

**CONV 515/03**

**CONTRIB 215**

**COVER NOTE**

---

from	Secretariat
to	The Convention
Subject :	Contribution from Ms Lena Hjelm-Wallén, Mr Kimmo Kiljunen, Mr Henrik Dam Kristensen, Mr Sören Lekberg and Ms Helle Thorning-Schmidt to the discussion on a Constitutional Treaty: right to trade union actions across the borders and securing of services of general interest in the interest of the Welfare Society

---

The Secretary-General of the Convention has received the contribution in annex from Ms Lena Hjelm-Wallén, Mr Kimmo Kiljunen, Mr Henrik Dam Kristensen, Mr Sören Lekberg , members of the Convention and Ms Helle Thorning-Schmidt, alternate member of the Convention.

**Contribution from Ms Lena Hjelm-Wallén, Mr Kimmo Kiljunen, Mr Henrik Dam Kristensen, Mr Sören Lekberg and Ms Helle Thorning-Schmidt to the discussion on a Constitutional Treaty: right to trade union actions across the borders and securing of services of general interest in the interest of the Welfare Society**

---

A well-run single market is a condition for economy, occupation and welfare in EU. However, it is far from sufficient. The market must be complemented with distinct rules of the game that may contribute to democratic development and counteract unfair competition and social dumping.

In this connection it is decisive to strengthen the single market, making it even more increasingly support and contribute to an extension of the total welfare in EU, and we therefore have the following proposals and considerations:

- The liberalisation in EU may contribute to removing barriers within the single market in sectors having a proper market (financial activity) across the borders. Certain “soft” sectors such as health, education and social services of general interest should however as point of departure not be included in the rules of the internal markets on liberalisation and state subsidy etc.
- The respect of developing services of general interest of high quality should be strengthened on European level by means of the method of open coordination.
- The social dialogue at European level and European agreements should be developed so that the parties of the labour market to the greatest possible extent can take and act up to their responsibility for welfare political topics near the companies.

Below we submit proposals on the right to trade union actions across the borders and on how to secure services of general interest. We hope our proposals will enter into the further work of the European Convent.

## **The right to trade union actions across the borders**

Internationalisation has made it possible for employers, being not prevented by national borders, to freely transfer capital and production to other countries. This has limited employees’ possibilities of influence and thereby upset the social balance on the market. We believe that a functional balance between the social partners is necessary to promote a stable and sustainable social and economic development. To create a better balance between the social partners, employees should get equal possibilities to trade union action across the national borders. The establishment of European Companies (SE) makes this need even more urgent. A right to industrial action across the borders would also supplement and strengthen the existing Directive on European Works Councils.

The right to take industrial action as a means of exerting pressure in purely national disputes is by and large realised in the EU Member States, although the rules for exerting this right differs between the Member States. It is however a considerable deficiency that in most countries there are no legal or factual possibilities of taking sympathy action in order to support trade union colleagues in other Member States. On the common market with free movement of companies and capital it is absolutely necessary that the trade unions can, in the same way as employers, act freely without being prevented by national borders. This freedom must, as the other rights of the single market, be

guaranteed at European level.

It is therefore our firm opinion that the Constitutional Treaty should guarantee the existence of possibilities to international trade union sympathy action in all countries provided that the main conflict is according to international case law. How this right should be outlined in practice shall in the first place be regulated by agreement between the social partners and in line with the common system of regulating the rights in the labour market in each country.

The articles in the Constitutional Treaty should ensure that trade union sympathy actions could be carried out to support trade union organisations in other countries. If this freedom is incorporated in the future Constitutional Treaty it should have the same strong status and position as the economic freedoms.

According to this proposal, this freedom shall guarantee the fulfilment of the goals concerning the legal status of workers, as it appears from the Treaty; see in particular Articles 125 – 130 and 136 – 137. A natural restriction is that action only may be taken on request of a trade union in another country.

The regulation further implies that the social partners of the labour market primarily are those who are to prescribe the guiding principles of conflicts with international connection on the labour market. If such an agreement could not be realised the responsibility of implementing falls upon the national authorities in the Member States.

The regulation does not imply any changes in the national right to take industrial action inside one of the Member States, as it is recognised in this Member States.

## **Services of general interest**

Every European citizen should have appropriate access to fresh water, sustainable energy, telecommunication, a well-functioning health and school-system, post service, transport, etc. It is part of their fundamental rights.

These services, also known as services of general interest (SGI), play a key role in creating a sustainable European social model and they have to be seen as a key element to ensure economic, social and territorial cohesion all over Europe.

SGI has traditionally been the same as public services, which have been created, organised and carried out by the national public sector. In today's Europe, many of the traditional public services have been privatised. Nevertheless, in most cases, it is still the Member States who control that the services are provided, and it should remain that way.

Taking the new developments into account, one of the key challenges, we face, is to ensure the increasing liberalisation of SGI, does not lead to social decline in Europe. The objective should be to have a well-functioning society, where all citizens have access to SGI independent of their social status, residence etc. In the light of liberalisation, we risk that some of the more expensive services such as postal service or transport in sparsely populated areas are not provided, since it might not be profitable for a private company to take on board this service.

It is a complex situation; many Member States have to manoeuvre when they deal with the SGI in a liberalised world. For instance, if a Member State decides to hire a private company to be in charge

of the public transport in a scarcely populated area and support the company financially to cover the extra costs due to the character of the service, the Member State can easily get into problems with the competition rules of the Union and the internal market. Also the Union's definition of what is merchandise and what is not threatens the SGI. For example, the definition of school canteens as SGI by a local authority could be challenged by private companies complaining that they are facing a monopoly. Therefore, there are created a number of tensions between the rules regulating SGI and the competition rules.

Both the EU and the Member States are responsible for the SGI, since they have shared competence in this area. They are obliged to ensure that the SGI keeps its high quality, and that the services also in the future will be based upon the principles of universality, equal access and neutrality of ownership.

Seen in this perspective, the Convention should work towards ensuring a better balance between competition rules and those rules regulating services of general interest at European level in the new constitutional Treaty. It is important to find a way to co-ordinate the two set of rules in a way that provides the European citizens with the best service. Furthermore, the EU also have to control that those services carried out by the public sector are not automatically more expensive or of a lower quality, because the Member States are not allowed to subsidise the SGI they have to provide. The EU should therefore make sure that those SGI could be supported economically. The system whereby state aids only apply where the market does not work is ineffective.

In other words there should be a re-balancing of the SGI with the Internal marked objectives and the competition rules, and especially the social dimension of the Internal marked should be emphasised. It is here of distinct importance in public tenders to put demands on equal opportunities, conditions of wages and employment being effective in the sector within the region and also make demands concerning the external environment and the working environment. This means the EU should be actively promoting the SGI at the EU level of course under respect of the principle of subsidiarity.

A number of European organisations, such as the European Federation of Public Service Unions (EPSU) and the European Trade Union Federation (ETUC) have made some very good contributions to the discussions on SGI. Together with the Social Platform, The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Liason Committee on Services of General Interest (CELSIG), these organisations have made a contribution to the Convention asking for the SGI to be anchored in the new constitutional treaty.

## **Suggestions for the new constitutional treaty**

### **The right to trade union actions across the borders**

The following proposal could be ground of departure for the formulation of articles on this issue in the new constitutional treaty:

#### **Article XX a**

*With the purpose of attaining the objectives to improve living and working conditions, the social protection of workers and also to guarantee workers' right to information and consultation in the*

*Union, each restriction concerning the right of a trade union established in a Member State, on request of a trade union organisation in another Member State, to take action in support of this organisation, including all forms of industrial action, should be prohibited.*

## **Article XX b**

*1. The provisions of Article XX a shall not prevent the social partners on a national level primarily, in accordance with national practice or usage, to conclude an agreement concerning the forms of pursuance of trade union influence or, with regard to the principle of proportionality, restrictions therein.*

*2. An agreement in accordance with paragraph 1 may specifically include protection of a neutral third part, accomplishment of a specific work to avoid indefensible economic damage or danger for the life and health of human beings and animals together with activities vital for the society.*

---