

**NOTE**

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Subject :           Summary report on the plenary session <sup>1</sup>  
                  – Brussels, 6 and 7 February 2003

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**I.    OPENING OF THE SESSION**

**1.   Presentation of the draft of Titles I, II and III (Articles 1 to 16) of the Constitution**

On behalf of the Praesidium, the Chairman presented the draft text of the first 16 articles of the Constitution, pointing out that it was a proposal and that the Convention members could submit their comments and proposed amendments. It would be for the Convention to give its opinion on the text of the Constitution.

The plenary session on the 27 and 28 February will be devoted to a debate on the draft articles. With a view to structuring that debate, Convention members were requested to forward to the Secretariat their initial proposed amendments by Monday 17 February so that the Praesidium could study, arrange and collate them.

It was announced that all the proposed amendments would be made available on the Convention Internet site and presented with a view to ready comparison.

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<sup>1</sup>     The verbatim record of the plenary session may be found on the following website:  
      <http://european-convention.eu.int>

## 2. Social Europe

- **debate on the report of Group XI chaired by Mr Katiforis (CONV 516/03)**

### *i. Presentation of the report by Mr Katiforis*

Mr Katiforis recalled the importance of the issue under discussion. The subject was of particular relevance to Europe, and one on which Europe could be proud of its achievements. The issues in the mandate of the Working Group fell into three broad categories: values and objectives; the attribution of competences; and instruments and procedures.

On values, the Group had accepted the need for brief and concise articles in the Constitutional Treaty. The Group had in some cases encountered difficulties in classifying certain ideas as a value or as an objective. Many proposals had been put forward, but the Group had concluded that the text on values should include social justice, solidarity and equality, in particular equality between men and women. On objectives, the Group had, after considerable discussion, agreed to recommend including a reference to "full employment". Consensus was also reached on including a reference to the promotion of a high level of social protection. A large number of other possible objectives had been proposed. The question as to whether the idea of a Social Europe might be better encapsulated by defining the overall concept of a "European Social Model" had been raised but not taken up by the Group.

On the issue of competences, the Group had concluded that in general existing competences were adequate, but that some of them would benefit from being clarified in order to allow them to be exercised more fully. This was particularly the case in the area of public health. In addition, the Group had accepted the argument for some strengthening of the legal base which would allow for legislation in the area of services of general interest.

On the issue of procedures, the Group had expressed broad support, despite some strong objections from some, for including the Open Method of Coordination in the Treaty. However, it had been emphasised that the flexibility of the method should be retained, and that it should not undermine existing Union competences. The issue of qualified majority voting had been a sensitive issue. Whilst all could agree to restating the Nice compromise on Article 137, a substantial number of members of the Group considered that a further extension of QMV was desirable in the social area. The Group had strongly endorsed maintaining and strengthening the role of the social partners in industrial bargaining, and giving appropriate recognition to the contribution of civil society in the area of social policy.

Mr Katiforis welcomed the fact that the Group had been able to come to a consensual view on many issues, despite the diverse backgrounds and views of its members. All were supportive of the view that the European Union had a significant role to play in the area of social policy.

*ii. plenary debate*

The general thrust of the report was favourably received by the Convention, which also heard contributions from representatives of the social partners, the Economic and Social Committee and the Youth Convention.

Many speakers concurred with the Group's suggestion that the opening articles of the future Constitutional Treaty should refer to human dignity, social justice, solidarity and equality, in particular equality between men and women.

The debate revealed considerable support for the Working Group's recommendations on objectives: mention was made of full employment, social justice, 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 public health and efficient and high-quality social services and services of general interest.

As regards competences, the plenary debate did not question the Working Group's conclusion that competence in the social sphere should remain shared between the Union and the Member States. Few members wanted to reopen the provisions of the existing Article 137, which exclude pay, the right of association, the right to strike and the right to impose lock-outs from the Union's competences.

Many members called for the Union's current competences in the area of public health (Article 152) to be extended with a view to countering, at European level, the risks of cross-border epidemics and bioterrorism.

The contributions often focussed on services of general interest, the substantive issue being whether the existing Article 16 of the Treaty ought to be amended to make it a true legal basis enabling the adoption of true Union legislation on services of general interest. Convention members remained very divided on the issue although many of them favoured such a solution.

Most members who took the floor argued in favour of including the open method of coordination in the Treaty in order to encapsulate it more clearly and make it more transparent and democratic, without losing the qualities associated in particular with its flexibility. Some speakers nevertheless voiced objections.

There was broad support for the Working Group's proposal that the Treaty include procedures to ensure coherence between economic and social policies at the spring European Council. However, the debate did not produce consensus on amending the existing Article 128 TEC to remove the requirement that the guidelines for employment be consistent with the broad economic policy guidelines.

The most difficult debate dealt with the extension of qualified majority voting to matters for which unanimity is currently required. Moreover, several members pointed out that specific discussions were to be held on the actual definition of qualified majority.

Very many Convention members were in favour of the transition to QVM and codecision, at least as formalised at Nice, leaving only the areas of social security and the social protection of workers to unanimity. Very many Convention members also wanted all matters coming under the existing Article 13, 42 and 137 TEC to be subject to codecision and QVM.

However, some Convention members emphasised that the Treaty of Nice had recently entered into force and that a transition to QVM was therefore possible provided that was the Member States' intention. Those members confirmed that they did not want to reopen the provisions agreed at Nice in that area.

Lastly, the debate confirmed that the social partners and civil society should have their place in the future Constitutional Treaty.

### *iii. Conclusions*

At the close of the debate, the Chairman noted consensus that the Constitution should enshrine principles such as human dignity, social justice, solidarity and equality, in particular equality between men and women. The Chairman said that this last principle was among the objectives for possible inclusion in Article 3 of the future Constitutional Treaty.

The Chairman also noted that there was very broad support for the objective of full employment although it could be regarded only as a desirable aim, in the recognition that it could never be fully achieved.

The Chairman remarked that, in the draft articles submitted to the Convention, the Praesidium had taken on board all these elements in some shape or form.

As regards competences, the Chairman noted consensus on competences in the social sphere remaining shared between the Union and the Member States. With reference to the existing Article 137, which excludes pay, the right of association, the right to strike and the right to impose lock-outs from the Union's competences, the Chairman observed that the issue had not been properly discussed and that it was therefore not possible, at that stage, to review those exclusions.

The Chairman noted that there was fairly strong demand from the Convention for a slight rewording of the Union's current competences in the area of public health (Article 152). The aim of the change would be to combat at European level the dangers of cross-border epidemics and bioterrorism. He said that consideration would be given to this issue.

On the question of services of general interest, the Chairman noted that there was a strong demand for amendment of the current Article 16 of the Treaty to make it into a true legal basis for adoption of Union legislation on the subject. However, he wondered about the practical effects of rewording Article 16 and about the type of legislation which a legal basis might lead to. The Chairman noted that members of the Convention were still very divided on this issue, although a considerable number had come out in favour of amending Article 16 to turn it into a legal basis. He said that the Praesidium would look into the matter.

The Chairman noted that the debate on the open method of coordination had been lively, but confirmed that most members of the Convention wanted the method included in the Treaty in order to encapsulate it more clearly and make it more transparent and democratic, without losing the qualities associated in particular with its flexibility. Nevertheless, since the advantage of the method was its flexibility, the Chairman wondered whether it was necessary to subject it to greater control, precisely at the risk of losing that flexibility.

The Chairman observed that the Working Group's proposal to insert procedures in the Treaty to ensure coherence between economic and social policies at the spring European Council had been well received. He said that this was a matter for Part Two of the future Constitutional Treaty.

On the question of extending qualified majority voting (QMV) to matters currently requiring unanimity, the Chairman noted that the debate had been a difficult one and pointed out that this was a subject on which there had been difficult negotiations at the IGC in Nice. He said that the Nice Treaty allowed such a transition to majority voting by a unanimous Council decision. The Chairman noted, however, that many members of the Convention wanted an immediate change to qualified majority and codecision, at least as formalised in Nice, leaving unanimity only for social security and the social protection of workers, while other members, including some government representatives, were opposed to any change to the compromise in the Nice Treaty. He concluded that the matter required further consideration.

Finally, the Chairman concluded that the social partners and civil society should have their place in the future Constitutional Treaty under the title "democratic life".

In conclusion, the Chairman noted that the discussion had produced some progress, but had not necessarily led to solutions on all points. Since several of the questions related to Part Two of the future Treaty, the Convention would return to them at a later date.

### **3. Discussion on the regional and local dimension (CONV 518/03)**

#### ***i. introduction***

The Chairman underlined the importance of the debate on the "regional and local dimension in Europe" in view of the fact that, in a system with 25 Member States and almost 450 million inhabitants, political action could not be centralised and needed intermediaries. He emphasised the crucial role already being played by regional and local governments, which would become even more crucial in the near future, in particular in relation to implementing a large number of Union policies, especially those affecting the lives and day-to-day concerns of Europeans.

He noted that regional and local councillors were represented by Observers from the Committee of the Regions who took part in the work of the Convention and were accompanied for this session by their Chairman, Sir Albert Bore. They had followed the work of the Convention attentively from the beginning, whether through the Committee of the Regions or through their major European representative organisations: this was attested by the large number of contributions to the Forum, the excellent attendance at meetings of the Contact Group chaired by Ms de Palacio and then by Vice-Chairman Jean-Luc Dehaene, and contributions from members of the Convention themselves.

The Chairman drew attention to the series of opinions adopted by the Committee of the Regions, in particular the opinion of Lord Tope and the European Parliament Resolutions adopted following the reports by Mr Lamassoure and Mr Napolitano, and stated that all these studies and proposals had been brought to the cognisance of the Praesidium, which had tried to adopt those with constitutional repercussions and had wished to open up a number of avenues to be explored (see CONV 518/03). The dossier had been supplemented by CONV 523/03, setting out a brief summary of the discussions in the Contact Group convened the previous week by Vice-Chairman Dehaene, to which was attached a summary table of the proposals from regional and local bodies and from the Institutions.

Finally, the Praesidium itself, in the proposals for Articles 1 to 16 which had been submitted to the Convention, wanted the Union's regional and local dimension taken into account here and now.

*ii. debate in the plenary*

Many members of the Convention pointed out that respect for Member States' right to organise their internal structures themselves was a fundamental rule. An equal number stressed the need to respect the diversity of those internal structures which in themselves constituted one of Europe's treasures. Some also said that it was not appropriate to set regions against States and objected to any idea of uniformisation at this level.



Members of the Convention were unanimous in recognising the importance of the regional and local dimension in Europe, with varying degrees of emphasis on the regional and local levels, and there was strong consensus that this reality should be recognised in the opening articles of the Constitution, as the European Parliament's Napolitano report in particular had proposed. The Praesidium's proposal that a reference be included in Article 9(6) to regional and local authorities was well received, although some wanted the reference to appear sooner, in the very first article of the Constitution. While several members said that the formula proposed by the Praesidium was the right one, some others proposed going further in establishing respect for local autonomy (or freedom of administration at local level); respect for local democracy was also mentioned in this context. Some speakers also suggested that the Constitution might make reference to the Council of Europe's European Charter of Local Self-Government or allow the Union to accede to that instrument.

Some members also asked that the Constitution refer in addition to regional identity and/or cultural and linguistic diversity, and even to minority rights.

A significant number of members underlined the role of regional and local governments in the approach to subsidiarity. Some stressed the fact that subsidiarity should also concern the local and regional levels and wanted this taken into account in the wording of the subsidiarity protocol.

Similarly, the idea that those who have to apply or ensure the application of Union legislation or policies must be consulted when that legislation and those policies are being prepared met with considerable resonance within the Convention, which confirmed and even reinforced the proposals to that effect by the Working Groups on Subsidiarity and Simplification, in particular as regards prior consultation.

Thus, a consensus emerged in favour of including consultation of the Union's local and regional authorities on subjects of relevance to them in an appropriate form in Title VI of the Constitution relating to the "democratic life of the Union" and in the provisions on subsidiarity. Members were in favour of this consultation taking place at a very early stage in the preparation and implementation of the Union's legislation and programmes, and some said that consultation should include all levels of local and regional authorities, including regional parliaments, particularly through their representative organisations. In this context it was also suggested that the Commission's legislative proposals should make an assessment of the burden (including the financial burden) imposed on local and regional authorities in implementing legislation.

Many members of the Convention stressed the important role of the Committee of the Regions in representing regional and local government in the Union. However, some wondered whether it operated efficiently.

Members of the Convention broadly supported the proposal by the Working Group on Subsidiarity that the Committee of the Regions be given a role in the early warning system and the right to refer a matter to the Court of Justice for violation of the principle of subsidiarity. A series of speakers also advocated granting the Committee of the Regions a right of recourse in defence of its own prerogatives, but this idea was not supported by all members.

Many members raised the issue of the membership and representativeness of the Committee of the Regions. Some noted that there were major disparities in the way seats were allocated (some regions, for example, were more populated or had a larger surface area than certain Member States) and pointed out that the less-populated Member States would have access to the Court of Justice, unlike the regions, no matter how big. Others pointed out that all the different levels of local and regional authorities in a given country were not always fairly represented within a single delegation and that representation of some levels was purely residual. Finally, some wanted members of the Committee of the Regions to be elected from now on and no longer appointed by national governments. Other members of the Convention, however, were opposed to any change in the current rules governing membership of the Committee.

A number of members thought that when institutions did not follow the Committee of the Regions' opinion they should be required to give reasons for their decision, while others wanted to change the name of the Committee of the Regions or to confer on it the status of an institution. This last suggestion in particular was not welcomed by certain Convention members, who took the opposite view.

A number of Convention members focused on the question of regions with legislative competence, but others were against making a distinction between the different types of authority or giving some of them privileged status. The question of a clearer wording of Article 203, enabling the Council to appoint regional Ministers, was raised. Others wanted to strengthen the position of the regions, which should be the basic constituency in European elections in Member States, and asked for introduction of the status of "partner region of the Union", to be conferred by the Member States.

Certain Convention members favoured giving regions with legislative competence the right of appeal to the Court and argued that such a right was a logical consequence of these regions' competences. It was pointed out in particular that such a right could in turn be accompanied by an obligation of loyalty to the Member State and the Union. Some members thought that this was not a matter which should be left to future case law and that it was sufficient to make a slight amendment to the fourth paragraph of Article 230 extending in some measure the general right of appeal of natural and legal persons in the case of acts of general scope which are of direct concern to them. Others thought it preferable that the regions should be able to apply to the Court solely through an appeal submitted by the Committee of the Regions, the Member State concerned or even (in the view of some) by the second chamber of a national parliament.

Finally, several members indicated that they would like to add the objective of territorial cohesion to that of economic and social cohesion. Others voiced their concerns regarding specific territories such as the outermost and island regions and wanted the existing special arrangements, protection and status to be maintained or indeed strengthened.

Several requests were, moreover, made for regions situated at the Union's internal borders to be given a legal framework designed to encourage cross-border cooperation, which still encounters too many obstacles.

*iii. conclusions*

Vice-Chairman Dehaene concluded the debate by saying he felt that the discussion had been a particularly useful one.

He noted the very broad agreement within the Convention that the Union should respect each State's competence to decide on its internal structures and the organisation of public authorities at regional and local level. He acknowledged the common desire within the Convention to include a reference to the fact of the Union's regional and local dimension in the opening articles of the Constitution.

The same held true as regards consultation of regional and local authorities, which should be taken up in Title VI of the Constitution on the democratic life of the Union and in the Protocol on Subsidiarity.

The Vice-Chairman noted that, although the proposals made regarding the Committee of the Regions were to some extent debatable, the Committee's role in subsidiarity had been seen as important.

Finally, he said that the Praesidium should look at the issues concerning the right of recourse in the light of the Convention members' interventions.

#### 4. Praesidium communications

(a) *remit to a working party of experts designated by the Legal Services for Part Two*

The Chairman informed the plenary session, as already announced in December, of the Praesidium's agreement that, in parallel with its work on drafting Part One of the Constitution, there should be progress in adapting the TEC and TEU provisions to be incorporated in Part Two. To that end, the Convention Secretariat had carried out some preliminary groundwork, identifying those provisions which would remain unchanged, those which would have to be adapted technically in the light of the conclusions already reached by the Convention, those which would have to be amended substantively and those which were to be deleted or were obsolete. While the Praesidium reserved the right, with the Secretariat's support, to draft the provisions in the third category, it had agreed to entrust a working party of legal experts designated by the Legal Services of the European Parliament, the Council and the Commission with the task of finalising the provisions in the second and fourth categories, in particular in order to adapt the provisions in Part Two in the light of the recommendations from the Working Group on Simplification approved by the plenary.

The legal experts had been given a precise and limited mandate and would submit the outcome of their work to the Praesidium, which could after assessment incorporate it in the draft Constitution. The mandate has been circulated in CONV 529/03.

(b) *Discussion circle on the Court of Justice*

The Chairman reminded members that a need had been voiced at the January meeting for the setting up of a "discussion circle" on the functioning of the Court of Justice. Mr Vitorino had in the meantime agreed to chair such a circle and the Praesidium had defined its working framework (circulated in CONV 543/03). This circle should have a more restrictive membership than the working groups, and its members should ideally be able to contribute specific expertise in order to ensure that it produces swift and effective conclusions. The various constituent elements would be invited to forward to the Secretariat the names of those Convention members who could participate in the circle.

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**Plenary session on Thursday 6 and Friday 7 February 2003**

**LIST OF SPEAKERS**  
**in order of intervention**

*Thursday 6 February*

**1. Presentation par Mr Katiforis of the report of Working Group XI on Social Europe  
(CONV 516/03)**

Ms Anne VAN LANCKER - European Parliament  
Mr Jurgen MEYER - Germany (Parliament)  
Mr Gijs de VRIES - Netherlands (Government)  
Ben FAYOT - Luxembourg (Parliament)  
Mr David O'SULLIVAN - (Commission)  
Mr Aloiz PETERLE - Slovenia (Parliament)  
Mr Dick ROCHE - Ireland (Government)  
Mr Timothy KIRKHOPE - European Parliament  
Mr Jacques FLOCH - France (Parliament)  
Mr Hannes FARNLEITNER - Austria (Government)  
Mr Alberto COSTA - Portugal (Parliament)  
Mr Emilio GABAGLIO - Social partners  
Mr Georges JACOBS - Social partners  
Mr Jan KOHOUT - Czech Rep. (Government)  
Mr Joachim WUERMEILING - European Parliament  
Mr Peter HAIN - United Kingdom (Government)  
Ms Pervenche BERES - European Parliament  
Mr Michel BARNIER - Commission  
*(Blue cards : The Earl of Stockton, Thorning-Schmidt, Pieters)*  
Mr Josep BORRELL - Spain (Parliament)  
Mr Hans Martin BURY - Germany (Government)  
Ms Marie NAGY - Belgium (Parliament)  
Mr Dimitrij RUPEL - Slovenia (Government)  
Mr Elmar BROK - European Parliament  
Ms Maria Eduarda AZEVEDO - Portugal (Parliament)  
Ms Sylvia-Yvonne KAUFMANN - European Parliament  
Mr Jozef OLEKSY - Poland (Parliament)  
Ms Piia-Noora KAUPPI - European Parliament  
Mr John BRUTON - Ireland (Parliament)  
Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)  
Mr Pál VASTAGH - Hungary (Parliament)  
Mr Jelko KACIN - Slovenia (Parliament)  
Mr Filadelfio BASILE - Italy (Parliament)  
Mr Caspar EINEM - Austria (Parliament)  
Ms Danuta HÜBNER - Poland (Government)  
Mr Henrik DAM KRISTENSEN - Denmark (Parliament)  
Mr Johannes VOGGENHUBER - European Parliament  
Ms Hildegard PUWAK - Romania (Government)  
Ms Cristiana MUSCARDINI - European Parliament  
Mr Per DALGAARD - Denmark (Parliament)  
Ms Liene LIEPINA - Latvia (Parliament)

Ms Marietta GIANNAKOU - Greece (Parliament)  
Mr Alfonso DASTIS - Spain (Government)  
Mr Sören LEKBERG - Sweden (Parliament)  
Mr Pierre CHEVALIER - Belgium (Government)  
Ms Lena HJELM- WALLÉN - Sweden (Government)  
Mr Adrian SEVERIN - Romania (Parliament)  
Ms Pascale ANDREANI - France (Government)  
Ms Androula VASSILIOU - Cyprus (Parliament)  
Mr Roger BRIESCH - Economic and Social Committee  
(*Blue cards: Fayot, Mendez de Vigo, Borrell, MacCormick*)

Friday 7 February 2003

### **1. Continuation of debate on "Social Europe"**

Mr Esko HELLE - Finland (Parliament)  
Mr Ingvar SVENSSON - Sweden (Parliament)  
Mr Robert ZILE - Latvia (Government)  
Mr Jan ZAHRADIL - Czech Rep. (Parliament)  
Mr Ernani LOPES - Portugal (Government)  
Mr João CRAVINHO - Social partners  
Mr Giacomo FILIBECK - Youth Convention  
(*Blue cards: Speroni, Dybkjaer, Hain, Heathcoat-Amory, van Lancker, Bruton*)  
Mr George KATIFORIS - Greece (Government)

### **3. The regional and local dimension (CONV 518/03)**

Ms Linda McAVAN - European Parliament  
Mr Dick ROCHE - Ireland (Government)  
Mr Michel BARNIER - Commission  
Mr Jozsef SZAJER - Hungary (Parliament)  
Ms MAIJ-WEGGEN - European Parliament  
Mr Alberto COSTA - Portugal (Parliament)  
Ms Gisela STUART - United Kingdom (Parliament)  
Mr Edmund WITTBRODT - Poland (Parliament)  
Mr Alain LAMASSOURE - European Parliament  
Ms Teija TIILIKAINEN - Finland (Government)  
Mr Iñigo MENDEZ DE VIGO - European Parliament  
Mr Gerhard TUSEK - Austria (Government)  
Mr Antonio TAJANI - European Parliament  
Ms Pascale ANDREANI - France (Government)  
Ms Cristiana MUSCARDINI - European Parliament  
Mr Hans Martin BURY - Germany (Government)  
Mr Luis MARINHO - European Parliament  
Mr Erwin TEUFEL - Germany (Parliament)  
Mr Matti VANHANEN - Finland (Parliament)  
Mr Elmar BROK - European Parliament  
Mr Göran LENNMARKER - Sweden (Parliament)  
Mr Peter HAIN - United Kingdom (Government)  
(*Blue card: Azevedo*)

Ms Maria BERGER - European Parliament  
Mr Kimmo KILJUNEN - Finland (Parliament)  
Mr Andrew DUFF - European Parliament  
Mr Caspar EINEM - Austria (Parliament)  
Sir Neil MacCORMICK - European Parliament  
Mr Josef CHABERT - Committee of the Regions  
Mr Hubert HAENEL - France (Parliament)  
Mr Alfonso DASTIS - Spain (Government)  
Mr Jurgen MEYER - Germany (Parliament)  
Mr Patrick DEWAEL - Committee of the Regions  
Ms Marie NAGY - Belgium (Parliament)  
Mr Sören LEKBERG - Sweden (Parliament)  
Mr Carlos CARNERO - European Parliament  
Mr Reinhard BÖSCH - Austria (Parliament)  
Mr Francesco SPERONI - Italy (Government)  
Ms Pervenche BERÈS - European Parliament  
Lord MACLENNAN - United Kingdom (Parliament)  
Mr Ernani LOPES - Portugal (Government)  
Mr Pierre CHEVALIER - Belgium (Government)  
Mr Manfred DAMMEYER - Committee of the Regions  
Ms Claude du GRANDRUT - Committee of the Regions  
Ms Eva-Riitta SIITONEN - Committee of the Regions  
Mr Jean-Luc DEHAENE, Vice-Chairman

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