter of Fundamental Rights in the ‘EU Constitutional Treaty’ will be pivotal in this respect. It needs to become a visible reality that “**Europe makes a difference**” in taking care of the citizens’ and workers’ interests in an era of globalisation. As the recent international situation has clearly illustrated, it is essential and of great added value that the EU, together with its Member States, is able to play its global role and address the common global challenges efficiently. Obviously, the question of “**more Europe**” will therefore be central in the treaty reform. The EU integration project goes beyond a single market and a single currency; the aim must be to achieve a proper political and social Union.

This development naturally makes it all the more important to **overcome the transparency and democratic deficits** (including at national level) through the treaty reform. The **missions of the Union** have developed considerably since the start half a century ago, and it will be crucial to reform the democratic legitimacy of the Union’s institutions and decision-making procedures to make them adequate and up to date for current and future tasks.

A key question in this respect will be the reinforced role to be played by the social partners and to allow for a European system of industrial relations in the 'EU Constitutional Treaty'. It will also be indispensable for the Union to reform its decision-making procedures, in order to be efficient. The need already exists with a Union of 15 Member States and proportionally, the problems would be accentuated with enlargement.

Following several treaty changes within a relatively short period of time, it should be a clear objective for the 2004 treaty reform to fulfil the criteria involved in preparing for the future:- having a treaty structure which ensures a dynamic EU, able to adapt – without necessarily first convening an IGC – to meet the continuously evolving demands to fulfil the Union's role of maintaining peace, stability, democracy, economic development, cultural diversity and welfare in Europe and at global level.

It would therefore be no exaggeration to say that the European Union, with the treaty reform process initiated, is at a decisive crossroads, and that the **European Convention** has been given a heavy responsibility to deliver a constructive answer to this common challenge, and thus pave the way for a successful outcome of the Future of Europe 2004 IGC reform process.

ETUC is convinced that the constructive way forward towards this goal is to follow a '**policy driven approach**', first focusing on the common missions and challenges and then looking for the institutional solutions to make the implementation of these concrete aims possible, based upon general criteria rather than focusing on an abstract constitutional discussion on architecture or subsidiarity.

From the outset, ETUC has recommended that a constitutionalisation of the EU treaties be the fruit of a '**Constitutional Pact**' which reflects the whole of European society and citizens. The mandating of a European Convention fulfils one of the pre-conditions to making this possible, and the inclusion of the European social partners as observers to the European Convention clearly improves the possibilities for obtaining such a Constitutional Pact. The full involvement of the candidate countries in the work of the European Convention is also to be welcomed, and ETUC recommends sticking to a timetable which makes it possible to conclude the 2004 IGC in time for the EP elections and entrance of new Member States into the Union.

Although the differing aspirations for the finality of the Union (and the factors behind the uncontested problems on agreeing on ambitious reforms, during the Nice IGC process itself,) should not be overlooked in the "Future of Europe" reform process, ETUC stresses all the more the **positive point of departure to find common European answers**: - that the Member States, albeit different cultures, do share common European values as expressed in the EU Charter of Fundamental Rights, - that there is basic mutual support for sustainability and the European social model, including the role of social partners and services of general interest, - and that the Member States generally also share common criteria as regards efficient and democratic institutions and decision-making procedures. The "practical" challenge and task for the work of the European Convention will be to find bridging solutions and build on the European integration already achieved, taking into consideration the different constitutional traditions and political structures of the Member States. The political adoption of the EU Charter, despite its deficiencies, constitutes a milestone in the European constitutionalisation process.

## **II. EU missions and trade union key policy priority issues**

For ETUC, the **overall objective** should be to achieve a European Union built upon peace, freedom, democracy, fundamental rights, solidarity, social justice and equality, full employment and quality jobs, social and territorial cohesion, welfare and prosperity, and founded upon the principles of the European social model, services of general interest and a social market economy. Social dialogue and the autonomous role of social partners, including their role as co-regulators also at European level and the development of a European system of industrial relations, must consequently constitute a fundamental pillar of the European Union. The single market and the single currency are key elements of European integration, but it cannot be confined to these tools; European integration should include a social union and European economic governance and evolve towards a political union based on democratic and effective institutions and the full recognition of civil and social rights. The Union will also have a clear mission as regards the external and global dimension.

To achieve these objectives, there will be a need for ‘more Europe’. The objective should not be to reduce but to clarify, adapt and extend the EU competencies according to the new missions and common challenges.

### **A UNION GUARANTEEING THE RESPECT OF COMMON FUNDAMENTAL RIGHTS**

The EU Charter constitutes a milestone in the European constitutionalisation process. Being in principle a politically agreed codification of the rights and values common for its Member States, to be respected by the EU, it will be crucial to make visible for the workers and citizens that the Member States, albeit their different cultures, do share common European values as expressed in the Charter, reflecting the indivisibility of the political, civil, social and trade union rights.

ETUC strongly recommends that the Charter, despite its remaining deficiencies, be incorporated as a cornerstone in the EU Constitutional treaty in a legally binding manner, (i.e. either directly as a building block in the treaty or as a Protocol annexed to the treaty) and that a political monitoring procedure be provided for through a treaty reference, also with a view to its further dynamic evolution.

Such a monitoring procedure will be all the more important in view of the apparent lack of possibilities, so shortly after the compromise reached by the Charter Convention, to improve it in the present treaty reform process. ETUC however, insists as a principal pre-condition for its support of the Charter, that the treaty’s shortcomings as regards transnational trade union rights are remedied, as proposed by ETUC, through an explicit inclusion in the Constitutional treaty of the respect for transnational trade union rights and autonomy of the social partners at European and cross-border level.

As the EU Charter does not imply any changes for the Member States as regards protection of fundamental rights because it states explicitly that it is addressed to the EU and its institutions “with due regard for the principle of subsidiarity” and only to the Member States to the extent that they implement EU law, ETUC further proposes that the Constitutional treaty include an obligation for Member States to adhere to and respect the equivalent rights in the European and international instruments upon which the EU Charter is based.

ETUC also recommends that the EU accede to the European Human Rights Convention.

## **A UNION WITH A 'EUROPEAN SYSTEM OF INDUSTRIAL RELATIONS'**

A top priority for ETUC is to ensure that the Constitutional treaty and the EU policy treaty recognise the (transnational) trade union rights and strengthen the autonomy and the role, also as co-regulators, of social partners at all levels. It will be highly significant that the European level, as is the case at national level in the Member States, also respects such a principle of 'horizontal subsidiarity'. The **principal objective** is to have anchored in the reformed treaties: 1. the framework conditions allowing for a European system of industrial relations by guaranteeing in particular the **respect of transnational trade union rights** (i.e. to information and consultation within the undertaking, the freedom of assembly and association and collective bargaining and action) in a way which fully respects the national systems of collective bargaining and action, and the **autonomy of the social partners**, as well as 2. **anchoring the role and rights of the European social partners as co-regulators and their involvement in the EU related decision-making procedures in general** as regards consultation and concertation, in all issues concerning their direct interest and responsibilities, and so **applying the principle of 'horizontal subsidiarity'**. The reconfirmation of the existing Social Policy Chapter provisions (TEC articles 138-139) concerning the role of European social partners, constitutes a key objective.

Consequently, it must be ensured that the treaty provisions, especially (Nice) TEC article 137, paragraph 5, do not pose an obstacle to guaranteeing the respect of fundamental trade union rights. Unless it can be proven that it is compatible in this respect, ETUC underscores the necessity to amend the present (Nice) TEC article 137, paragraph 5, deleting the reference to the 'right of association' and the 'right to strike'.

With a view to strengthening the social dialogue operations, the Treaty should provide for the establishment of a **'permanent European social partner infrastructure'** aimed at securing and developing the institutionalised consultation, social dialogue and negotiation with the recognised European social partners at inter-professional and sector level on EU treaty-related issues, in an efficient way.

The question of relevant treaty provisions is similarly to be clarified as regards **'social concertation'** in relation to social summits and Council committees, as well as in relation to external relations activities (ILO, WTO, international financial institutions, UN) and bilateral trade and other agreements.

One perspective integrated in the ETUC proposal is that the European social partners, within their competencies, should supplement the proposed reform of the treaties with a social partner agreement setting out the framework for autonomous negotiations at European and cross-border level, including the related questions of arbitration, mediation and conciliation.

ETUC likewise proposes to reform the ECJ with the aim of giving the social partners:

1. the status of "privileged applicants", also including the right to submit cases to the ECJ concerning EU institutions which have failed to fulfil, or infringe a Treaty obligation and
2. the right to be consulted and to submit written observations in cases brought before the ECJ concerning community law implementing EU social dialogue framework agreements.

Furthermore, concerning cases relating to the implementation and interpretation of the *social acquis communautaire* or cases affecting workers and trade union rights, consideration should be given to having such cases dealt with by a separate labour and social court section, whose composition would include assisting experts appointed by the social partners.

The ETUC treaty reform proposals should be seen as a contribution, in the further development of the European social partner joint Laeken declaration and in the context of the European Convention, to review and streamline the historical, step by step development, with the objective of establishing an (also cost-) efficient and coherent EU framework for the reinforced role and responsibilities of the social partners. The latter should incorporate the existing practices and be adequate and flexible for future dynamic development towards a European system of industrial relations.

It is ETUC's intention to seek to have these proposals discussed and further developed with the other European social partners in the context of the European Convention reform debate, especially as regards a concrete proposal for the provision of a 'permanent European social partner infrastructure', but also in relation to the question of a supplementary agreement setting out a framework for autonomous negotiations at European level, including the related questions of arbitration, mediation and conciliation.

## **A SOCIAL UNION WITH EUROPEAN ECONOMIC GOVERNANCE**

One of ETUC's key priorities is for 'European economic governance' to be included as a core EU mission in the Constitutional treaty, based upon the principles of a social market economy, and for the framework for European economic governance as a common task to be consequently established in the EU Policy treaty, with a view to making it possible to pursue the objectives of a social market economy.

The societal perspective for the European integration project has at least changed since the Maastricht and Amsterdam treaty reforms. Although not completed, the Union treaty as such and its objectives (TEU article 2), the Community principles and activities (TEC articles 2 & 3), the introduction of the euro, the recognised role of the European social partners, the new social policy competencies, the concept of the European social model, the European Employment Strategy, the economic policy cooperation and the Lisbon economic and social sustainability strategy, are all clear landmarks showing that the ambitions for the European integration project go beyond a single market, and also that of a monetary union. The aim today is to establish an economic, social and political union where the economic, employment and social policy objectives are promoted directly as targeted objectives for EU coordination, and building upon the European social model and its values. This agreed societal perspective and aim for the EU integration should be explicitly expressed in the treaties.

Accordingly, the ETUC is making 7 proposals:

### **1. Social market economy**

The basic treaty reference (TEC articles 4, 98 and 105) should be the principles of the 'social market economy', instead of 'an open market economy with free competition,' which is no longer adequate.

## **2. Full employment**

It should likewise be clearly stated that the Union objective (TEU article 2) and Community task (TEC article 2) is to promote ‘full employment’ (and not the unaccountable target of ‘a high level of employment’) and the same as regards ‘social inclusion’.

## **3. ‘European economic governance’**

The objective of ‘European economic governance’ should be included as a core EU mission in the Constitutional treaty (TEU article 2, TEC articles 2 & 3) and, consequently, the framework for a European economic governance should be established as a common task in the EU Policy treaty, with a view to making it possible to pursue the objectives of a social market economy (e.g. TEC articles 3 & 4). The aim should be to establish a framework in which all Member States participate and in which the social partners have an institutionalised role. Taking all these factors into consideration, the objective of a framework of European economic governance should be to deepen and improve the coordination of the (macro-economic) policy mix rather than seeking to adopt a single or common economic policy.

A ‘Euro-area Ecofin’ should be established to exercise treaty provisions relating to the economic governance of the euro-area.

## **4. Institutionalising the procedures of the ‘EU economic and social sustainability strategy’**

The procedures governing the EU's economic, social, and environmental strategy – ie the EU's core strategy initiated at the Lisbon and Stockholm European Councils- should be set out in the EU Policy treaty. Broadly speaking, ETUC can accept the proposals made by the Commission in its August 2002 Communication on streamlining procedures. Thus:

- a) The annual Spring European Council should lay down the Union's general political orientations on economic, social, and sustainability issues.
- b) Prior to the Spring European Council, the Commission would present both:
  - an ‘Implementation package’ in two halves dealing respectively with the implementation of the Broad Economic Policy Guidelines and the Employment Guidelines, and
  - its ‘Synthesis report’ making proposals for the Council's conclusions.
- c) After the European Council, the Commission would present a ‘Guidelines package’, again in two halves – dealing with the BEPG and the Employment Guidelines – which would be considered respectively by the Ecofin and Employment Councils, before going for endorsement to the Summer European Council, and then to the relevant Councils for adoption.
- d) The EP, national parliaments and the European Social Partners must be able to play full roles throughout these procedures. A Social Partners' Tripartite Social Summit for Growth and Employment should be established in relation to the Spring European Council. Especially in view of the important role of the ‘open method of coordination’, the Member State governments should be obliged to ensure the consultation and assent of the national parliaments in accordance with their national constitutional practice.



## **5. Broad Economic Policy Guidelines**

a) Both the economic and the employment guidelines should be consistent with each other. Consequently, ‘employment mainstreaming’ should be part of the BEPG provisions. It is therefore proposed to amend the present TEC article 99, para 2, 1<sup>st</sup> part, by adding that:

*“These [BEPG] guidelines shall be consistent with the Employment guidelines adopted pursuant to Article 128”.*

b) In the spirit of making existing procedures more streamlined and effective, the BEPG and the excessive deficits procedure (on which the Stability and Growth Pact is based) should be merged and TEC articles 98 - 104 consolidated. It should be made clear that the purpose of the BEPG, and of operational pacts to put these articles into effect, should be to promote growth as well as stability.

c) More specifically, the provisions of TEC article 104 should be clarified to ensure that the objective of budgetary balance is assessed on a cyclically adjusted basis; that investment expenditure does not account towards a deficit (ie the 'golden rule'); and that Member States with low debt should have greater flexibility on deficit levels.

d) As proposed by the Commission, Member States should inform the Union and each other about policy changes before they are introduced, and a common set of rules should be established for the conduct of economic policies.

e) The reform of procedures should likewise ensure, as proposed by the Commission, that:

*“The instruments of economic policy coordination, particularly the major guidelines and the opinions on the stability and convergence programmes, should be drafted on the basis of proposals from the Commission rather than mere recommendations from which the Council may depart by qualified majority”.*

## **6. Taxation**

Given the obvious role taxation plays in securing the resource base of the Member States, it will be crucial to counter negative tax competition, which reduces the means available to Member States to pursue active policies. It is therefore proposed to change the decision-making rule for internal market-related taxes, from unanimity to qualified majority voting by co-decision between the Council and the EP, by introducing a new article TEC art. 93, para 2 in the treaty:

*“The Council shall, by qualified majority voting and in co-decision with the EP, adopt provisions for the harmonisation of legislation concerning minimum corporate, capital and environment taxation.”*

## **7. The European Central Bank**

It should be made clearer in the treaty that the ECB has a responsibility to support growth, investment and employment and not only stability, and thus, to support the treaty objective of ‘full employment;’ the inflation target should be set in this perspective.

To enhance transparency and thus promote accountability, the ECB should publish the minutes of its Governing Council meetings (which determine the level of interest rates). The treaty should provide for the establishment of an advisory committee to the ECB, composed of all relevant actors including the European social partners.

## **A UNION RESPECTING AND PROMOTING ‘SERVICES OF GENERAL INTEREST’**

A key objective for ETUC is to provide for a re-balancing of the SGI missions with the Internal Market objectives and the competition rules in the reform of the EU treaties, and so underpin the social dimension of the Internal Market. Another objective is to enable an active promotion of SGI at the EU level, while fully respecting subsidiarity.

It is undisputed that ‘Services of General Interest’ (SGI) constitute a cornerstone of the European social model. The crucial role of efficient and high-quality SGI in achieving the objectives and targets of the ‘Lisbon economic and social sustainability strategy’, including the social and territorial cohesion objective, is likewise acknowledged. The same goes for a successful enlargement.

This perspective, however, is not sufficiently reflected in the treaties, and the present TEC article 16 provision on services of general economic interest does not re-balance the situation. It will therefore be important to reform the treaties to make them adequate, for example in terms of EU missions.

As there exists widespread political concern in terms of a possible unwanted transfer of Member States’ competencies to the EU level, a key element of the treaty reform should therefore be to achieve greater legal clarity and improved clarity as regards the scope and reach of the competition rules in order to ensure public authorities the necessary room for manoeuvre in developing, modernising and organising efficiently their SGIs.

At this stage, the ETUC treaty proposal primarily addresses the constitutional issues. In view of the Convention discussions on a proposed Constitutional treaty, ETUC will come back to the SGI issues related to the EU policy treaty, taking account of its proposal for the Nice IGC based on the SGI Charter established jointly by ETUC and the European Centre of Enterprises with Public Participation (CEEP).

In addition to the right in the EU Fundamental Rights Charter art. 36 on access to Services of General Economic Interest, ETUC thus proposes, :

1. that the principles of SGI are anchored in the Constitutional treaty provisions and so included in the ‘common objectives’ (TEU article 2):

*“to secure and promote, within its competence and in its activities, services of general interest of high quality and based upon the principles of universality, equal access, neutrality of ownership, fair pricing, the quality of work, quality employment, safety and social justice. The Union shall ensure in particular that the aims referred to in this Article are also respected in all its external activities.”*

and as a task for ‘common activities’ (TEC article 3.1):

*“measures to secure and promote services of general interest”;*

2. that TEC Article 16 should read as follows:

*“(1) Given the place occupied by services of general interest in the shared values of the Union, as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.*

*(2) National, regional and local authorities of the Member States must remain free, in accordance with national legislation and practice, to determine the way in which they wish to deliver a service of general interest.*

*(3) Without prejudice to the exercise of any official authority and non-profit oriented activity, the (EU) competition rules shall apply to the organisation and delivery of services of general interest only to the extent determined sector by sector by the Council and the EP (QMV & co-decision) and taking due account of the principles and objectives of the services of general interest. Concerning state aid, special or exclusive rights granted in connection with the organisation of services of general interest should not be considered as competition-distorting practices, where the amounts awarded to achieve the defined objective are proportionate.”*

## **THE UNION AS A GLOBAL ACTOR**

The Union’s external role concerns a key future mission for the EU cooperation and it will be a focus area for “more Europe”, including in terms of extended competencies. As the recent international situation has clearly illustrated, it is essential and of great added value that together with the Member States, the EU is able to play its role and to address the common global challenges efficiently.

It is important for all Europeans that the Member States can fulfil a role as a global player through cooperation in the European Union, also in the area of foreign and security policy in respect of maintaining peace and stability, and contribute to social justice, democracy and the respect for human and trade union rights. The Union will also have a clear mission as regards the external and global dimension in the field of asylum and immigration, development and aid, promotion of democracy and fundamental rights, economic and social sustainable global development and the requirement to manage globalisation in general. There is a clear need for the Union to be able to play a more active role as a global actor in the future.

To be consistent, it will be important that the EU enhances its competencies in the field of **asylum and immigration policy** by including this mission on the ‘community’ track. ETUC is convinced that a common European immigration policy with clear rules is also the best remedy against racism and discrimination. Further to this, EU’s possibilities to act efficiently in preventing and combating racism and xenophobia should also be strengthened through the application of the principle of qualified majority voting in this area.

**External representation** in the international trade, economic and financial fora and institutions is one of EU's core missions, not least seen from the point of view of the majority of smaller Member States. An optimal organisation and allocation of EU competencies plays a key role for EU’s possibility to meet the public demand to “manage globalisation”. It will therefore be important to review and reform the treaty provisions for the external representation of the EU guided by the principle of: ‘with one voice and with one mouth’.

The future EU policy treaty should also include a provision requiring the EU to defend and promote the community principles, as defined in the ETUC proposal for Services of General Interest in its foreign economic and trade relations, and in particular within the WTO, the WB and the IMF.

Whereas the basic principles and objectives for the Union's policies in these areas should be retained, a reform will be necessary, especially with extended competencies, in terms of transparency, democratic legitimacy and accountability.

### **III. Treaty structure and institutional framework**

As stated, ETUC shares the view that it is now time to make a fundamental overhaul of the treaties developed step by step at consecutive IGCs. This is a question of a) codifying, streamlining and clarifying existing treaty provisions, b) enabling the Union to meet its current challenges and fulfil its function efficiently according to its missions (existing and new), c) reforming the institutional architecture and d) abolishing the present three-pillar structure of the treaty. A 'constitutionalisation' of the EU treaties will be a key question.

ETUC endorses the need and the aim to agree now on a **two-treaty structure** for the EU cooperation in 1) an 'EU Constitutional Treaty', (as a historical step towards a genuine 'Constitution') entailing the constitution principles, and 2) an operational 'EU policy Treaty' with the provisions for the respective concrete policy areas within the Unions competencies.

The ETUC position in favour of "a federally balanced structure, simultaneously practising subsidiarity, complementarity and solidarity, and which clearly defines the aims, jurisdiction, missions and competencies of the Union", reflects the pertinence and necessity of, for obvious reasons at the present stage of development of the EU integration, applying a flexible and open-minded operational approach based on a set of general principles when choosing the structures adequate to meet the challenges and missions to be solved at the EU level in the most efficient way.

When reforming the treaty, **gender mainstreaming** should be implemented, both as regards the formulation and content of the treaty and its provisions. It has to be ensured that the general objective of **equality** is applied to the labour market and beyond, in all policy areas. ETUC will actively monitor and take appropriate initiatives in this respect.

#### **a) The Constitutional Treaty:**

ETUC's aim is to obtain a "Constitutional Treaty for a Citizens' Europe", including the following elements:

- the Union's founding principles, fundamental rights and values;
- the Union's missions and competencies, political objectives and common tasks and activities. What to include in the Constitutional the Policy treaty respectively should be carefully clarified. Furthermore, as a general rule, quantitative targets should be referred to secondary legislation;
- Instruments and decision making procedures;
- Institutions, including the role of national (and regional) parliaments as well as the social partners.

#### **b) Guiding principles for the review and reform of the institutional architecture:**

From a European point of view, ETUC underscores the need for the Union to have more transparent, democratic and efficient decision-making procedures and institutions, especially in view of the reality of having a Union almost doubled in size, both in terms of the number of

Member States and the traditional strong national interests concerning the numbers of representatives and members of the different EU Institutions.

Seen from a trade union point of view - and more concretely, against the background of key trade union policy priorities - the following guiding principles for a review and reform of the institutional architecture and proposals should be taken into consideration:

## **COMPETENCIES**

In addition to the principle of “a Union built on law”, the criteria for **democratic legitimate political and executive decisions** should also be met. This includes as an indispensable prerequisite, having fundamental rights enshrined in the constitutional treaty, with the current and new missions of the Union. It also obviously assumes clearly stipulated competencies, clarified concretely for the respective policy areas and missions, since without clear competencies there will be no clear responsibilities. The principle that any political or executive competence should be founded on the criteria of being democratically accountable (which implies questions on the decision-making procedure, functioning on the basis of an elected mandate and the application of the parliamentary principle) should also be respected.

Apart from the traditional four **categories of competencies** (exclusive community, exclusive national, shared and complementary competencies), it should be taken into account that the ‘open method of coordination’ implies a fifth category: ‘combined competencies’ (i.e. the addition of national and Union competencies).

The great attention paid so far to the clarification of these specific categories of competencies and the application and respect for the **principle of ‘subsidiarity’**, reflects first of all the clear deficiencies of the Union in respect of democratically accountable procedures. Competencies, of course, need to be formulated in a clear manner but as has been clearly pronounced in the Convention debate, there is a need at the same time to avoid too rigid definitions and to ensure flexibility vis-a-vis future demands. The open method of coordination obviously also contributes to the “confusion”. Therefore, apart from securing more appropriate judicial and political control mechanisms, the challenges will be to reform the treaty in order to secure the application of **democratic, legitimate decision-making procedures**, including for the open method of coordination, and to give the Union a legal personality. If this acknowledged major reform were implemented, the great concerns and attention expressed in the debate around ‘subsidiarity’ would be remedied.

Safeguarding the social dimension of the Internal Market is a key trade union concern. ETUC will likewise monitor the reform process discussion carefully in order to ensure that the present EU competencies in the social policy area are kept without any reduction, both as regards being included in the Common provisions (TEU Article 2) and as a Community activity (TEC Articles 2 & 3) (of the Constitutional treaty) and concretely in the TEC ‘Social policy’ chapter.

## **INSTRUMENTS AND DECISION-MAKING PROCEDURES**

ETUC is of the general opinion that the instruments should be chosen according to the nature of the task and objective to be fulfilled, and the issues to be regulated. That is to say, it must be clarified whether it would be most appropriate to regulate by the “rule of law” or by “common policy objectives” – or for example by involving the European social partners (according to the principle of ‘horizontal subsidiarity’). As the Lisbon economic and social sustainability strategy illustrates, the optimal policy mix will often require a combination of the different instruments. However, it has nonetheless to be ensured that the ‘open method of coordination’ is reformed and strengthened i.e. making it more binding with a clearly defined procedure in the treaty.

ETUC proposes that the ‘Lisbon economic and social sustainability strategy’ and so the ‘open method of coordination’ is reformed and included as an instrument in the Constitutional treaty. For example, the Lisbon strategy illustrates that EU cooperation has changed from being a “foreign policy” issue for the Member States to a “home affairs” issue. The reform of this method therefore needs to redress the deficiencies as regards the incorporation of the national (and regional) parliaments within their competencies. This is partly a question of reforming the decision-making procedure, partly a question of strengthening, meaning making more committal and binding, the decisions taken within the open method of coordination, in order to secure accountability and credibility. This is a factor not to be neglected in relation to citizens’ understanding and backing of EU cooperation – and so to avoid “the chain jumping off”.

Efficient and democratic decision-making procedures imply making qualified majority voting the general principle for legislative and Single market-related issues, and applying the co-decision-making procedure, thus extending the role of the EP. This should be the general rule for social policy, the European Employment Strategy, environment policy decisions and for decisions on minimum levels for corporate, capital and environmental taxation, while reserving unanimity voting for constitutional and quasi constitutional issues, ie including amendments of the Treaty, definition of EU competencies and the inter-institutional balance or enlargement of the Union.

Improving the decision-making procedures whilst securing transparency will be essential; a decisive factor to achieve a Union closer to its citizens will be to involve them in the process. In general, the principle of transparency and public access to information and documentation must cover all EU institutions and exemptions must be specified and strictly defined.

## **ENHANCED COOPERATION**

In view of the future circumstances in an enlarged Union, ETUC does not rule out in general that the Treaty should give Member States the option of enhanced cooperation on specific and well-defined policy areas. Although the Schengen agreement and EMU are being mentioned as positive examples of enhanced cooperation, this should only be used as a last resort and only if basic principles and conditions are being respected. It would be detrimental for the future of the Union if it took place at the expense of progress regarding integration and cohesion, or it hampered the development of the Social Union in parallel with EMU. ETUC would oppose treaty amendments which put the institutional identity or legal order at risk; enhanced cooperation should not in any case include the Single Market, the European Employment Strategy or the Social policy chapter. ETUC is carefully stating this reservation to underline that mixing up an enhanced cooperation mechanism with the unacceptable but also utilised “opt-out” mechanism, from core policy areas such as social policy, should be avoided.

## **INSTITUTIONS**

The effectiveness and democratic legitimacy of all European Institutions need to be increased. The present **institutional ‘triangle’** of the Commission, Council and Parliament must be preserved. Taking into account the national interests in being represented, it will be even more important in the enlarged Union, with its possibly increased competencies and responsibilities, to secure the full independence and central role of the Commission.

The Commission should retain the right of initiative; qualified majority voting in the Council should be extended and the European Parliament should have co-decision powers across the board with a view to enhancing the function of the EP as an instrument of democratic control on EU policies and decisions, as well as its legislative power. ETUC therefore endorses the proposals to link qualified majority voting with the co-decision procedures (TEC article 251) as a general rule.

The principle of “with one voice – one mouth” is important to ensure consistency in external relations as regards international trade, economic and financial institutions, development and aid etc. Consequently, for these trade union related priority areas amongst others, the functions of the High Representative and of the External Relations Commissioner should be merged and placed within the Commission.

There should be a single Council of Ministers ‘formation’ in charge of all legislative issues.

The European Council should continue to determine strategic goals for the European Union, and the present six-month rotating Presidency should be reformed with a view to securing continuity and consistency of the Union’s policies

An essential factor in overcoming the democratic deficit will be to reform the working methods of the Council. When sitting in its legislative capacity, the Council must be fully transparent and open to scrutiny. This should also include the open method of coordination such as the Lisbon economic and social sustainability strategy. All institutions should be accountable. Giving the ‘Union’ a ‘legal personality’ will also be a pre-condition for accountability and responsibility.

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As far as the role of the European Economic and Social Committee is concerned, ETUC supports their contribution to the Convention (October 2002).

## **IV. Conclusions: A Constitutional pact process involving all sections of society**

It should be acknowledged that the mandating of a European Convention which holds its meetings in public, with the European social partners as ‘observers’ and the organisation of a hearing of civil society, constitute qualitative, positive steps which open up the discussion process, compared to the Intergovernmental Conferences reforming the treaties. It should however be emphasised that formal access for the broader public to participate in a cyber-internet debate on the future of Europe, does not fulfil the need for a broad debate across Europe with the citizens. It is therefore crucial that all stakeholders, particularly at national level, engage themselves in a **public debate**, for example also within the education systems.

The European trade unions feel themselves obliged to contribute at all levels to such a broad debate, both within the trade unions and in relation to the citizens in general, not least in the candidate countries. At European level, the ETUC is participating actively in the ‘Civil society contact group’.

ETUC suggests underpinning the aim of having a broad public European debate (also in view of the proposals voiced as regards “referenda”), by utilising the occasion of the general European Parliament elections in 2004, at which all political families could make the treaty reform issue and their proposals a key election theme.

ETUC gives high priority to its participation as an observer in the European Convention and, as mentioned, ETUC’s intention (analogous to the Maastricht Treaty reform) is to seek to have its proposals concerning the role of the social partners discussed and further developed with the other European social partners, especially as regards a concrete proposal for the provisions of a European social partner infrastructure but also in relation to the question of a supplementary agreement setting out a framework for autonomous negotiations at European level, including the related questions of arbitration, mediation and conciliation.

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