



European Economic and Social Committee

**THIRD INFORMATION AND DIALOGUE MEETING
on the
EUROPEAN CONVENTION**

27 June 2002

SUMMARY OF DEBATES

The chairman of the meeting, **Jan Olsson**, member of the **European Economic and Social Committee (EESC)** and alternate observer at the Convention, welcomed the participants and warmly thanked the Convention's vice-chairman, **Jean-Luc Dehaene**, for attending and, more generally, for the universally welcomed efforts he was making at the Convention by acting, so to speak, as the spokesperson for civil society.

Mr Olsson asked **Mr Dehaene** to report on the Convention session on 24-25 June which had been given over in its entirety to civil society, and to outline the future work programme.

Mr Dehaene thanked all the civil society organisations which had made constructive and valuable contributions to the session on 24-25 June, thus helping to ensure that everything went smoothly. He pointed out that this session should not be considered as the end of the dialogue but rather as one step in an ongoing dialogue which took on several forms.

Mr Dehaene then went over the main Convention events in the short term:

From 9 to 12 July the Youth Convention would be held in Brussels. This event would bring together 210 young Europeans from the twenty-eight member and candidate countries taking part in the Convention.

On 11 and 12 July the Convention would hold its next session at which it would discuss matters relating to external relations and the common defence policy. The Praesidium would also be proposing to the conventionists that four additional working groups be set up on the following subjects: an area of freedom, security and justice; the EU's external action; security and defence policy; and the simplification of legislative procedures.

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In September the Convention would begin to discuss the initial reports of the working groups, and in mid-October the Praesidium would present an initial set of proposals setting out the architecture of a basic constitutional Treaty.

Turning once again to the question of the dialogue with civil society, **Mr Dehaene** confirmed the holding of further meetings at the EESC and proposed that such meetings be more thematic. He suggested that oral evidence be taken at hearings from the chairpersons of the working groups that dealt with subjects of particular concern to civil society such as the Charter of Fundamental Rights, subsidiarity and economic governance.

Virgilio Dastoli, spokesperson for the Permanent Forum of Civil Society, expressed his general satisfaction with regard to the preparation of the Convention session on 24-25 June and the session's proceedings. He stressed that the organisation of the session had been facilitated by the meetings hosted by the EESC.

He was pleased to note the move towards a constitutional Treaty which would incorporate the Charter of Fundamental Rights, and away from the idea of simply revising the existing Treaties. However, he regretted that a real draft constitution was not the aim.

Turning to the future, he thought that the meetings at the EESC should continue, albeit with conventionists being involved more. Noting that a good many organisations did not belong to European networks, he wondered whether there was not a case for a further forum to widen the circle of civil society organisations involved in the dialogue with the Convention. These additional meetings would also be organised and hosted by the Committee.

Mr Dastoli also noted from reading the Convention's reports on the national debates that the future of Europe was being hardly discussed at national level and that major public awareness campaigns still needed to be organised in most countries. He thought that this would require a major pedagogical effort in which European civil society organisations should be involved.

Referring to certain statements made by conventionists, who had queried the representativeness of European civil society organisations or networks that had been members of the contact groups or had spoken at the plenary session on 24-25 June, **Georges Liénard, secretary-general of the European Humanist Federation,** called for more transparency on the part of the organisations and networks and for clarification of the question of representativeness. To that end, he suggested that reference be made in particular to the work carried out by the EESC at the Convention organised by it in October 1999 and subsequent opinions.

Giampiero Alhadeff, secretary-general of the platform of European social NGOs, also acknowledged that civil society organisations' representativeness and transparency were

very important matters. He noted, however, that certain anti-federalist organisations had deliberately chosen to boycott the Convention plenary session so as to be in a better position to contest the representativeness of the participants. This was something he deplored.

He also underlined that it was important to carry forward the debate on the future of Europe at national level, even though it should not be forgotten that the experience of the Convention on the Charter of Fundamental Rights had shown that the effective involvement of civil society took time.

Henrik Kröner, secretary-general of the European Movement, considered that the organisations representing civil society had to mobilise their forces, show determination and demonstrate that they had the desire at both European and national level to let their views be heard by the Convention. He stated that the European Movement had long been campaigning for a more effective Europe and more transparent and democratic decision-making procedures, and expressed the hope that the conventionists would soon present more precise guidelines for their work, as this could facilitate the launch of a proper debate at national level.

Patrick de Bucquois, secretary-general of the European Council for Voluntary Organisations (CEDAG), criticised the questioning of certain organisations' representativeness as an attempt to divide civil society. He also thought that such a debate was not necessary, for the participating organisations did not aim to represent the whole of civil society but merely to defend their interests as best they could.

The only real distinction that had to be made was between civil society organisations and the citizen as an individual, whose place in society was given priority by the direct forms of democracy. It was vital to recognise that there was a natural difference between these two types of players within society.

Mr de Bucquois admitted that the lack of a debate on the future of Europe at a national level was an indisputable fact, which could be explained by several factors. This being so, it was necessary to work for a real dialogue with the general public.

Luigina de Santis, secretary-general of the European Federation of Retired and Elderly Persons (FERPA), did not dispute the fact that certain Brussels-based organisations were unrepresentative, but considered that that this was not the time to open a debate on that subject when the priority task was the debate on the future of Europe.

Like other speakers, she was worried by the lack, or even complete absence, of debate at national level. To remedy this situation, she called on the economic and social committees or

similar institutions in the Member States to follow the line taken by the EESC and organise meetings with civil society.

Daniel Spoel, ATTAC's coordinator for the Convention, stressed that the mobilisation of citizens took time; that was why the Convention ought to modify its agenda in order to take better account of public opinion. This period of reflection was also needed to take a broader look at matters – an approach which his movement particularly favoured. He announced that ATTAC would organise an initial social forum at European level in November.

Hugo Luders, director of Initiative Netzwerk Drei-Gliederung, acknowledged that it was necessary to consider associations' representativeness, but noted that this was beside the point, for more often than not small highly committed groups were behind civil society initiatives.

Etienne Pflimlin, president of the Coordinating Committee of European Cooperative Associations (CCACE), trusted that a referendum would be held simultaneously in all EU countries on the outcome of the Convention's work.

On the question of subsidiarity, he stressed that this principle for sharing out power between the different tiers of government was for ever evolving and was not sacrosanct. He also stated that since economic and political pluralism was the guarantor of democracy, the organisations which he represented were urging that the principle of entrepreneurial freedom in all its forms be enshrined in the Charter of Fundamental Rights.

In reply, **Mr Dehaene** advised the representatives of civil society not to attach too much importance to the recurring criticisms with regard to representativeness. He thought that a debate on this subject was neither a priority nor a matter of great urgency, for it was in danger of dividing civil society and deflecting it from its objective, which was to pool forces in order to be able to exercise a real influence on the work of the Convention.

He added that he shared the concern expressed by several speakers regarding the need for greater transparency, and proposed that the Forum's website include a form which organisations and associations could use to present themselves.

With regard to the "constitutional Treaty" that was to be prepared by the Convention, **Mr Dehaene** agreed that the term "constitution" meant more to public opinion. He stressed nonetheless that from a legal point of view, the text would in fact be a constitutional Treaty, i.e. a Treaty between states, and not a European constitution to replace the various national constitutions.

He agreed that the debate on the future of Europe was arousing little interest at national level, but thought that the national reports drawn up by the Convention would draw politicians'

attention to the problem and prompt them to consider the need for remedial action. He also called on participants to get more involved in the national debates, for European civil society had a responsibility to bear in mobilising national organisations. That was not only a matter for governments. National ESCs – like the EESC – could also help by organising dialogues with civil society organisations at national level.

Mr Dehaene concluded by reiterating his wish to continue with the monthly information and dialogue sessions at the Committee and the proposal which he had put forward in his initial statement. He pointed out that the website could be used not only for general contributions but also for reactions to the documents published by the Convention.

The second part of the meeting consisted of a discussion with **Commissioner António Vitorino**, co-representative of the European Commission along with **Michel Barnier** on the Convention Praesidium, on the procedures for incorporating for the Charter of Fundamental Rights in a future constitutional Treaty, and the implications which this would have.

António Vitorino, who was also the chairman of the Convention's working group on the Charter of Fundamental Rights, recalled first of all that the main objective of the exercise was to give the protection of fundamental rights within the Community legal order a high political profile and put these rights on a sound legal footing.

He added that there was already a Community "acquis" with regard to fundamental rights in that their protection was guaranteed by Treaty Article 6 plus a number of major Court of Justice judgements.

Despite that, the inclusion of the Charter in a constitutional Treaty raised a series of questions.

Firstly, the future Treaty had to reconcile a double legitimacy on which the European venture was based: the legitimacy of the state, since the power of decision rested with the Member States, and the legitimacy of citizens, which largely took the form of fundamental rights.

At the moment it was necessary to recognise that even though practically the whole of civil society was in favour of the incorporation of the Charter as it stood, some voices were calling for changes. Personally, **Mr Vitorino** recommended caution. He thought that the Charter should be incorporated without changes and hence that the debate should not be reopened on its content, for this could lead to an extension of fundamental rights but equally it could lead to their reduction.

What was more important was to define a strategy for incorporating the Charter which safeguarded two essential principles:

The first of these was that the list of rights contained in the Charter must not be regarded as definitive; the Charter did not exhaust the list of fundamental rights which were protected by the European Union.

The second principle was that the Charter should not be incorporated as a rigid set of provisions without the flexibility needed to make adjustments that took account of developments in society and in the field of fundamental rights. In other words, it was necessary not to forsake the flexibility offered by Article 6, which referred to the constitutional traditions of the Member States and to the European Convention on Human Rights.

This was why the Charter's incorporation in the draft constitutional Treaty was no substitute for accession to the European Convention on Human Rights and nor could it lead to the non-application of Community case law, which reflected the constitutional traditions common to the Member States and was the source of new fundamental rights within the Community legal order.

Mr Vitorino pointed out that the Charter's incorporation into the Treaty was also not incompatible with accession to the European Convention on Human Rights. In accordance with opinion 2/94 of the Court of Justice, the Community's accession to the European Convention on Human Rights required the inclusion of an explicit legal basis to that effect in the EC Treaty, but if the Convention recommended that the European Union be granted legal personality and that this be merged with the Community's legal personality, a legal basis would exist for accession.

Mr Vitorino stated that the main issue at stake in relation to such an accession was to make sure that the autonomy of the Community legal order and the Court of Justice's role as the ultimate arbiter of this legal order were respected. The autonomy of Community law was based on two principles – the direct legal effect of certain instruments (regulations and certain directives) and the primacy of Community law over national law. The question of relations between the Court of Justice of the European Communities and the European Court of Human Rights in Strasbourg should therefore be addressed.

Finally, the question of means of redress before the Court of Justice would also have to be tackled from two angles. Firstly, should Treaty Article 230 be amended so as to extend the right for private individuals to instigate direct proceedings? And secondly, should the Court of Justice's powers with regard to judicial cooperation in criminal and police matters be extended to include the protection of human rights?

Daniela Mitchener from the platform of European social NGOs pointed out that the questions raised by the Charter's incorporation and accession to the European Convention on Human Rights must not mask the absence of a true European human rights policy. The rudiments of a

policy existed (Article 13 on the fight against discrimination, Article 136 on social rights), but the Union had no general powers.

Virgilio Dastoli, spokesman of the Permanent Forum of Civil Society, stated that members of the Forum were generally not in favour of the Charter's renegotiation. With regard to how the Charter was to be incorporated in the Treaty, he preferred a mention in the current Article 6 plus a reference in the preamble of the new Treaty. He also called for the amendment of Article 230 so as to extend the possibilities for private individuals to instigate direct proceedings with the Court of Justice. Similarly, the principle that sovereignty was a matter for the people should be affirmed.

Pieru Ravaoli from the Pan-European Federation for Heritage (Europa Nostra) stressed that his organisation would have liked to make an amendment to the Charter so as to include a right to culture. He queried the possibility for including new provisions in the Treaty which would cover the fundamental rights not contained in the Charter.

Arlette Heymann-Doat from the Carrefour européen pour une Europe civique et sociale (CAFECS) underlined the importance for Europe of incorporating the Charter in the future Treaty. She recommended a reference to the Charter in Title I of the new Treaty in order to give it a high political and public profile. She called for the Union's accession to the European Convention on Human Rights and the European Social Charter.

Luigina de Santis, secretary-general of the European Federation of Retired and Elderly Persons (FERPA), stated that she understood the Commissioner's arguments in favour of incorporating the Charter in the Treaty without changes, but added that even if the Charter constituted progress, it also had shortcomings. Thus, the entitlement to a minimum income was not recognised although poverty in Europe was rising steadily. Rather than reopening the discussion she suggested that this omission be remedied by including a provision in the Treaty.

Henrik Kröner, secretary-general of the European Movement, was concerned about the risk of the Charter becoming too rigid as a result of its incorporation in the future Treaty. He would have preferred a direct reference to the Charter in the new Treaty along the lines of: "The Union shall respect the rights, freedoms and principles enshrined in the EU Charter of Fundamental Rights".

Sharon Leclercq-Spooner, spokesperson of the European Agricultural Convention, thought that it was inadvisable to reopen the discussion on the content of the Charter, but felt that consideration should be given to the best way of taking account of new rights concerning culture, the environment, health and food safety, etc.

Michael Cwik, Forum for language rights and cultural diversity, pointed out that a number of rights mentioned by several speakers, especially with regard to culture, languages and heritage, etc, which were not included at present in the Charter, could be included in a specific chapter in the Treaty entitled "Citizens' rights and obligations".

Flavio Mondello, coordination of the Group of Ten, wondered whether in the event of fundamental rights being violated it would be possible to instigate proceedings with the Court of Justice.

In reply, **Mr Vitorino** stated that in an enlarged European Union which had almost as many legal traditions with regard to fundamental rights as there were Member States and in which the principles laid down over the years by the Court of Justice and the European Convention on Human Rights also applied, it was right to debate the distinction between rights amenable to the courts and the guiding principles governing fundamental rights. This distinction would not be changed by incorporating the Charter in the future constitutional Treaty.

He added that once the Charter had been incorporated, its field of application would be that of the Treaty. Hence it would apply to the European institutions but also to the Member States when they acted under Community law in keeping with the principle of Community law's autonomy vis-à-vis national law.

Returning to the need for a proactive policy with regard to fundamental rights, **Mr Vitorino** pointed out that TEU Articles 6 and 7 already provided a legal basis for guaranteeing the respect of fundamental rights within both the Community's and Member States' legal orders.

On the question of how the Charter was to be incorporated in the Treaty, there was the problem that the Charter duplicated a certain number of articles and in some people's eyes merely reiterated rights already enshrined in the Treaty. This matter had to be studied closely, for it was necessary in particular not to delete Treaty articles which were more binding than the Charter, e.g. the provision relating to non-discrimination on grounds of nationality.

The reference to popular sovereignty was a subject which extended beyond the scope of fundamental rights and was part and parcel of the constitutional debate.

It was clear that the Charter could not cover all fundamental rights, hence the need to make provision for flexible revision mechanisms in order to take account of the emergence of new rights (biotechnologies, protection of dignity, etc.).

With regard to the Charter's place in the structure of the future Treaty, the Commissioner understood, and to some extent, agreed with, the idea of including it in Title I. However,

he pointed out that this could have a drawback if, as was occasionally envisaged, the Treaty was to consist of two parts – the first part forming the Union's quasi inviolable constitutional basis and the second containing the Community policies and legislation that would be continually adapted. The inclusion of the Charter in the first part would limit the scope for revision. Giving the Charter a high political profile and constitutional force - a worthy objective - could therefore have an undesirable consequence, namely it could restrict the possibilities for adapting the Charter to developments within society. Another option, namely to refer to the Charter in a basic article and include it in a protocol appended to the new Treaty, would have the advantage of offering greater flexibility when the Charter was revised.

The promotion of fundamental rights had to be included in the tasks of the Union, but the protection of these rights in law had to be exercised further by the national courts for the most part. These were the "front line" courts with regard to the application of European law, coming before the Court of First Instance and the European Court of Justice. It should also be noted that individual proceedings before these courts took time – two years on average – which would increase with enlargement.

Mr Olsson thanked **Mr Vitorino** for his clear presentation and direct and candid replies. This made for a better understanding of the problem of incorporating the Charter in the Treaty.

Mr Olsson then asked about how to adopt a still more practical approach at the forthcoming meetings, and above all about the possibility of participants being given the chance to draw up joint positions on general issues such as subsidiarity, participatory democracy and socio-economic governance.

Virgilio Dastoli, spokesperson for the Permanent Forum of Civil Society, had his doubts about such a possibility, since the likelihood of participants being able to reach agreement was remote. He supported **Mr Dehaene's** proposal that more thematic meetings should be held to address the issues dealt with in the Convention's working groups.

Hugo Luders, director of Initiative Netzwerk Drei-Gliederung, considered that it was very difficult for participants to make proposals at this stage, but also supported the idea that the meetings should be more theme-based. He hoped, for example, that a forthcoming meeting could discuss subsidiarity.

Sharon Leclercq-Spooner, spokesperson for the European Agricultural Convention, emphasised that it would be useful to give greater consideration to representative democracy as one way of tackling the public's sense of "disconnection" from the institutions. This objective would involve the provision of training for politicians and officials.

Etienne Pflimlin, president of the Coordinating committee of European cooperative associations (CCACE), focused on two points that had been discussed at length during the meeting. Firstly, he called on participants not to get bogged down in a debate on representativeness but to pay more attention to the ideas expressed by civil society organisations. And secondly, the lack or absence of debates at national was a joint responsibility, which should be discussed and acted on.

Michael Cwik from the Forum for language rights and cultural diversity stated that before making plans for joint proposals, it was necessary to agree on the constitutional principles to be promoted in a multicultural and multilingual community. To that end he proposed that participants be sent a list of these principles to which they could add their own if they thought it useful.

Frédérique Chabaud, secretary-general of the European Forum for Arts and Heritage (EFAH), noted that the challenge facing them was to piece together a joint position from their sometimes conflicting views. To do that, it was necessary to work out a method and draw up a short-term plan in order to be able to follow the proceedings of the working groups and comment on the broad issues.

Monique van Tichelen from the Gauche européenne stated that the proceedings of the meetings should tie in closely with the work schedules and discussion topics of the Convention's working groups. It was also necessary to be able to respond rapidly.

Ailsa Spindler, executive director of the International Lesbian and Gay Association (ILGA Europe), agreed that it was necessary in the short term to fit in with the Convention's timetable and proceedings. However, it was also necessary not to lose sight of the more long-term objective, which was to provide civil society with a structure at European level.

Luigina de Santis, secretary-general of the European Federation of Retired and Elderly Persons (FERPA), thought that they should get in touch with the main players on the Convention's working groups and, if possible, draw up joint positions on the working groups' reports.

William Lay, director of the Confederation of Family Organisations in the European Community (COFACE), thought that agreement ought to be reached on topics of common concern. He noted, as other speakers had, that the debate had not taken off at national level and that it was the job of each organisation to raise awareness of what was at stake. Similarly, the EESC had to liaise with its national counterparts.

Mr Olsson took note of all the contributions and concluded, bearing in mind the various statements and the progress made by the working groups, that 15 July was too early for the next meeting. He therefore cancelled it. The meetings schedule up to the end of the year would be drawn up and sent to participants shortly.

He thanked all the participants for attending and contributing to the debates with **Mr Dehaene** and **Mr Vitorino**.
