

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 30 January 2003**

**CONV 516/03**

**WG XI 9**

**REPORT**

---

from: Working Group XI - "Social Europe"

to: Members of the Convention

---

Subject: **Final report of Working Group XI on Social Europe**

---

## **Report of WG XI – Social Europe**

### **Summary of Conclusions**

1. On the issue of which values should be included in Article 2 of the Constitutional Treaty, the group welcomes the reference to human dignity in the preliminary draft Constitutional Treaty, and recommends also the inclusion of the values of social justice, solidarity and equality, in particular equality between men and women.
2. On the social objectives of the Union, the Group recommends that Article 3 of the Constitutional Treaty include the promotion of: full employment, social justice leading to social peace, sustainable development, economic, social and territorial cohesion, social market economy, quality of work, lifelong learning, social inclusion, a high degree of social protection, equality between men and women, children's rights, a high level of public health and efficient and high quality social services and services of general interest.
3. On the competences of the Union in the social field, the Group considers in general that the existing competences are adequate. However the Group suggests that these could be further clarified, and that action at a European level should focus on issues related to the functioning of the single market and/or areas with a considerable cross-border impact. The Group considers that specific extensions to existing competences in the area of public health should be envisaged as well as a possible re-drafting of Article 16 TEC in order to further enable EU legislation in the field of services of general interest.
4. The Group broadly supports the inclusion of the open method of coordination in the Treaty, in such a manner as to clarify the procedures and respective roles of those involved. This provision should indicate clearly that the open method of coordination cannot be used to undermine existing Union competence.

5. The Group agrees on the need to streamline the various economic and social coordination processes, with the Spring European Council having responsibility for ensuring coherence. It is recommended that the procedures needed to ensure this be formalised in the Treaty.
  6. Over qualified majority voting (QMV), the consensus reached by the Group was limited to the position that, as a minimum, the compromise achieved in Nice with respect to authorizing the Council to unanimously seek a changeover into codecision and QMV for Article 137(d), (f) and (g) should be upheld in the Constitution. This would leave subparagraph 137(1)(c) still subject to unanimity. Beyond that, a strongly expressed minority opinion remained opposed to any automatic extension of QMV to social security and employment relations while for most other members of the Group it was possible, as of now, to envisage progress towards a majority decision system. A "superqualified majority vote" was mentioned by some as a possible compromise. The Group agreed that a better clarification of the scope of European action could be envisaged in order to facilitate general use of qualified majority voting. In this context, the scope and language of Article 137 could be updated and modernised. Most members of the Group pleaded for codecision with qualified majority voting to be applied to Articles 13 and 42 TEC
  7. The Group recommends that the role of the social partners be recognised explicitly in the Constitutional Treaty, that adequate consultation provisions should be included and that the existing arrangements for negotiation of social agreements should be enhanced. Civil society organisations should also be given an role, especially in combating social exclusion, without prejudice to the existing special position of social partners in the social dialogue process.
-

## Introduction

1. The social content of European integration, the social face of Europe, is a matter of crucial concern for the citizens of the Union. It is also a matter that has become prominent in the deliberations of the Convention. European citizens are at one with their representatives in their concern over employment, conditions of work, social security, people's welfare before they become professionally active, while they are active and after they retire with an adequate pension available to all.
2. Social considerations constitute an essential part of European integration. The EU cannot be a credible force for good in the wider world if it is indifferent to questions of social justice and poverty in European society or to how its citizens are treated at work and in retirement. As set out in Article 2 TEC: "The Community has the mission, by means of creating a common market, an economic and monetary union... to promote... a high level of employment and social protection". Social regulation is seen as a means necessary for the advancement of the common market itself. The Treaty of 1957 already included a chapter on Social Policy (Part III, Title III, Chapter I) as well as a chapter on the free movement of workers (Part II, Title III, Chapter I). On this basis already in 1958 the Council adopted regulations on the free movement of workers (No. 15) and on the coordination of social security of workers (No. 3 and 4). In 1967, a Directive in the field of occupational safety and health (Directive 67/548/EEC) was adopted. Finally, as the European enterprise developed from its early phase of a common market to the mature form of a community of values, "economic and social progress" are proclaimed in Article 2 TEU as major aims of the European Union.
3. The outlines of a coherent social policy began to emerge with the Paris Summit of 1972 and the Commission action programme drawn up accordingly. It was built around three themes: achievement of full employment and of high quality jobs in the Community, improvement of living and working conditions for labour and an increase in the participation of social partners in the economic decision-making of the Community and of working personnel in the

development of their businesses. After the Paris summit, and as part of the implementation of the Commission action programme, several directives in the field of occupational safety and health and of labour law were adopted. In Maastricht, a protocol on social policy was added to the Treaty. The Amsterdam Treaty was a watershed in the development of social policy competences. The new Treaty gave a new impetus, providing a new title on employment coordination as well as a new revised Social Chapter, thereby facilitating efforts to expand and strengthen EU social policy, while at the same respecting the principle of subsidiarity.

4. The Working Group held 5 meetings during which it examined the seven questions set out in its mandate. It heard the following experts: Ms Anna DIAMANTOPOULOU, Commissioner for Employment and Social Affairs, Mr Frank VANDENBROUCKE, Belgian Minister of Social Affairs and Pensions, Professor Tony ATKINSON, Warden of Oxford University's Nuffield College, and Mr Olivier DUTHEILLET de LAMOTHE, French Conseiller d'État, Member of the Conseil Constitutionnel.
5. It was actively assisted by a Secretariat consisting of Alain Pilette, Kristin de Peyron, Elisabeth Gateau, Guy Milton, and Etienne de Poncins to whom the Group expresses its thanks. It conducted its deliberations on the basis of a Mandate by the Praesidium of the Convention. The responses of the Group to the topics outlined in the Mandate are set out below.

**I. What basic values should Article 2 of the preliminary draft Constitutional Treaty contain in the social field, taking into account those already present in the Charter of Fundamental Rights of the EU?**

6. Article 2 of the preliminary draft Constitutional Treaty presented by the Praesidium to the Convention on 28 October 2002 (CONV 369/02) sets out to define the values of the Union and indicates by way of example such basic values as human dignity, fundamental rights, democracy, the rule of law, tolerance, respect for obligations and for international law.

7. In the current Treaties, the preambles, as well as in particular Article 2 TEC and Articles 1 and 2 TEU, set out the overall values and basic objectives of the Community and the Union. The values expressed therein 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 equality between men and women.
8. In its examination of the basic and overarching values related to the social field which should be included in Article 2 of the future Constitutional Treaty, the Working Group agreed that the Article should be short and specific. It furthermore noted consensus in the Convention regarding the integration of the Charter of Fundamental Rights into the Treaty, and that the Charter should not be reopened and noted that the Charter and Article 2 have different scopes. The Member States have a general obligation to comply with the values set out in Article 2. Indeed Article 7 sets out possible sanctions against Member States which do not respect such values. For this reason, some members insisted on the need to keep the list of values short and precise.
9. There was broad demand for the inclusion of the notions of solidarity, equality, equal opportunities and democracy (the latter already mentioned in the preliminary draft Constitutional Treaty), values which already feature prominently in the current treaties among the basic values of the Union. Some members suggested that the concept of solidarity could be further understood as solidarity between people and/or between generations, or between Member States. Solidarity with the disabled was mentioned as an example of solidarity between people. Some members pleaded for the inclusion of a reference to social justice and to social peace, while others suggested that these should be considered as objectives rather than as basic values. Several members argued that as equality between men and women was a core feature of the European social model, it deserved a specific mention among the basic

values, while other members emphasised that it should be considered as an objective. With regard to equal opportunities, most members emphasised that they would prefer that such a reference should be interpreted in its broadest sense so as to cover not only gender equality, but also ethnic origin, religion, sexual orientation and disability. Some proposed that not only equal opportunities but also equal treatment should be included, while others were of the view that this should be considered rather as an objective. The concepts of tolerance and non-discrimination were also put forward, and some members underlined the fact that the Union is constantly becoming more diverse, and that an expression of the basic values on which it is based should take into account the respect for the multicultural and multiethnic character of European society.

10. Other suggestions regarding values not contained in the preliminary draft Constitutional Treaty of 28 October 2002 included sustainable development or sustainability, the latter in terms of the economy, social policy and the environment. This was broadly welcomed by the Group, but it was argued by some that the concept of sustainability should be considered rather as one of the major objectives of the Union, and that it should therefore be included in Article 3. Some members furthermore suggested that the wording dignity of the person should be used instead of human dignity. Several other suggestions were made for basic values, which the Group after discussion considered rather as objectives. They included reference to the level of employment the Union should strive for (full employment v. a high level of employment, see discussion in relation to Article 3 on objectives) and the objective of ensuring a high level of health protection. It was also suggested that references to the protection of the interest of the child and to solidarity with the developing world should be added to the values.
11. Article 136 TEC, which sets out the objectives of Community social policy, refers to fundamental rights "such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers".

The EU Charter of Fundamental Rights contains many social provisions but due to the specific nature of this Charter, the Group recommends that a specific reference be made to it in the Constitutional Treaty provision alongside the current Article 136 TEC <sup>1</sup>.

In conclusion, the Group welcomes the mention of human dignity among values of the Union in the Preliminary Draft Constitutional Treaty and recommends that the following values be added to Article 2 of the Constitutional Treaty: social justice, solidarity and equality, in particular equality between men and women.

## **II. The inclusion of social objectives in Article 3 of the preliminary draft Constitutional Treaty that sets out to define the Union's general objectives**

12. Article 3 of the preliminary draft Constitutional Treaty sets out to define the Union's general objectives. The Working Group examined to what extent and in what way these general objectives should include objectives in the social field. The Group ascertained that affirmation of social objectives as equivalent, not subordinate, to economic objectives constitutes an integral part of the spirit in which the European Union was conceived and of the direction in which it develops.
13. More specifically, it was recalled that next to the economic objectives of the Union, Article 2 TEC states 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. Article 136 TEC indicates the Community's social policy objectives, 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.

---

<sup>1</sup> Regarding the ways and means to integrate the Charter itself in the Constitutional treaty, the Group referred to and confirmed the conclusions of the Final Report of Working Group II (Doc. CONV 354/02)



14. It was recalled that at its meeting in Lisbon in 2000, the European Council agreed a new strategic goal for the Union for the decade: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion". The Lisbon conclusions further insisted that "this strategy is designed to enable the Union to regain the conditions for full employment and to strengthen the regional cohesion in the European Union. The European Council needs to set a goal for full employment in Europe in an emerging new society which is more adapted to the personal choices of women and men". The balance between economic, employment and social policies and environmental policy is central to the Lisbon strategy. Several members considered that this balance should be enshrined in the future Constitutional Treaty, and in particular in the article defining the general objectives of the Union. Recalling the Union's Sustainable Development Strategy decided by the European Council in Göteborg in 2001, which is based on the principle that the economic, social and environmental effects of all policies should be examined in a coordinated way and taken into account in decision-making, they argued that alongside economic growth and prosperity, sustainable development, the promotion of full employment and a high degree of social protection should be included in Article 3. There was a high degree of support in the Group for the inclusion of these objectives.
15. The Working Group considered which objectives of the Union in the social field should be included in the Constitutional Treaty. It did not consider the option of including them in Part Two of the Treaty, which will cover specific policies and will contain all the legal bases, and where it might be appropriate to set out detailed objectives in each chapter dealing with each policy, thereby making it possible to keep the list in new Article 3 shorter and more general than the one in the existing Article 3 TEC.
16. In relation to employment goals there was very broad support for establishing the promotion of full employment as an aim, not least taking into account the fact that the European Council in Lisbon (and its follow-up in Barcelona) had set the goal of full employment. Some members stressed that the promotion of full employment is of particular relevance to the

promotion of equal opportunities for men and women. Some members argued, without calling into question the objective of the promotion of full employment, that a high level of employment is a better formulation and that it should be kept in the Constitutional treaty because it is a more realistically attainable objective than full employment. In the absence of any explicit opposition to the objective of full employment, and given also the widespread support for this objective, consensus can be said to have been reached over this point. Article 2 of the current Treaty of the European Community connects, in the same phrase, the achievement of "a high level of employment and social protection". Consensus was also achieved over the desirability of the social protection clause being restated in the Constitutional treaty. Several members were of the view that the Union's objectives should also include the need to promote employability, and suggested that access to education and training or the concept of life-long learning should also figure among the general objectives. Several members also pointed to the need to strive not only for full employment or a high level of employment but also to strive to ensure the quality of jobs.

17. Several members were of the view that the definition of the objectives of the Union should contain a reference to the "European social model". In this respect, some members pointed to the need to be clear on the interpretation given to this concept, and some referred to the definition provided in the Presidency Conclusions relating to the Barcelona European Council in 2002, which stated that the European social model is based on good economic performance, competitiveness, a high level of social protection and education and social dialogue. It was also noted that the European social model allows for a diversity of approaches in order to achieve shared European values and objectives and that this diversity should be treated as an asset and a source of strength. The Treaty should therefore respect and nurture a Europe of diverse ways of doing things in the social area, but one with shared objectives and values. Several members considered that the objectives should refer to the Union as a "social market economy", to underline the link between economic and social development and the efforts made to ensure greater coherence between economic and social policies. This proposal received broad support in the Group although there were some members who preferred the current Treaty reference to the concept of an open market economy.

18. There was general support for the central place of equal opportunities for men and women among the objectives; some members also suggested referring to equal treatment. Other suggestions, which received support from substantial number of members, were the objectives of ensuring a high level of social protection and social inclusion, the fight against social exclusion and poverty, access to efficient and high-quality services of general interest, and the improvement of living and working conditions. Further proposals introduced by some members but on which there was no consensus included economic and social cohesion and the right to information and consultation of employees.
19. A large number of members considered that universal access to services of general interest should figure among the Union's objectives, and underlined the link with access to basic services, such as health and education, for every citizen. These members argued in favour of a horizontal provision in line with Article 36 of the Charter of Fundamental Rights, that would go further than the form of words in the current Article 16 TEC and guarantee universal access to and thus provision of basic services. Some underlined that this should not exclude the application of internal market rules to the providers of such services.
20. A substantial number of members proposed that such objectives could partly be articulated in a horizontal clause on social values in the Constitutional Treaty, along the following lines:
- "In all activities falling within its competence, the Union shall aim to eliminate inequalities as well as discrimination on the basis of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation, to promote equality between men and women, to promote full employment and a high level of social protection, protection of human health, advancement of education and training, and to guarantee universal accessibility of services of general interest which are financially viable, of high quality and organised on the basis of solidarity by the individual Member States. Regulations concerning services of general interest at European level should be compatible with the rules of the internal market and should respect the specificities of national systems while aiming at ensuring the economic, social and territorial cohesion of the Union."

21. The Group furthermore agreed that a high level of health, physical and mental, an essential right of European citizens, should be one of the basic objectives of the Union. Meeting this objective is largely the responsibility of Member States. There are, however, a number of important developments especially in public health where Member States acting alone cannot adequately meet the challenge and where action at EU level is limited, e.g. on communicable diseases, bioterrorism, quality and safety for blood, tissues and organs, and WHO Agreements.

22. In conclusion, there was consensus in the Group to recommend that Article 3 of the future Constitutional Treaty include the promotion of:

- full employment,
- social justice leading to social peace,
- sustainable development,
- economic, social and territorial cohesion,
- social market economy,
- quality of work,
- lifelong learning,
- social inclusion,
- a high degree of social protection,
- equality between men and women,
- non-discrimination on the basis of racial or ethnic origin, religious or sexual orientation, disability and age,
- children's rights,
- a high level of health, and
- efficient and high quality social services and services of general interest.

**III. Need to define the competences currently conferred on the Union/Community in respect of social matters. Possible conferral of new competences on the Union/Community in respect of social matters and, that being so, the type of those competences.**

23. The Union's social policy objectives are set out in Article 136 TEC: "the Community and the Member States ... shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, 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".
24. Article 137(1) <sup>2</sup> specifies how those objectives are to be achieved: "With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
- (a) improvement in particular of the working environment to protect workers' health and safety,
  - (b) working conditions,
  - (c) social security and social protection of workers,
  - (d) protection of workers where their employment contract is terminated,
  - (e) the information and consultation of workers,
  - (f) representation and collective defence of the interests of workers and employers, including co-determination,
  - (g) conditions of employment for third-country nationals legally residing in Community territory,
  - (h) the integration of persons excluded from the labour market,
  - (i) equality between men and women with regard to labour market opportunities and treatment at work,
  - (j) the combating of social exclusion,
  - (k) the modernisation of social protection systems, without prejudice to point (c) "

---

<sup>2</sup> Text and numbering of Article 137 as it stands following the Nice Treaty.

25. Minimum requirements may be adopted only in the areas referred to in paragraphs (a) to (i), by means of a Directive. Adoption is by qualified majority and in codecision with the Parliament, with the exception of paragraphs (c), (d), (f) and (g) which are by unanimity and in consultation with the European Parliament.
26. Finally, Article 137(5) <sup>3</sup> of the Treaty excludes the adoption of minimum requirements in the fields of pay, the right of association, the right to strike and the right to impose lock-outs.
27. With regard to the relevance of the scope of the current competences set out in the Treaty, all members felt that social matters should remain an area of shared competence. Opinions, however, differed on possible extensions of, or reductions to, the existing scope of that competence. Some members insisted that the primary responsibility for social matters should remain within the Member States.
28. The Group was unable to reach agreement on the question of amending the exceptions in Article 137(5). A number of Group members felt that these were obsolete and could be deleted. Other members were firmly of the opinion that the exceptions in Article 137(5) should continue to apply. Although Article 137(5) TEC rules out the adoption of uniform minimum requirements on pay, it does not rule out the possibility of adopting measures under other provisions of the Treaty, even if these measures have an impact on pay. The result is that a number of Community instruments contain provisions on pay.
29. On the other hand, a considerable number of Group members expressed their support for the limits placed on action at European level. In particular, they emphasised that these were areas in which the specific features of each Member State are very important. One member insisted nevertheless that the EU should not in the future harmonise Member States rules at a lower level than today and that future legislation should not undermine the existing social legislation.

---

<sup>3</sup> Text and numbering of Article 137 as it stands following the Nice Treaty.

30. Others emphasised that the scope of the provisions of Article 137(1) was too broad as it was sometimes difficult to envisage what Union legislative initiative could be taken in certain areas (Article 137(1)(f) was mentioned to in this respect). However, this situation caused concern amongst some Member States as to the extent of possible legislation in the areas concerned, leading them to maintain the unanimity rule as a means of protection. Following this line of argument, a better definition of the scope of Community action could be combined with general use of qualified-majority voting (see Chapter VI of this report).
31. Most members were of the opinion that current Article 152 of the EC Treaty should be amended so as to constitute a sufficient legal basis for EU action on Communicable Diseases in a multi-state emergency, in anticipation of a grave cross-border threat, bioterrorism and WHO Agreements. The protection of the exclusive competence for Member States' health systems in Article 152(5) should be maintained. Furthermore, the current Treaty provides for only a limited obligation to ensure a high quality and safety for blood, tissues and organs. Science (biotechnology) could offer new challenges for which there are currently no health provisions available. Consistently with the Group's recommendation to add a high level of physical and mental health, as one of the basic objectives of the Union, the Group agreed to recommend to strengthen and enlarge EU competences in the field of public health, while maintaining it as a shared competence.
32. With regard to services of general interest, it was emphasised that these were linked to universal access to basic services (health, education, etc.) for all citizens, which many members considered should be included among the objectives. In their view, services of general interest were a means of achieving that objective.

The current Article 16 TEC and Article 36 of the Charter of Fundamental Rights recognise the special role of services of general interest while specifying that they should be operated without prejudice to Articles 86 and 87 TEC (competition law and State-aid arrangements). Article 86(2) TEC provides, however, that "undertakings entrusted with the operation of

services of general economic interest (...) shall be subject to the rules (...) Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them". Some members of the Group underlined that the reference to public service enterprises in Article 86 does not imply any obligation of provision of such services exclusively through enterprises organized commercially and that member-states either by themselves or through local communities remain free, especially in the context of subsidiarity, to organize the provision of such services in other forms.

For various members, Article 16 TEC has an essentially declaratory value and cannot provide the basis for genuine European legislation on services of general interest, which would require a positive rather than an exceptional legal basis. These members therefore pleaded for the Constitutional Treaty to contain a legal basis allowing the Union to adopt framework legislation at European level, covering relevant aspects of the provision of such services e.g. universal access. Others considered the existing competences to be sufficient.

33. A number of members pleaded for a provision in the Treaty allowing the Council to adopt by codecision the legislative measures necessary for establishing minimum standards of social protection not only in health care but also in social security benefits and social services providing protection in cases such as old age, incapacity for work, maternity, unemployment and dependency and in social and housing assistance needed to ensure a decent existence for those who lack sufficient resources. Some members considered that recognition of the role of the "social economy" should be made in the Treaty, allowing for its development on the basis of social solidarity.
34. A substantial number of members of the group pleaded also for the extension of the scope of action of Article 42 TEC, currently limited to workers, to all citizens and residents.



35. The Group considered that, in general, the range of competences available at European level were adequate. However, better clarification of the scope of European action could be envisaged, which in turn might make it easier to extend the use of qualified-majority voting. In this regard, the group believes that European action, which should support and supplement the activities of the Member States, should primarily concern areas of action closely linked to the functioning of the internal market, preventing distortions of competition, and/or areas with a considerable cross-border impact. Consideration should also be given in the final structuring of the Constitution to ensuring the visibility of articles relating to social policy. Furthermore, current Article 152 should be enlarged so as to give the Union more competences in the field of public health and cover matters such as grave cross-border threat, communicable diseases, bioterrorism and WHO Agreements. The question as to whether current Article 16 TEC should be amended to become a legal basis concerning services of general interest should be considered by the Convention.

#### **IV. The role of the open method of coordination and its place in the Constitutional Treaty**

36. Following the Working Groups on Economic Governance and Simplification, both of which recommended conferring constitutional status on the open method of coordination, the Group returned to this matter.
37. The open method of coordination was established by the European Council held in Lisbon on 23 and 24 March 2000. It is a new form of coordination of national policies consisting of the Member States, at their own initiative or at the initiative of the Commission, defining collectively, within the respect of national and regional diversities, objectives and indicators in a specific area, and allowing those Member States, on the basis of national reports, to improve their knowledge, to develop exchanges of information, views, expertise and practices, and to promote, further to agreed objectives, innovative approaches which could possibly lead to guidelines or recommendations.

38. In Lisbon, the European Council extended the method incorporated in the Title on Employment of the TEC to other areas, such as the information society and research policy, enterprise policy, education and vocational training policy, combating social exclusion and social protection.
39. An empirical approach has been used to develop and adapt this method to the specific characteristics of each field of action. The method is therefore applied in different ways to different areas, with an ad hoc procedure being worked out each time. That is why we sometimes speak of open methods of coordination, in the plural.
40. The Group welcomed the usefulness and efficiency of the method, which enables Member States to create synergies within the Union in order to deal with matters of common interest together.
41. Although some members expressed doubts, most members requested the insertion into the Treaty of a horizontal provision defining the open method of coordination and its procedure, and specifying that the method can be applied only where no Union legislative competence is enshrined in the Treaty and in areas other than those where the coordination of national policies is governed by a special provision of the Treaty defining such coordination (in economic matters (Article 99) and in the area of employment (Article 128), in particular). Indeed, unlike the open method of coordination, the coordination procedures enshrined in the Treaty are compulsory and enable the Union institutions to make recommendations to Member States and even to impose sanctions on Member States which do not respect the line jointly adopted. The open method of coordination could nevertheless be applied to areas where coordination of national policies is provided for in the Treaty, but where the detailed arrangements are not laid down, such as trans-European networks (Article 155 TEC), enterprise policy (Article 157 TEC) and research and technological development (Article 165 TEC).

42. The Treaty provision on the open method of coordination should be embodied in the Constitutional Treaty, within the Chapter on Union instruments which constitute non-legislative measures. This provision should define the aims of the open method of coordination and the basic elements to be applied. These would include the identification of common objectives, establishing a timetable for action as well as, where appropriate, outcome indicators making it possible to assess whether national actions are able to achieve the objectives, and facilitating exchanges of experience between Member States. The precise nature of any Open Method of Coordination procedure would be guided by the nature of the issue involved, rather than be specified in detail in the Treaty.
43. At the same time, the scope and limits of the method would need to be specified by indicating that the open method of coordination is an instrument for achieving the Union's objectives; that the instrument can be implemented only where the Union does not have legislative competence, and where Union competence in the area of sectoral coordination is not enshrined in the Treaty (Articles 99, 104 and 128) or where the Union has competence only for defining minimum rules, in order to go beyond these rules. The open method of coordination constitutes an instrument which supplements legislative action by the Union, but which can under no circumstances replace it. It enables the Union to support and supplement Member States' actions.
44. While allowing for the flexibility of the instrument to be retained, incorporation of the open method of coordination in the Treaty would improve its transparency and democratic character, and clarify its procedure by designating the actors and their respective roles.
45. The method would in principle be implemented each time by a decision of the Member States meeting within the Council on the basis of a European Commission proposal, with notification of the European Parliament. National parliaments and regional or local authorities could be consulted during implementation, as could the social partners when the

open method of coordination is applied to the social field. Civil society could possibly be consulted when the matter under coordination lends itself to that. The Commission would be responsible for analysing and evaluating the action plans. The outcome of the Commission's analysis could be discussed within the European Parliament and national parliaments. The Commission would have the power to make recommendations to Member States' governments and to inform national parliaments directly of their opinions in order to trigger a "peer review" procedure and to a national debate, the aim being to allow Member States, within the Union framework, to set themselves common objectives while retaining national flexibility in their implementation.

46. Although some members of the Working Group wished to include into the Constitutional Treaty not only the method, but also the list of subjects to which the open method of coordination could be applied, a consensus emerged against such a list.
47. Some areas to which the method could be applied were mentioned in the Group, such as education, tax harmonisation and the establishment of minimum social standards. Members of the Group thought social protection and inclusion was particularly well suited to this approach, and considered that a specific reference as to how the open method could be applied in this case could be inserted into the Constitution, building on the description of the role and functioning of the Social Protection Committee (as established under article 144 of the Nice Treaty).

## **V. The relationship between economic policy coordination and social policy coordination**

48. As it is the case for economic and for employment policy, social policy has to be considered as a matter of common concern for Member States. Recent steps have been taken to ensure that there is greater coherence between the coordination of economic policies and social policies. In particular the Barcelona European Council decided that the calendars for the adoption of the Broad Economic Policy Guidelines and of the annual Employment Package should be synchronised.

49. The Group was of the view that the close relationship between economic and social policies needed to be reflected in the approach adopted by the Union. The Group therefore welcomed the decisions taken at the Barcelona European Council, but considered that more could be done to encourage coherence. The Group considered in particular that further efforts could be made in the organisation of the Council's work. It was broadly accepted that the different aspects of economic and social policy should continue to be prepared within the appropriate sectoral Council formation, but the Group also considered that responsibility for ensuring coherence of all the policy strands should lie formally with the Spring European Council, and that the General Affairs Council should prepare the outcome of the European Council, based on the different contributions from the sectoral Councils. These should include not only the Broad Economic Policy Guidelines and Employment guidelines, but also all other aspects of social policy to which the open method of coordination is applied. Most members of the Group recommends that this procedure should be formalised in the Constitutional Treaty.
50. Most members of the Group considered that there should be a presumption in the preparatory stages that no specific policy area should be subordinate to another. This was not clear in the current wording of Article 128(2), which refers to the Employment Guidelines being "consistent" with the BEPGs. A number of members of the Group therefore recommended that this phrase be amended appropriately, while others considered the current wording to be satisfactory.
51. Some members of the Group considered that coherence between the different processes could be better ensured by merging them. This would mean that the scope of the Broad Economic Policy Guidelines be extended to include social issues and be renamed the Broad Economic and Social Policy Guidelines. A small number of members argued that coherence could be better assured by the appointment of a Vice-President in the Commission with specific responsibility for economic and social issues (the possible future arrangements for CFSP being cited as a model). Others considered that this was not necessary since the institutional arrangements in this area were very different from those in CFSP.

52. It was recommended by most members of the Group that the European Parliament should be given a greater role in the economic and social policy coordination processes.

**VI. The procedures: possible extension of codecision and qualified majority voting to areas where unanimity is required at present.**

53. The present situation was outlined, in particular with respect to the amendments made by the Treaty of Nice, which would enter into force on 1 February 2003. In the social field, the Council acts by adopting directives in codecision with the European Parliament. These directives set minimum rules.

54. Currently, the Council can adopt minimum requirements by qualified majority, with the exception of four areas for which the unanimity rule applies, with consultation of the European Parliament:

- social security and the social protection of workers (Article 137(1)(c)),
- the protection of workers where their employment contract is terminated (Article 137(1)),
- representation and collective defence of the interests of workers and employers, including co-determination (Article 137(1)(f)),
- conditions of employment for third-country nationals legally residing in Community territory (137(1)(g)).

55. It was recalled that the Treaty of Nice stipulates that, by a unanimous decision, in the case of three of the subjects mentioned above – subparagraphs (d), (f) and (g) – the Council can, on a proposal from the Commission and after consulting the European Parliament, provide for recourse to codecision with the Parliament and majority voting (application of Article 251).

56. Member States retain the possibility of applying standards which give workers greater protection (137(5)).

57. Several members of the Group pointed out that the provisions of "Social Europe" were not confined to Articles 136 and 137 but also concerned Articles 13 (non-discrimination), 42 (social security arrangements) and 93, 95(2) and 175 (tax). The debate should also relate to their possible transition to qualified majority voting. It was furthermore recalled that the Nice Treaty (Article 144) established a social Protection Committee with advisory status to promote cooperation on social protection policies between Member States with the Commission.
58. The group recognised that it was necessary to modernise and improve Community rules for the protection of the social rights of workers who exercise their right to mobility.
59. In agreement with the conclusion of Working Group IX, the Group confirmed that codecision with qualified majority voting should become the rule for the adoption of legislative acts and that exceptions to this rule would remain in areas where the special nature of the Union requires autonomous decision-making, or in areas of great political sensitivity for the Member States. The Group debated at length the prospect of amending these provisions by expanding the field of qualified majority voting. The members belonging to the Group were divided into two categories of unequal weight:
- according to an active minority, comprising, among others, a number of government representatives, the discussions which had been held at Nice concerning the extension of the scope of qualified majority voting should not be reopened. The balance achieved at that time was satisfactory. According to their position, the existing provisions should therefore remain unchanged. In addition, as the Treaty of Nice was only about to enter into force, it would seem inappropriate to consider amending it now when its provisions, particularly those making an extension of qualified majority voting possible, had not yet been able to demonstrate their effectiveness. These members opposed to any move towards QMV, whilst recognising that QMV in European policy making should be the norm, insisted that for reasons of national diversity based on the

particular traditions and cultures of Member States, it should not automatically be extended to social security and employment relations where Member States have different systems. They indicated that what works well in one country may not be appropriate in another. They therefore re-affirmed the Nice settlement in this matter. In the meantime, they pleaded for the Council to be empowered to consider how to address issues of cross-border mobility in the social field.

- conversely, for most members of the Group, it was possible as of now to envisage improvements to the existing arrangements. In particular they stressed that enlargement makes improvements essential; the status quo would lead in practice to it being impossible for the Union to adopt any regulation in the areas requiring unanimity. Some wanted across-the-board use of qualified majority voting covering not only Article 137(1) but also Articles 13, 16, 42, 95(2) and 175 of the Treaty. Others envisaged limited extension. Where limited extension of qualified majority voting was raised, the provisions quoted most often as having to remain subject to unanimity were those relating to social security schemes and to conditions of employment for third-country nationals. Finally, some took up the line of argument developed under point III above, whereby a better definition of powers would facilitate acceptance of qualified majority voting.

- A "superqualified majority vote" of 75% was recommended by some as a possible compromise.

60. On the basis of discussions within the Group, it appeared that general use of qualified majority voting would be difficult to contemplate. On the other hand, some progress could be envisaged, such as the transition to qualified majority voting of subparagraphs (d), (f) and (g) of existing Article 137(1). As such a prospect has already been made possible by the Treaty of Nice, for the purposes of clarification and simplification, it could be applied in the future Constitution. It is hard to imagine that it could not be determined, merely by reading the



constitutional text, whether a particular subject fell under a specific adoption procedure (qualified majority or unanimity). However, that would indeed be the situation if Article 137(2) emerging from Nice were incorporated as it stood into the constitutional Treaty.

61. Most members of the Group consider that the starting point for a possible consensus could be that the transition to the procedure in Article 251 (qualified majority and codecision) for Article 137(1)(d) as provided for in the Treaty of Nice, should apply in the future Constitution. This would leave subparagraph 137(1)(c) still subject to unanimity. The "bridging" provision introduced in 137(2) would be deleted.
62. The Group agreed that a better clarification of the scope of European action could be envisaged in order to facilitate general use of qualified majority voting. In this context, the scope and language of Article 137 could be updated and modernised, in particular as regards matters currently falling under the unanimity rule, in order to address the specific concerns which some argue require the continuation of unanimity. This task should take place when the Convention comes to consider Part II of the Preliminary Draft Constitutional Treaty. Nevertheless, some members already proposed a rewording of article 137(1)(c) which would read as follows: "the social security and social protection of workers excluding their financing organisation". They advocated that with such a new wording, qualified majority voting and codecision should be applied. On this point, one member specifically requested that attention be paid to the problems that could be faced by Member States with mainly tax financed social security systems and that the possibility of derogations for such Member States be foreseen.

Most members of the Group agreed that the wording of Article 137(1)(f) was unclear and that the necessity of keeping it in the Constitution should be investigated.

Regarding Article 137(1)(g), some Members insisted on keeping unanimity. Mention must be made that this matter, i.e. the conditions of employment for third-country nationals legally residing in Community territory is closely linked with Article 63(4) TEC, which currently

causes problems as both provisions deal with matters which should be treated together while the United Kingdom, Ireland and Denmark have an opt out for Article 63(4). The Group therefore recommend that the relationship between these two legal bases should be clarified and that the conditions of employment of third-country nationals should be dealt with in Article 63(4). The Group recalls the recommendation made by WG XI to move to qualified majority voting and codecision for Union legislation in the areas dealt with in Article 63 TEC.

63. Most members of the Group pleaded for codecision with qualified majority voting to be applied to Articles 13 and 42 TEC.

**VII. The role of the social partners, as it could appear in Title VI of the preliminary draft constitutional Treaty deals with the democratic life of the Union**

64. The existing Treaties confer a specific role on the social partners in the field of social policy. Article 138 includes a general provision on this type of consultation and places an obligation on the Commission to consult representatives of employers and employees before submitting proposals in the social policy field. Article 137 stipulates that Member States may entrust management and labour with the implementation of certain directives. Article 139 opens up the possibility of establishing contractual relations, including agreements, between the Community and the social partners. Any framework agreement between management and labour concluded on the basis of Article 139 may lead, on a proposal from the Commission, to the adoption by the Council of directives which exactly reproduce the agreement concluded. Five agreements, including two sectoral agreements, have been subject to this procedure, i.e.:

- agreement on parental leave,
- agreement on part-time work,
- agreement on fixed-term contracts,
- agreement on the organisation of working time of mobile workers in civil aviation,
- agreement on the organisation of working time of workers at sea.

- A sixth agreement, on teleworking, is now due to become a directive through this procedure.

65. Furthermore, an important role of management and labour has been acknowledged in the "Lisbon process". It has taken the form of regular "social affairs summits" on the occasion of spring European Councils which offer management and labour the opportunity to give their point of view on the issues discussed by the Council.
66. The Group unanimously welcomed the role of management and labour and the importance of social dialogue in Europe. It generally took the view that this role of management and labour, already included in the treaties, should be recognised, facilitated and – as far as possible – enhanced with horizontal subsidiarity becoming an important consideration. It was agreed that this role should be specified in Title VI of the Constitution, and it was pointed out that this role should be distinct from that played by organised civil society, which should also be recognised.
67. The question of reviewing and/or defining the social partners more precisely was raised on several occasions, but the Group, respecting their autonomy, did not adopt this approach, noting, however, that retired persons organisations do form a component of the social dialogue. While endorsing the specific role of management and union bodies in negotiating pan European agreements, some members recommended flexibility in the definition of "social partnership" to include a wider relevant stakeholder group in all other social and economic consultations where negotiated agreements are not at issue.
68. It has often been stressed that the social partners should be consulted in all areas concerning them and a significant number of members of the Group made proposals for strengthening the role of the social partners and of social dialogue, particularly in macro-economic consultations, creation of legislation and, in order to facilitate negotiation at European level,

by promoting mechanisms for conciliation and settlement of disputes and ensuring the effective exercise of the European partners' right to bargain and conclude enforceable voluntary collective agreements. Certain members nevertheless considered that the autonomy of the social partners should be respected and that the success of the social dialogue often made legislation superfluous. One member felt that a wider group of social and economic stakeholders should be involved in consultations with the European institutions on macro-economic issues. To allow Social Dialogue and Industrial Relations to freely develop at European level, provisions should be made to ensure the recognition of transnational trade union rights. The deletion of the provisions of the Treaty limiting the extent of negotiations was often proposed as a logical consequence of the recognition of the autonomy and freedom of action of management and labour. Several members also expressed the view that there should be joint adoption by both the Council and the Parliament.

69. The Group also expressed satisfaction with the growing importance of the social dialogue and stressed the major role that could be played by the organisation of tripartite social affairs summits held just before the spring European Councils. A number of members were in favour of formalising and/or institutionalising this process, by embodying it in the Constitutional Treaty, including aspects of composition and content. Others thought that the current arrangements offered greater flexibility. Finally, numerous comments were made on the recognition of the growing role of civil society and the recognition of a European statute for associations and for other forms of organisation such as private, non profit services. Some members stressed the importance that various sectors of organised civil society, such as the retired and others, could have in the future. The role of the Economic and Social Committee was also mentioned, while one member questioned its added value in this respect.

In conclusion, a consensus was reached within the Group on the following points:

- the role of the social partners should be recognised explicitly in Title VI of the draft treaty,
- provision should be made for consulting management and labour in all fields concerning them,
- in the treaty the management-labour process of negotiation on social agreements should be recognised, facilitated and enhanced,
- the procedure concerning collective agreements as set out in Article 139 TEU should be maintained,
- distinguishing it from the role of management and labour in the field of collective bargaining, the treaty should recognise a certain consultative role for the relevant stakeholders and the civil society, especially in view of the increasingly active involvement of NGOs in combating social exclusion as also in most areas of social policy.

\*       \*

\*

The working group endeavoured to conduct its deliberations in a non-partisan spirit, acknowledging the contributions of all political families to the development of the modern welfare state as one of the finest achievements of social evolution in Europe. More generally, the group rejects any artificial opposition of economic and social objectives in European policy or any arbitrary hierarchical order between them. For the members of the working group there is no justification for an opposition between the individual and society in the European Union. On the contrary European policy in the economic and social sphere is aimed at creating conditions for the fullest development of the individual in society in such a manner that ultimately the free development of each one becomes a condition for the free development of all.

=====