

CONV 472/02

WG XI 6

NOTE

from :	Secretariat
to :	Working Group XI on Social Europe
Subject :	Summary of the meeting on 11 December 2002

1. The basic values of the Union

With regard to basic values relating to the social field which should appear in Article 2 of the preliminary draft Constitutional Treaty, the members of the Working Group rapidly agreed on the principles that Article 2 should be short and specific and that a distinction should be made between values and objectives, with it being possible to list several objectives for each value. For example, while equality of treatment and of opportunity was recognised as a value by the entire Group, the promotion of equal treatment between men and women was recognised as an objective which derived from that value.

The Chairman reminded Group members that Article 7 TEU allowed sanctions to be taken against Member States which did not respect the principles (or values) of the Union. A similar provision was planned for Article 45 of the preliminary draft Constitutional Treaty.

The Group also agreed that the European Charter of Fundamental Rights should not be reopened, but that a reference to the Charter in Article 2 was possible.

The Group drew up an initial list of the values which might appear in Article 2, covering the following concepts:

- equality, in the sense of equality of treatment (non-discrimination) and equality of opportunities;
- solidarity, which some preferred to the concept of social justice proposed by other members of the Group. It was suggested that social justice should preferably appear amongst the objectives;
- the dignity of the individual;
- solidarity, particularly between generations;
- democracy.

Some members also proposed the concept of sustainability in terms of the economy, social policy and the environment and this concept was welcomed by the Group. However, some members felt that sustainability was not a value but a major objective.

The concept of tolerance was also put forward. However, some members felt that the concept of tolerance was not sufficient, and that it should be made more specific by means of a reference to anti-racism and to the multicultural and multiethnic nature of European society.

The Chairman invited members to propose wording for Article 2 of the preliminary draft Constitutional Treaty.

2. The general objectives of the Union

Regarding the general objectives of the Union to appear in Article 3 of the preliminary draft Constitutional Treaty, discussion covered the following points:

The Group discussed the question of whether the Union's objectives had necessarily to correspond to Union areas of competence, or whether those objectives should also be addressed to the Member States within the sphere of their competences, given that economic policy is a competence of the Member States, social policy is a shared competence, and employment a complementary

competence of the Union. However, several members stressed the need for balance between objectives and the instruments used to achieve them. The opinion which emerged within the Group was that objectives should not be confined to what could be achieved by the Union alone, but should also be addressed to the Member States where the Union had complementary competences in the areas in question.

Several members stressed the need to full employment as one of the major objectives of the Union, pointing out that the European Councils in Lisbon and Barcelona had stated that full employment was a basic objective of economic and social policy. However, several other members felt that a high level of employment was closer to the objective which the Union should pursue, and that the main thing was to create favourable conditions for jobs to be created. The concept of "employability" was highlighted here.

Several members stressed that equality of opportunity, mentioned amongst the values but which should above all be an objective, should be linked with this, for example by open access to vocational training which was linked with the principle of the right to engage in work as set out in Article 15 of the Charter of Fundamental Rights.

Other objectives suggested for Article 3 included the social market economy, economic and social cohesion, the creation of stable jobs, universal social protection, and access to efficient and high-quality services of general interest.

Some members pointed out that the wording of Article 3 should be balanced, in the sense that the duality of the objective – namely a high level of social protection in a market economy where competitiveness was ensured – should appear there. Some felt that the wording appearing in the preliminary draft Constitutional Treaty covered all the objectives to be pursued.

Others also drew attention to the fact that the text should limit itself to objectives and avoid entering into the question of means.

The promotion of equality between men and women was widely approved by the Group as something which should appear amongst the objectives, as should the promotion of social integration, as well as the objective of a high level of social protection, which appears in the current Article 2 TEC. In this connection, ensuring universal social protection was suggested as an objective by one member.

The Group stressed the importance of not regressing in relation to the objectives currently mentioned in Article 2 TEC.

Some members wanted certain specific objectives appearing in Article 3 TEC to be promoted as general objectives, such as for example those relating to health and education. Some members felt that the fight against economic insecurity and social exclusion should also appear in Article 3 of the preliminary draft Constitutional Treaty.

Regarding services of general interest, it was stressed that these were linked with access to basic services (health, education, etc.) for every citizen, which many members felt should appear amongst the objectives. To their mind, services of general interest were a means to achieve this objective. Several members therefore wanted a horizontal provision guaranteeing access to and thus the provision of basic services, without necessarily excluding the application of the rules of the internal market to the providers of those services.

The promotion of the social market economy and/or of the European social model was mentioned by several members as an objective of the Union, to safeguard both the existing system of protection and the competitiveness of the European economy.

Sustainable economic and social development were also put forward as belonging amongst the objectives.

Finally, some members wanted economic and social cohesion between States and regions to appear as objectives.

3. The competences of the Union

The Group considered the current competences appearing in the Treaty. While some members felt that the current range of competences was sufficient, others wanted the Union to be able to legislate in the areas currently excluded by Article 137(6) TEC, namely pay, the right of association, the right to strike or the right to impose lock-outs. If the Union's competences had to be widened, some members wanted the new competences to come into the category of complementary competences.

Others were strongly opposed to this extension of competence, stressing that the right to strike should not be regulated at European level. Similarly, regarding pay, they pointed out that this was defined contractually by means of collective national agreements and that it was not desirable for it to be set at European level. Supporters of the inclusion of pay amongst the Union's competences said that it was not a question of setting salaries at European level, but of providing the right for the social partners to discuss them.

It was stressed that the true dividing line in the distribution of competences in social matters was fixed by the nature of the action of the Union, which either actually legislated or was limited to accompanying the policies of the Member States. It was stressed that in the case of complementary competences, the coordination of the Member States' policies should be carried out at Union level by its adoption of broad guidelines.

Some members stressed that there could be no true internal market without uniform social standards, social harmonisation and services of general interest, and that competences in social matters should be structured in relation to competences in the economic area.

Other members stressed that social Europe did exist, and that there was abundant European legislation in the social area (according to them, about 230 legislative texts), but that better coordination was needed between the broad economic policy guidelines and employment policy, as the Working Group on Economic Governance had pointed out.

The question of the requirement for unanimity by the Council for the subjects listed in Article 137(3) TEC was also addressed. Some queried whether these competences were real, since the requirement of unanimity made it very difficult for any Community legislation to be adopted in these areas. Some examples were quoted, particularly in relation to social security for migrant workers and the question of the transfer of acquired rights in social security systems.

In this respect, the general view within the Group was that it would be desirable to stipulate voting by qualified majority in relation to the transfer of rights between social security systems linked with cross-border activities. The Group was unanimous in considering that the Union should not become involved in the management of social security systems and that, in this area, its legitimate area of activity was limited to cross-border situations.

Some members wanted to make qualified majority voting the general rule in the whole social and taxation area.

Some members also wanted competence as regards equality between men and women to go beyond the area of opportunities in the labour market and treatment at work, to cover all areas of the Union.

Several members also wanted a strengthening of the provisions relating to services of general interest, currently appearing in Article 16 TEC. The Commission announced that it would shortly be making a technical contribution on this subject.

Several members regretted the weakness of the current provisions of the Treaty as regards health protection (Article 152 TEC) and argued for wording in the Constitutional Treaty to incorporate the development of case-law in this area.

Several members of the Group pointed out that the principle of subsidiarity should apply in the social area too, and that each Member State should be able to take decisions relating to its level of social protection, with the Union acting only in cross-border cases or in situations which might have an effect on the internal market, for example in the case of the compatibility of social security systems for those migrating within the EU or because of problems of competition generated by legislation on working hours, particularly in the area of road transport.

While some members felt that competition policy and the internal market had harmful effects as regards social protection, others believed that the internal market, and the rules on competition which could not be dissociated from it, had in no way provoked social erosion, but that on the

contrary a well-performing economy alone could contribute to the prosperity needed for social protection systems to endure. Other members saw the internal market as a tool in the aim of increasing the welfare of the population, with services of general interest being included in such a way that, within the framework of the rules on competition, everyone should have access to basic services whatever their financial means.

Several members expressed a wish that the provisions of the Treaty relating to competences in the social sphere should be brought together in a single chapter.
