

**EUROPEAN CONVENTION
WORKING GROUP XI
“Social Europe”**

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Introduction

Before elaborating on a number of specific proposals aimed at bringing about a clear balance between the principles of the single market and the principles pursued by national welfare states, I should like by way of an introduction to outline the content of a study I conducted during the summer of 2002 at the request of the Max-Planck-Institut für Gesellschaftsforschung in Cologne¹. My inquiry into the role the EU should play in the field of social protection started from an empirical question: what role does the EU play in the development of social protection?

My discussion of the EU's role in social policy will not be exhaustive. I will concentrate mainly on the development of social protection, thus not going into employment policy and related issues. Nor will I relate the discussion on social protection to the discussion on how Member States can maintain the necessary funding for social programmes in a context of 'tax competition', nor to the debate on the future of the structural funds. This is not to say that these discussions are not important, quite on the contrary. However, my aim here is to examine the impact of the EU on the typical work of a national minister who is responsible for social protection (including health care), and what kind of EU such a minister would like to see develop now, and after the Convention.

The facts point to two conclusions.

Firstly, Member States have lost more control over national welfare policies in the face of pressures from integrated markets than the EU has *de facto* gained in transferred authority, substantial though the latter may be. Thus, there is a growing gap in our steering capacity with regard to welfare policy. This is problematic, since the combination of diminished Member State autonomy and authority and continued weakness in developing responses at EU level may restrict both the scope and the pressure for innovative social investment, which is needed everywhere given the common challenges created by the dynamics of demographic ageing. The problem will be exacerbated by EU enlargement because the requirement of unanimity in the Council for important areas of social policy entails the risk of paralysis of decision-making in the social field, and because enlargement will bring about dramatic increases in the economic and social heterogeneity among EU Member States.

¹ Vandebroucke, F. (2002), "The EU and Social Protection: What Should the European Convention Propose?", MPIfG Working Paper, 2/6 (June), Paper presented at the Max Planck Institute for the Study of Societies, Köln, 17 June 2002. Other speeches and policy documents are available at: www.vandebroucke.com.

The facts point to a second conclusion. In a context of increased mobility, not just of workers and capital, but also of service organisations (more particularly in the field of health care), care providers and patients, the present Treaty constellation might prioritise two polarised trajectories, as Leibfried and Pierson fear: core welfare state components (redistribution, pay-as-you-go,...) would remain 'intervention-free', to the extent that they are 'pure' welfare; but the more these functions are provided by market-based services, the more the welfare state (in whole or in parts) would tilt towards the sphere of 'economic action' from the point of view of the EU institutions, thus becoming subject to single market principles and market regimes. Thereby the welfare state could gradually be submerged into a single European 'security' market, that is, a single market for personal protection and insurance instruments. Yet, although it would be unfair to blame 'Europe' for some of the difficulties facing national social policy makers if they choose to rely more on market or quasi-market mechanisms in their welfare provision, the Treaty provides no robust guarantee against such a polarised development.

However, the answer to this problem is not an additional transfer of national competencies to the EU, nor the imposition of uniformity, let alone harmonisation for the sake of harmonisation.

Although I think that the concept of 'a European social model' not only reflects an important reality which should be specified by means of common objectives, I also think national diversity with regard to social protection systems cannot be treated as illegitimate. On the contrary, diversity is itself part of the legitimating structure of beliefs and practices supporting the multilevel European polity. Although there is a proper role for EU legislation in the social domain, social protection policy is and should primarily remain the responsibility of municipalities, regions and nation states. Nevertheless, Europe should enable the Member States to develop active welfare states and encourage intelligent social investment, by indicating the broad objectives, both where employment and social protection are concerned. And cross-border mobility should create additional opportunities for intelligent welfare solutions, rather than make welfare policies more difficult to sustain.

Social protection policy – so conceived – has gained some momentum with the Lisbon Summit. Yet, this progress remains politically and institutionally fragile. Moreover, the answers to important questions (such as the proper organisation of patient mobility) remain open, as the Treaty lacks an explicit balance between the principles of the single market and the principles pursued by national welfare states. And the efficiency of decision-making in the field of social protection can be improved. Therefore, I have tabled, in the aforementioned paper for the Max-Planck-Institut, six proposals.

I shall begin by reviewing these rapidly. I shall then look in more detail at some of the specific proposals which, to my mind, are indispensable in creating a clear balance between the principles of the single market and the principles pursued by national welfare states.

In short, the following actions seem to me indispensable:

- Firstly, we would have to include the Charter of Fundamental Rights into the constitutional Treaty.
- Secondly, to express clearly the idea that the social dimension is part and parcel of the Union, it is crucial to reformulate the general principles of the European Community, as laid down in Articles 2 and 3 of the Treaty, to anchor a commitment to social protection to the new Treaty. Since this

principle would have a 'horizontal' nature, *all* actions undertaken by the Union would have to take it into account.

- Thirdly, we need a legal basis for the open method of co-ordination as it is to be applied in the field of social protection and social inclusion. This legal basis should guarantee the transfer of the results of the open method of co-ordination in the social domain to the economic and budgetary policy co-ordination on the level of the Broad Economic Policy Guidelines.
- Fourthly, enlargement demands that we increase the efficiency of decision-making with regard to the social provisions of the Treaty.
- Fifthly, social partners should be able to decide for themselves which issues relating to employment they want to negotiate. All European collective agreements could be declared legally binding by QMV.
- Finally, it would seem advisable to ensure that agreements concluded by means of collective bargaining between the social partners on a basis of social solidarity should enjoy a particular legal status, recognised by the Treaty. It would seem equally appropriate to specify in the Treaty the concept of "service of general economic interest".

As promised, I shall confine myself during my remaining speaking time to three proposals, crucial ones in my opinion, concerning:

- firstly, inclusion in the future constitutional Treaty of a horizontal clause on social values, which includes, among others, a commitment to social protection.
- secondly, a strengthening of the social provisions in the Treaty;
- thirdly, enshrining the open method of co-ordination in the constitutional Treaty.

I. INCLUSION IN THE FUTURE CONSTITUTIONAL TREATY OF A HORIZONTAL CLAUSE ON SOCIAL VALUES

The part of the existing EC Treaty relating to principles (Part One) contains two so-called "horizontal" clauses intended to ensure that certain fundamental values are taken into consideration in the formulation and implementation of European Union policies and activities². The first comes in Article 3(2) of the EC Treaty, which stipulates that: "In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women". The second appears in Article 6 of the EC Treaty, which states that: "Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development".

So as to express clearly the idea that the social dimension in a broad sense is an integral part of European Union policy, the cross-cutting clause of a social nature, currently contained in Article 3(2) of the EC Treaty, could be amended as follows and inserted in Article 3 of the preliminary draft constitutional Treaty drawn up by the Praesidium of the European Convention (this article should be entitled "Objectives and Principles for Union activities").

² Specific horizontal clauses do moreover appear under particular Titles of the EC Treaty: see, for example, the present Article 127(2) of the EC Treaty, which stipulates that: "The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities"; see also the present Article 152(1) of the EC Treaty, which states that: "A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities".

“In all the activities falling within its competence, the Union shall aim to eliminate inequalities, and to promote equality, between men and women, and shall take into account the requirements related to achieving full employment and a high level of protection of human health, education and training, and to guaranteeing social protection and services of general interest which are accessible, financially viable, of high quality and organised on the basis of solidarity.”

The key advantage of this reworded clause is to place the values and objectives enshrined in it on the same footing as other values and objectives, most notably economic ones, which guide the building of Europe (in particular the internal market and competition) and to ensure that these social values and objectives are taken into consideration both in the formulation and implementation of European Union policies and activities and in the enforcement and interpretation of Community law by national and Community judges. In other words, it is a matter of striking a fair balance (weighting) between economic and social objectives. This should be done in step with recent developments in case law at the European Court of Justice (hereafter “the ECJ”), which believes that for overriding reasons of general interest it is necessary to maintain the financial equilibrium of social protection systems in each Member State, coupled with the organisation of a well regulated, high-quality medical and hospital service that is accessible to all³.

The added value of such a clause can be illustrated by four specific examples.

1.1. Supplementary activities of sickness insurance funds

In certain Member States, sickness insurance funds are key players in healthcare systems. On a number of markets, the sickness insurance funds responsible for operating statutory sickness-invalidity insurance schemes are embarking on supplementary activities (offering supplementary hospitalisation insurance or providing supplementary benefits for the disabled, for example) without being subject to the legislation applying to private providers (legislation on business practices, rules on prudential control, etc.), sometimes by relying on compulsory contributions from members. Some private insurance providers wonder to what extent their activities are subject to the classic rules on competition.

The horizontal clause proposed above would consolidate the idea that, provided these sickness insurance funds embody a legally defined “social solidarity” mechanism, the activities they engage in, over and above their task of managing social security, would not be constrained by the rules on competition. This point could moreover usefully be made in the part of the future constitutional Treaty dealing with competition rules.

It goes without saying that one has to avert the risk of improper recourse to the notion of “social solidarity”. It is necessary to devise criteria for this purpose, most notably through ECJ case law, backed up by the so-called “horizontal clause”.

It goes without saying that the risk of improper recourse to the notion of “social solidarity” must be averted. Criteria would have to be devised for this purpose, notably using ECJ case law, backed up with* the “horizontal clause.”

³ See in particular the ECJ rulings of 28 April 1998, Kohll, C-158/96, ECR I-1931, and Decker, C-120/95, ECR I-1831, and of 12 July 2001, Smits and Peerbooms, C-157/99, ECR I-5473.

1.2. Supplementary sectoral pension schemes

In the context of pension reform, the national public authorities across Europe are considering ways of creating more democratic access to what it has been agreed to call the “second pillar” (supplementary occupational pension schemes) and to develop solidarity mechanisms within this pillar. In some Member States, the social partners are being encouraged by the government to conclude collective labour agreements with a view to establishing compulsory supplementary pension schemes in given sectors (sectoral pension schemes). The aim is both to make the second pillar accessible to categories of workers who are normally excluded from this level of social protection (older workers, employees of SMEs, blue-collar workers, etc.) and, thanks to a broadening of the contributor base, to introduce several elements of solidarity (the supplementary pension continues to accumulate despite temporary suspensions of contributions resulting for example from the worker’s prolonged illness).

On the basis of the horizontal clause proposed above, and in the light of recent ECJ case law concerning the Dutch system of compulsory affiliation to sectoral pension schemes⁵, one might suggest inserting into the present Article 81 of the EC Treaty, which will undoubtedly be placed in the part of the future constitutional Treaty relating to Union policies, a provision stipulating that

“Agreements concluded in the context of collective bargaining between management and labour in pursuit of social policy objectives shall not fall within the scope of Article 81(1) EC”.

Similarly, in this same part of the future Treaty, one might see fit to reflect the broad interpretation given by the ECJ, in the above-mentioned context, to the notion of “services of general economic interest”, in the meaning of existing Article 86(2) of the EC Treaty⁶. This provision could be amended as follows:

“Undertakings entrusted with the operation of services of general economic interest *or with a mission of general social interest...*”.

⁵ ECJ rulings of 21 September 1999, Albany, C-67/96, ECR I-5863, Brentjens, C-115/97 to C-117/97, ECR I-6029, and Drijvende Bokken, C-219/97, ECR I-6125. In these rulings the Court basically deemed that the decision taken by organisations representing employers and employees in the sector concerned, through a collective labour agreement, to set up a pension fund tasked with managing a supplementary pension scheme and to ask the government to make affiliation to this fund compulsory for all employers and employees in that sector, does not “by its nature and purpose” fall under the prohibition contained in Article 81(1) of the EC Treaty (see in particular points 60 and 64 of the Albany ruling).

⁶ In the rulings referred to in the previous footnote, the ECJ, when asked to examine whether the exclusive right conferred by the social partners on a sectoral pension fund to manage supplementary pensions in the sector concerned, and the resulting restriction of competition, can be justified under Article 86(2) of the EC Treaty, ruled in essence that the sectoral pension schemes in question fulfil an “essential social function in the Netherlands pension system” and that “the removal of the exclusive right conferred on the Fund might make it impossible for it to perform the tasks of general economic interest entrusted to it under economically acceptable conditions and threaten its financial equilibrium” (see in particular point 111 of the Albany ruling).

Alternatively, the existing Article 86(2) of the EC Treaty could be amended as follows: “Undertakings entrusted with the operation of services of general economic *or social* interest...”. Another solution may be to delete the term “economic”, so that the existing Article 86(2) of the EC Treaty would read: “Undertakings entrusted with the operation of *services of general interest*...”.

Such adjustments, in the constitutional Treaty, would send out a strong signal that, in the context of free market competition, the European Union wishes to preserve the particular nature of agreements or mechanisms predicated on social policy considerations.

One can see that there is a clear link between this discussion and my proposal with regard to the financing of services of general interest, which is my third illustration of the possible added value of the “horizontal clause”.

One can see a clear link between these considerations and my proposal regarding the financing of services of general interest, which is my third illustration of the potential added value of the “horizontal clause.”

1.3. Financing services of general interest

Services of general interest are a key component in the European model of society, whose role is consolidated by Article 16 of the EC Treaty, inserted by the Amsterdam Treaty, and by Article 36 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice in December 2000.

Whether it be entrusted to a public or a private company, the management of a service of general economic interest⁷ inevitably engenders additional costs related to the obligation to conduct unprofitable operations with a view to ensuring continuity and universality of service (for instance, the obligation to make local mail deliveries even in the most distant regions, or the obligation to connect small, remote communities to the telephone, electricity and gas networks). In order to safeguard the financial equilibrium of companies providing such services and, hence, universal and continued provision of these services, their additional costs are often offset by governments through direct funding (subsidies) or indirect funding (tax benefits). Such compensatory measures are sometimes criticised as running counter to competition rules, especially when the company concerned also performs activities unrelated to its public service mission.

On the basis of the above-mentioned cross-cutting clause, and in keeping with recent ECJ case law⁸, it could be stipulated, in the part of the future constitutional Treaty concerning State aid, that:

“Benefits granted by a public authority to a company entrusted with the operation of services of general interest shall not constitute State aid unless those benefits exceed the additional costs borne by that company in ensuring the continuity and universality of the service”.

1.4. Financing of sectoral training activities

⁷ Public radio and television broadcasting, airline operations, water, gas and electricity distribution, public telephone network, countrywide mail deliveries, etc.

⁸ ECJ ruling of 22 November 2001, Ferring, C-53/00, ECR I-9067.

Arrangements are being put in place on some markets, in the context of collective labour agreements negotiated at sectoral level, to establish training programmes for workers that are funded from employer and employee contributions and operated exclusively by the social partners (private funding and operation). Such arrangements are geared to establishing a form of social solidarity in the operation and financing of sectoral vocational training activities.

On the basis of the cross-cutting clause as worded above, a provision could perhaps be inserted into the rules laid down by the future constitutional Treaty on State aid, stipulating the following:

“Provided that the public authorities are in no way involved in their funding or operation, vocational training programmes established by a collective labour agreement concluded between the social partners and based on a social solidarity mechanism shall not fall within the scope of the rules on State aid, even where it is extended to all sectors by an act of the public authorities”⁹.

Let me illustrate the importance of such a clause by looking at an ongoing discussion between the European Commission and the country I happen to know best. In Belgium the social partners conclude sectoral agreements on the constitution of training funds. The social partners have a free hand in deciding how much of the total wage bill is allocated to these funds and how the resources are spent (e.g. in support of training initiatives.) The funds are therefore not public funds, for the money does not proceed from the State and the social partners manage the resources independently. Furthermore, the funds do not “favour” any particular company, since the companies collect the money themselves. Despite this, because the Belgian government “declares these agreements to be generally binding,” the Commission describes them as “State support” and places them under the same strict supervision as economic support. It goes without saying that such an interpretation does nothing to promote training and education, despite the fact that these measures are fully in line with European wishes.

II. STRENGTHENING THE SOCIAL PROVISIONS OF THE TREATY

My second proposal deals with the social provisions of the Treaty, which can be found, at present, in Articles 136 and 137¹⁰, as well as in the technical co-ordination of social security systems. The new formulations of the social provisions since Amsterdam allow us to conclude that the social objectives of the Union are being accepted as independent objectives, despite the fact that the central place of the subsidiarity principle still holds, meaning that social policy is still primarily a matter for Member States, as should be the case. The scope of these articles is in my view sufficiently large.

However, we have to change the decision-making procedure applicable to the social provisions of the Treaty, some of which are still governed by the rule of unanimity in the Council. As said before, the perspective of enlargement calls for the generalisation of qualified majority voting (QMV), also in this area.

⁹ Concerning the scope of the concept of social solidarity in this context, a lead could be taken from ECJ case law on the notion of solidarity in social protection schemes (see footnote 3), considering that such social solidarity is inherent in a mechanism whereby the contributions collected from employers and employees are proportional to their respective capacity to contribute, and not to the scale of their specific training requirements, while ensuring access to training courses of equal value.

¹⁰ Ex Articles 117 and 118.

I am aware that some (current and future) Member States fear the shift to qualified majority voting on all social provisions as an attempt to oblige them to give up their competitive advantages in social terms, which they sometimes see as compensation for geographical and capital investment disadvantages. I would like to allay these fears by mentioning three elements. My first argument is substantive: we should not forget that cumulative scientific evidence has further corroborated, since the Dutch Presidency in 1992, that social protection is a productive factor and not an impediment to competitiveness. My second argument is institutional: even if we were finally able to abandon the unanimity rule for decision-making on social policy at the next Intergovernmental Conference, it is clear that a broad coalition of the accession countries, possibly supported by one or two of the current Member States, could easily, and rightly, block decision-making in this respect. Rightly, indeed, since we would be making a bad start with the unification of Europe if the Union were immediately to twist the arms of the accession countries. Thirdly, and finally, I believe we can attach the necessary conditions to ensure that such an extension of QMV will not impose unacceptably high burdens on the Member States. The conditions that have already been agreed upon in Article 137 of the Treaty and which refer, amongst others, to *minimum* requirements and unnecessary administrative and financial constraints, can serve as a source of inspiration¹¹.

Finally, I find it inconceivable that the decision-making process with regard one of the fundamental pillars of European integration, namely the free movement of persons, should be brought to a complete halt. I believe that this alone constitutes a convincing argument in favour of applying QMV to the technical co-ordination of social security systems (Regulation 1408/71).

III. ANCHORING THE OPEN METHOD OF CO-ORDINATION ON SOCIAL POLICY TO THE EU'S ARCHITECTURE

My third point relates to enshrining the open method of co-ordination in the constitutional Treaty.

A potential weakness of open co-ordination as it has developed today, is that this kind of intergovernmental collaboration tends to be highly dependent on the coincidental political constellation of the moment. In view of the fact that the open method of co-ordination is not part of the formal *acquis* we need to think of ways of ensuring that that this soft *acquis* remains valid after enlargement. In my opinion, the "soft" *acquis* means that, potentially at least, the Ministers of Social Affairs have a say in the broad outlines of European policy.

The enlargement of the EU to 25 Member States will certainly make the processes of 'peer review' and evaluation in the open method of co-ordination more complicated. Practical feasibility will require simplification (and maybe a revision of the frequency) and possibly integration of the various processes. I will not elaborate upon this, since my concern here is with the legal entrenchment of the open method of co-ordination in the field of social protection.

¹¹ Article 137(2) of the Nice Treaty explicitly mentions "excluding any harmonisation of the laws and regulations of the Member States" and "directives, *minimum* requirements for gradual implementation[...]. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation of small and medium-sized undertakings".

Given the ambition to establish a coherent and transparent new Treaty, it seems logical to argue, within the Convention, for the inclusion of the open method of co-ordination as one of the *general* instruments of the Union. This could be done in the planned article of the constitutional Treaty that would describe all the Union's instruments. This general article would give a description of the basic features of the open method of co-ordination. Such a 'generic' article could even encompass the processes of policy co-ordination which are already established in the actual Treaty, such as the employment process (art. 128). The specific application of the open method of co-ordination to employment could then be developed in more detail in the employment chapter of the Treaty, the specific application to social protection and social inclusion could be developed in the social provisions of the Treaty, etc.

I do believe this twofold anchorage to the constitutional Treaty to be necessary. What form might such a "generic article" and a "specific article" in the field of social protection take?

3.1. Proposal for a generic article in the *basic Treaty*

As far as the "generic article" is concerned, I envisage two possibilities.

The first is that the generic article is a reflection of what the Member States regard as the fundamental characteristics of open co-ordination. These fundamental characteristics relate to the goal of open co-ordination (enabling European Union Member States to compare their practices and learn from one another), as the tools to be used in making this process effective (common objectives, indicators, national reports).

I can therefore fully endorse the text submitted by the Belgian Minister for Foreign Affairs and Vice-Prime Minister, Mr Louis Michel to this Working Group, which specifies that the open method of co-ordination could be defined as:

"Consisting *for Member States*, at their own initiative or that of the Commission, with due respect for national and regional diversity, in setting joint objectives and indicators on a given topic, and, on the basis of national reports, enabling these States to improve their knowledge, develop exchanges of information, experience and practice, and, in accordance with the objectives set, to promote innovative approaches likely to result where appropriate in guidelines, recommendations or other forms of European legislation"¹².

Another possibility would be to provide a mere "anchor point" in the article of the draft constitutional Treaty describing all the instruments of the Union. In this regard I would refer to Article 83 [on page 50 in the English text] of the "Principles" part of the PENELOPE document put forward by the European Commission, in which the open method of co-ordination is introduced in a specific provision on recommendations reading as follows:

1. *"A Recommendation shall give those to whom it is addressed guidance to be followed to attain a given result.*

It shall not produce binding legal effects, unless the Constitution provides otherwise.

¹² Contribution by Louis Michel - Social Europe Working Group - Questions 4 and 7 of the mandate, p. 2.

2. *A Recommendation may be directed to encouraging a dynamic coordination method between the Member States in specific areas covered by different Union policies and action.*¹³

3.2. Proposal for a specific article in the “Political” part of the Treaty

This specific legal basis should build on the learning process which we are currently experiencing in the social field, and more particularly in respect of social inclusion and pensions.

This constitutional provision, which is probably best placed in the part of the future constitutional Treaty relating to policies of the Union, should meet the following requirements:

- make it clear that open co-ordination applies to two specific subject matters in the broad social policy field: the modernisation of social protection and the promotion of social inclusion (to signal that we do not want open co-ordination to replace ‘hard EU law’, in those domains where a ‘hard law’ approach is indicated);
- make it unambiguously clear that open co-ordination on subject matters will not depend on political good will, but be stated as an obligation by the Treaty (hence the expression “shall”);
- give an active role to the Commission, yet taking into account the prominent and positive role played by the Social Protection Committee in shaping the social ministers’ common political identity over the past two years;
- define the role of the European Parliament, and of the social partners (called ‘management and labour’ in the Treaty’s jargon);
- provide for the possibility, yet not the obligation, of developing guidelines (it seems easier, at this stage, to envisage the development of guidelines with regard to social inclusion, than with regard to a highly sensitive area such as pensions);
- require the incorporation of the results of the process into the Broad Economic Policy Guidelines (for convenience, I use the expression ‘Broad Economic Policy Guidelines’, referring to the Treaty as it stands today; maybe the Convention will opt for a broader concept, such as ‘Broad Economic and Employment Guidelines’).

In the aforementioned Max Plank lecture I took these criteria as my starting point and developed the following proposal.

Text proposal

Anchoring the open method of co-ordination with regard to social protection and inclusion to the Treaty

In the fields referred to in Articles 137, paragraph 1, (j) and (k), ()*

the Council,

on the basis of the conclusions of the European Council,

¹³ Article 83 (*Recommendations*) of Chapter 4 (*Non-legislative Acts*) in Title V (*Instruments*) of Part One (*Principles*) of the “Contribution to a preliminary draft Constitution of the European Union (feasibility study)” from the European Commission, 4 December 2002.

pursuant to a consensus between the Member States, on a proposal from the Commission, which takes into account the opinion of the Social Protection Committee, and after consulting the European Parliament, management and labour, and the Social Protection Committee,

shall

- adopt a set of commonly agreed objectives and commonly agreed indicators,*
- if appropriate, draw up guidelines which the Member States shall take into account in their policy,*
- adopt reports on the implementation of this co-operation process.*

The result of this process shall be incorporated into the Broad Economic Policy Guidelines.

() reference is to the Treaty establishing the European Community as amended by the Treaty of Nice)*

The European Commission has also developed an interesting proposal in this connection in the aforementioned PENELOPE document. It can be found more particularly in Articles 42, 43 and 44 of Chapter 3 on Social Protection.

CHAPTER 3 - SOCIAL PROTECTION

Article III – 42

The Union and the Member States shall work towards developing a coordinated strategy for social protection with a view to achieving the objectives set out in Article 19 of the Constitution.

Member States, having regard to national practices related to the responsibilities of management and labour, shall regard the modernisation of systems of social protection as a matter of common concern and shall coordinate their action in this respect within the Council. That coordination shall not affect the prerogative of the Member States to define the fundamental principles of their system of social protection.

Article III – 43

1. The European Council shall each year consider the social protection situation and adopt conclusions on the basis of a joint report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, acting on a proposal from the Commission and after consulting the European Parliament, shall adopt common objectives and, where appropriate, draw up in the form of recommendations, guidelines on the modernisation of systems of social protection which the Member States shall take into account in their policies.

3. Each Member State shall provide the Commission with a periodic report on the principal measures it has taken to implement the modernisation of its system of

social protection in the light of the objectives and, where appropriate, guidelines for the modernisation of systems of social protection.

On the basis of those reports, European Parliament and the Council shall periodically carry out an examination of the implementation of the modernisation of systems of social protection of the Member States.

Article III - 44

A Social Protection Committee with advisory status shall be established to promote cooperation on social protection policies between Member States and with the Commission. The composition and tasks of the committee are set out in Additional Act No 4.

IV. FINAL REMARKS

Ladies and Gentlemen, I believe the work undertaken by this Working Group is of crucial importance for the success of the Convention as a whole. I therefore wish you all the best for the coming discussions and I hope that the Working Group will present a strong and precise Report to the plenary meeting. I thank you for your attention and look forward to your comments and criticism.