

NOTE

from:	Secretariat
to:	Working group XI on "Social Europe"
Subject:	Summary of the meeting held on 6 December 2002

Outcome of Proceedings

1. Opening by the Chair

The Chairman welcomed the members to the constitutive meeting of the Working Group.

The Group agreed that that due to its sizeable membership, it would apply the same rule as the other working groups regarding the attendance at meetings, i.e. restricted to members with only one assistant registered with the Secretariat long enough in advance in order to inform the Parliament Security Service and have access badges ready in time.

2. Terms of Reference of the Group

The Chairman referred to the mandate of the Group which had been approved by the Plenary. He outlined in more detail how he saw the various issues covered by the mandate being dealt with by the Working Group.

Presentation by the Chairman

a) The first question is about Article 2 of the preliminary draft Constitutional Treaty that sets out to define briefly the Union's basic values. What basic values should this provision contain in the social field, taking into account those already present in the Charter of Fundamental Rights of the EU?

Article 2 of the preliminary draft Constitutional Treaty presented by the Praesidium to the Convention on 28 October sets out to define the values of the Union. The draft text indicates basic values such as human dignity, fundamental rights, democracy, the rule of law, tolerance, and respect for obligations and for international law.

In the current Treaties, the preambles as well as in particular Article 2 of the TEC and Articles 1 and 2 of the TEU set out the overall values and basic objectives of the Community and the Union. The values expressed herein include the attachment of the Union to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law, the attachment to fundamental social rights, the desire to deepen solidarity, a high level of employment and social protection, the harmonious, balanced and sustainable development of economic activities and sustainable growth, and the equality between men and women.

There is a large consensus in the Convention to integrate the Charter of fundamental rights into the Constitutional Treaty, and thus render it legally binding. Title IV on Solidarity in particular, but also Title III on equality, set out the values and fundamental rights in the social field. The Working Group should consider which basic and overarching values in the social field should be expressed in the Constitutional Treaty, taking into account the fact that it is foreseen that the Charter will be integrated into the Treaty.

b) The second question is on Article 3 of the preliminary draft Constitutional Treaty that sets out to define the Union's general objectives, the Group is asked to examine to what extent and in what way should these general objectives include social objectives?

Next to the economic objectives of the Union, article 2 of the TEC stipulates that:
“the community should have as its task to promote a high level of employment and of social protection, equality between men and women and the raising of the standard of living. The draft Constitutional treaty places the promotion of a high level of employment and of social protection among the objectives of the Union set out in its article 3. A "High level of employment" includes, as one of its forms "full employment". The Group could therefore address the question whether the broad description of a high level of employment could be specified in the target of full employment? The Chairman called the attention of members to the reference to "the access to services of general interest" in the article of 36 of the Charter of Fundamental Rights which the mandate indicates as one of the sources of our inspirations

Article 136 of the EC Treaty indicates the objectives of the Community in social policy, i.e. the promotion of employment, improved living and working conditions, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

The Working Group should consider which objectives of the Union in the social field should be expressed in the Constitutional Treaty.

The Working Group should take account of the possibility that in the second part of the Treaty, which will deal with the policies and contain all the legal bases, it might be appropriate to set out detailed objectives in each chapter dealing with each policy. This might permit the Working Group to keep the list in new article 3 shorter and more general than the one in existing article 3 TEC. This would perhaps be appropriate for the constitutional part of the new Treaty.

c) The third question regards the Union's competences: does the Group consider that the present competences of the Union/Community in social matters should be modified? If so, what new competences should be conferred on the Union/Community in social matters, and in which category of competences should they be placed?

To attain the objectives set out in article 136 EC Treaty, article 137 EC Treaty gives the Community the competence to adopt minimum requirements in a limited number of areas listed in the Treaty:

- improvement of the working environment,
- working conditions,
- social security and social protection of workers,
- protection of workers where their employment contract is terminated,
- the information and consultation of workers,
- representation and collective defence of the interests of workers and employers, including co-determination,
- conditions of employment for third-country nationals legally residing in Community territory,
- the integration of persons excluded from the labour market,
- equality between men and women,
- combating of social exclusion (added in Nice)
- modernisation of social protection systems (added in Nice)

Member States may always introduce more stringent measures.

These competences are shared competence of the Community and of the Member States.

There are explicit exclusions from Community action in certain areas (pay, the right of association, the right to strike and the right to impose lock-outs) (article 136.5 EC Treaty).

Question 3 of the mandate asks to decide whether the limited list of social matters where the Community has competences, as set out by the Treaty, is sufficient. What about the exceptions where Community action is forbidden? If the Group recommends the addition of new competences, it should indicate if these competences should be exclusive, shared or complementary.

Furthermore, the EC Treaty has a Title VIII dealing with Employment. But employment is placed within the complementary competence, which means that the Member States have exclusive competence to legislate, and the Community has no power to oblige them to alter their legislation.

The Community is requested to contribute to the achievement of a high level of employment by encouraging cooperation between Member States and, if necessary, supplementing their action. Member States remain competent in the field of employment. The Community can set up a coordinated employment strategy which Member States take into account in their employment policies. To support the implementation of that strategy, the Community can adopt incentive actions to promote cooperation on the part of the Member States and support their action. Harmonisation by the Community is excluded in this matter.

The Group should give its point of view on this matter and propose, if necessary, modifications to the current system regarding employment.

d) The fourth question is about the role which could be given to the open method of coordination and its possible place in the Constitutional Treaty?

All members received in September a paper from the Secretariat drafted for the Working Group VI "Economic Governance" related to the coordination of national policies and the open method of coordination (Working Document 15 of WG VI).

This paper explains the Method and gives example of sectors where it has been applied, for example for combating social exclusion.

While the report of WG VI indicated that there was a large measure of support for including the basic objectives, procedures and limits of the open coordination method in the Constitutional Treaty, the debate in plenary did not fully confirm this. For its part, WG IX on Simplification recommended that constitutional status should be assigned to the open method of coordination, which involves concerted action by the Member States outside the competences attributed to the Union by the treaties. The WG IX added that this should not be confused with the coordination competences conferred upon the Union by various legal bases, notably in the economic and employment fields.

The Convention had a debate on 5 December on the report of the Working Group Simplification but no consensus was reached on this question, the views expressed by Members remaining divided.

The Working Group is asked to examine when the Open Method of Coordination could apply. The Group is asked too to address the question of its inclusion in the Constitutional Treaty.

e) The fifth question is about the link which could be established between economic policy and social policy coordination?

The Barcelona European Council mandated the Commission and Council to examine ways of streamlining the different economic and social coordination processes so that future Spring European Councils could review, and where necessary adjust, the Community's economic, social and environment policies as a whole. The Chairman recalled that only this week, finance ministers agreed on proposals which provide for better coordination of the preparatory work for the Spring European Council, on the basis of a single "package" from the Commission including recommendations for the BEPGs and Employment Guidelines.

The question for the Group is whether more can, and should be, done to improve the coherence of economic policy and social policy coordination. The reforms so far will certainly improve coordination between different policy areas, but preparation, both within the Commission and Council is still compartmentalised. Are there further structural changes which the group might recommend in order to go further? Should the processes themselves be merged? (for example should the BEPGs take more explicit account of social objectives? If so, how?).

f) The sixth question regards procedures: to what extent should codecision and qualified-majority voting be extended to matters for which unanimity is currently required?

The Chairman recalled that the matters where the Community may adopt minimum requirements (see point c) hereabove). In these cases, the Council acts by adopting directives in co-decision, therefore with QMV, with the exception of 4 areas where the Council must decide by unanimity. These areas are

- the social security and social protection of workers,
- the protection of workers where their employment contract is terminated,
- the representation and collective defence of the interests of workers and employers, including co-determination,
- the conditions of employment for third-country nationals legally residing in Community territory,

Nevertheless, the Treaty of Nice opened the possibility for the Council, acting unanimously on a proposal from the Commission and after consulting the EP, to decide to render co-decision applicable to these questions, with the exception of the area of social security and social protection of workers, which therefore remains subject to unanimity.

The Group is asked to give its opinion on the matters for which unanimity applies in view of the new Constitutional Treaty: is the door opened at Nice enough as it is up to the Council to decide to make the pace to co-decision or should the Constitutional Treaty foresee co-decision in these matters?

g) The seventh and last question is about the role of the social partners. Title VI of the preliminary draft Constitutional Treaty deals with the democratic life of the Union. Should the role of the social partners appear in Title VI and, if so, what should this role be?

The current Treaties provide for a specific role for the social partners in the area of social policy. In particular:

- Article 138 includes a general provision for the consultation of management and labour, as well as an obligation on the Commission to consult both management and labour in advance of submitting proposals in the social policy field.
- Article 137 provides for the possibility for Member States to entrust the implementation of certain directives in the social field to the social partners.
- Article 139 provides for the possibility of establishing contractual relations, including agreements, between the Community and the social partners. Each framework-agreement between the social partners within the framework of article 139 EC Treaty can lead to the adoption by the Council of directives which simply reproduce the agreement without changing a word of it. Examples are the directives on "parental leave" (1996), "part-time work" (1997) and "work for a fixed-term" (1999).

In addition to these specific Treaty provisions, it has now accepted that there is an important role for the social partners in the 'Lisbon' process. This has taken the form of regular 'social summits' just before the Spring European Councils, providing the opportunity for the social partners to give their views on the issues on the European Council agenda.

Question 7 of the mandate goes rather wider than both these aspects. This group needs to decide whether the Constitutional Treaty should include any reference to the social partners. Given the nature of such a Treaty, the Chairman suggested that the Group examine whether the interests of social partners extend to a sufficiently wide range of policy areas to justify such a reference. Would a clearer definition of 'social partners' be needed? Should such a reference remain general (i.e. a presumption to involve management and labour where their interests are affected) or should it be more detailed (i.e. an obligation to consult social partners in specific policy areas - bearing in mind the need for building in flexibility into the new Treaty)? Should any of the existing consultative mechanisms, in particular the 'social summit', be included in the Treaty. If so, should they be in the first or second part?

3. Hearings

The Chairman suggested that the Working Group should invite experts to participate in hearings before the group. He suggested inviting Commissioner DIAMANTOPOULOU and asked members of the group to communicate to the Secretariat the name of anyone else whom they wished to be invited, bearing in mind that the Group would not have time to hear more than 4 persons.

4. Time schedule

The draft time schedule drawn up by the Chairman with the secretariat was circulated to the Group. The chairman considered that this would enable the Group to meet its deadline, bearing in mind that it had to present its report during the 6-7 February Plenary Session of the Convention. The Group agreed with the proposed time schedule.

The Chairman recalled that the work of the Group had to be intensive, because it needed to present its report before the Convention could consider the relevant draft articles for the Constitutional Treaty, and the Praesidium considered that this work on draft articles should begin early in the new year.

5. Agenda for next meetings

For the next meeting, the Chairman asked members to send to the Secretariat their first written comments on questions 1, 2 and 3 for the 10th of December at 12:00 in order to discuss them at the meeting of 11 December. He suggested that, due to this short deadline, Members should be allowed to send further written comments regarding the points discussed at the 11 December meeting for 18 December in such a way that the Secretariat could prepare a "pre-draft report" covering the 3 first questions of the mandate, leaving open the others, for the 10 January meeting.

The Chairman proposed a working plan for the subsequent meetings. After the meeting of 11 December, Members would be invited to send their written comments on questions 4, 5, 6 et 7 for 6 January in order to have a discussion on them at the meeting of 10 January. After this meeting, the Chairman would ask the Secretariat to prepare a draft report, that could be ready for 17 January and on which the Group could work during its two last meetings of 21-22 and 27 January.

The Group agreed to proceed as proposed by the Chairman.
