

EUROPEAN PARLIAMENT



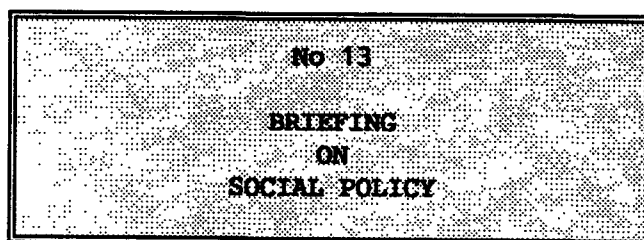
SECRETARIAT WORKING PARTY

TASK-FORCE
ON THE
" INTERGOVERNMENTAL CONFERENCE "

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These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

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**BRIEFING
ON
SOCIAL POLICY**

1. Previous Community situation:

a) Treaty of Rome. The Treaty of Rome adopted a minimalist approach to social policy. Specific measures were contained in Art. 48, 49 and 51 (free movement and social security for migrants) and Art. 123-127 (European Social Fund). The Treaty of Rome contained a Chapter on social policy, but with the exception of Art. 119 (equal pay) the provisions were of a programmatic nature and gave the Community an insecure legal base on which to build any coherent form of Community social policy. Social issues were seen as subsidiary to market economics, and the improvement of living standards of workers was regarded as a by-product of the functioning of the Common Market. Therefore, during the period from 1958 until 1974 the only tangible results were the introduction of free movement, with social security for the workers concerned and the setting up of the European Social Fund.

The adoption of an initial Programme of Social Action in 1974, where the Council stressed the need for close coordination in the social area, gave impetus to a more active social policy in the Seventies. Although the legal bases for social legislation were articles 100 and 235 (requiring unanimity, except for free movement of workers which required qualified majority), the Council nevertheless adopted a variety of directives and action programmes.

b) The Single European Act widened the power of the Community by adding Art. 118a so that legislation on health and safety at the working place is adopted by a qualified majority, which has facilitated the enactment of a range of directives in this area.

c) The Community Charter of the Fundamental Social Rights of Workers. The reforms contained in the Single Act were, however, not sufficient to cope with the changes that the Internal Market would entail for employees, so 11 Member States (the United Kingdom did not participate) adopted the Community Charter of the Fundamental Social Rights of Workers in December 1989 (mostly inspired by the existing ILO Conventions). Although the Charter is a political declaration, it meant that the Commission, which because of the inactivity of the Council had proposed very few items of binding legislation since the beginning of the 1980s, drew up an Action Programme and a whole range of new provisions were slowly adopted, although important directives such as 'posting of workers' and 'atypical work' are still blocked.

d) The Treaty on European Union increased the Community's powers in the social and employment spheres. The principles now stipulate that a policy in the social sphere is to be introduced. The Social Fund's remit has been expanded and the 'cooperation' procedure and 'codecision' procedure now apply to vocational training and education. In addition, an "Agreement on Social Policy" was attached to the Treaty by means of a Protocol. This Agreement, which applies to all Member States except the UK, extends the scope of action of the Union. In particular, it increases the use of Qualified Majority Voting instead of unanimity. This means that the Treaty now contains 2 separate legal bases in the social area, which has made it difficult to adopt legislation. The Agreement has only been used in two cases, one being the important directive on European Works Councils.

2. Position of the Member States:

Belgium:

No official position yet, but the Belgian Government has published a note on the IGC. It provides a frame of reference for discussing the subjects and ideas which will be on the IGC agenda. The points of view set out are merely a preliminary statement of the Belgian position, which will be refined and corrected by consultations with Parliament, the Regions and Communities as negotiations progress. In its note, the Belgian Government indicates that viable European integration in the interests of European citizens should rest on a minimum joint European basis at social, environmental and fiscal level, involving the integration of the Social Protocol into the Treaty on Union, institutional confirmation of the results of the social dialogue, upward harmonisation of the social provisions, insertion of social convergence criteria, insertion of social and environmental clauses as part of common trade policy, defining and specifying universal service and fighting poverty and social exclusion. The strengthening of the Union in the social, fiscal and environmental spheres is of the highest importance with regard to alternative funding of social security, and could also contribute to reducing production costs. Harmonisation in these areas should be achievable by a qualified majority.

'The strengthening of this balance is of fundamental importance for the viability of the Union. All the Member States which profit from the advantages of the single market should, in consequence, apply European social, ecological and fiscal rules in their entirety. If not, there is the danger of a downward-spiralling competition at social, ecological and fiscal level, which jeopardises the single market. Given that the Government is concerned to strengthen the equilibrium between rights and obligations within the Union, it rejects the idea of a Europe à la carte'.

The Belgian Government is prepared to contemplate certain proposals for extending the rights of citizens, such as:

- the signing by the European Union of the European Convention safeguarding Human Rights and other conventions setting out basic rights and liberties, including the Social Charter, or else the insertion of a list of basic freedoms and rights into the Treaty;
- a limited extension of the of the current list of rights and obligations which appears in the Treaty, such as the fight against racism and xenophobia;

Denmark:

In June 1995, the Danish Ministry of Foreign Affairs published a report "Agenda for Europe" which deals with the main issues on the agenda for the IGC. By publishing this report the Danish Government wishes to provide a platform for a broad public and political debate of the Danish position. As regards social policy it is mentioned that the issue relating to the legal protection of employees and the British opt-out of the Social Agreement will be subjects for discussion. As regards the problem of unemployment the report says "that there are only entirely preliminary ideas for ways to strengthen employment through Treaty amendments. One idea could be to set an EU target for unemployment at a certain low level. It is not quite clear,

however, what this would entail in practice since Member States are unwilling to allow other EU members to control their economic policies. It is more likely that measures will be taken to coordinate national economic policies with a view to reducing unemployment figures".

Germany:

On 21 February 1995 the Foreign Minister Klaus Kinkel set out the underlying philosophy behind the Government priorities agreed on 11 November 1994¹. The Federal Government supports participation by all Member States in the Agreement on social policy. With regard to implementation of framework legislation on social policy, the Federal Government will not tolerate any watering down of German social standards. For this reason, and with a view to further development of the common social policy, the Federal Government calls for harmonization of minimum social standards.

Greece:

In January 1995 the Greek Government submitted a document setting out its initial position concerning 1996 IGC. With respect to employment, the document stresses that, in the context of Community social policy, Maastricht has laid the bases for new policies in the areas of technological innovation and employment: it will now be necessary to examine employment as a macro-economic phenomenon, with a more integrated, Europe-wide dimension. In the political sphere, the Greek proposal advocates greater protection for workers' rights, equality between men and women should be promoted, and specific regulations should be introduced for part-time work and pregnant women.

Spain:

The Spanish Chair of the Reflection Group and the Foreign Ministry have submitted to the Spanish Parliament's Joint Congress-Senate Committee on the European Union on 2 March 1995 a 100 page 'basis for discussion document' on the 1996 IGC.

A key aspect is institutional reform and the replacement of unanimity by qualified majority voting. Spain believes that in such areas as, for example, industrial policy, social security and social welfare in general, and the Structural Funds, the unanimity rule should either be retained or replaced by a requirement involving an 'extended qualified majority'. It is also suggested that a reform of certain policies, for example industrial, energy and social policy could be relaunched. On the subject of Union citizenship and fundamental rights, the text puts forward two practical alternatives: either the catalogue of rights contained in the existing chapter on "Citizenship of the Union" should be substantially extended, to include, inter alia, a specific article condemning racism and xenophobia; or there should be a charter of fundamental rights of the citizens of the Union, including, with a view to future enlargements, all the rights considered as

¹ Agence Europe of 22 February 1995.

basic in the context of the 'acquis communautaire', which would thus receive protection from both the Union institutions and the Member States.

Ireland:

No official document yet. In a speech on 16 June 1995 the Minister of State for European Affairs, Gay Michell T.D., who represents the Irish Government in the IGC Reflection Group in an address at the European Anti-Poverty Network Information Seminar said: "In general Ireland strongly believes that the social provisions of the Treaty should apply throughout the Union. The exclusion of the UK from the Agreement on Social Policy has caused concern here. These provisions must be seen as complementing the Treaty provisions on the establishment of the single market and the creation of an Economic and Monetary Union. Social, economic and monetary policies are not mutually exclusive but reinforce one another. A Union which ignored the needs of the disadvantaged would not be in the Union's or Ireland's interest. It would also not be in keeping with the Community approach to integration which is based on solidarity between the different sections in society. However, in considering possible amendments to the Treaty in the social policy area, we must bear in mind that an IGC operates on the basis of unanimity. We must also consider that if new provisions in the social field do not apply to all Member States, then they could aggravate the different condition of competition between Member States and work directly against the objective of providing a fair system within the European Union."

Italy:

The joint declaration of 15 July 1995 by the German and Italian Foreign Ministers regarding the 1996 IGC stated with regard to European citizenship that the fundamental duties and freedoms should be codified and responsibility for safeguarding them entrusted to the Court of Justice.

Luxembourg:

Paragraph 8 (on the social dimension) of the Luxembourg Government's memorandum on the IGC of 30 June 1995 states that 'The government attaches the same importance to the social dimension and to community policy as it does to the other major ambitions of the EU. It cannot conceive of a Member State remaining indifferent to one of the major goals of European integration. It considers that a common approach on the part of all the Member States, reflecting their solidarity, is essential if real progress is to be encouraged within the EU.

The government remains deeply committed to the principles of the Social Charter and to social dialogue. The revision of the Maastricht Treaty must be used as an opportunity to make the machinery more efficient, allowing a basis of minimum social rights to be established.

With regard to this structural layout, it is important to reduce the number of levels which proposals have to go through during the drafting process, as this will expedite the decision-making process.

Austria:

The "Leitlinien zu den voraussichtlichen Themen der Regierungskonferenz 1996" underlines the need to establish better preconditions for the fight against unemployment. The opt-out of the UK is not acceptable, and the Social Protocol should be integrated in the Treaty. The EP is regarded as a spokesman for high social standards and its powers should therefore be increased in this area. The Austrian Government also proposes establishing of minimum standards for protection against racism and xenophobia.

Portugal:

No official document yet, however it is clear from statements made by government representatives in the Committee on European Affairs of the Assembly of the Republic that Portugal would insist on the achievement of total freedom of movement for persons; on strengthening economic and social cohesion between the Member States to ensure comparable living and working conditions for its inhabitants. The former portuguese Prime Minister Anibal A. Carvaco Silva in the newspaper "Publico" of 4 June 1995 proposed that the European Union should draw up a genuine Citizens' Charter for all Europeans, establishing an area without frontiers with equal rights and opportunities.

Finland:

The steering group preparing the participation of Finland published a background memorandum on 18 September 1995, capturing preliminary Finnish views that can be used as a basis for further preparations. According to the memorandum new means must be sought for safeguarding economic development and promoting common employment and environmental problems. In these areas the Union could play a more central role in supplementing national policy. "Suggestions have been made for the establishment of a Community-level employment administration with its own budget, for the development of pan-European investment finance mechanisms, and for separate employment funds. The viability of these proposals should be jointly scrutinized, and wiser use of existing funds in supporting employment re-assessed."

The Union's role in promoting equality between the sexes should be enhanced through the IGC. The Protocol on Social Policy should be integrated into the Treaty, since the arrangement with two different legal bases has proved unsuccessful. "The reaction to proposals for dealing with social security through various Community funds must be negative. At Community level, there should be support for an increase in social dialogue and as wide as possible observance of the tripartite principle, also when dealing with matters related to social security."

More generally with the evolution of Economic Union, it should be established whether there is a need to develop Community-level social policies, as a complementary function. Finally, the memorandum states that the role of European citizenship in the future must be clarified.

Sweden:

The Swedish Government wishes to see the issues which will be at the heart of the IGC's work subjected to a wide-ranging public debate. Indeed, a parliamentary committee has been entrusted with the task of encouraging this debate.

As things stand, the government would like to set out what it believes to be the major fundamental issues for Sweden, and in July 1995 published a report on 'Sweden's fundamental concerns with regard to the EU Intergovernmental Conference in 1986'. A major objective for Sweden is the need to fight the high rate of unemployment in Europe and achieve a high rate of lasting employment. Properly worked out economic policy action and an active labour market policy should allow the creation of conditions for high rates of growth and unemployment and low unemployment. The conference should work towards making employment and labour market policy the subject of a special title within the Treaty and ensuring that the question of a 'union for employment' is explored.

4. Report of the Reflection Group:

The Progress Report from the Chairman of the Reflection Group from 1 September 1995 mentions under the heading: Challenges, Principles and Objectives that the Group has come to the conclusion "that the coming reform must give priority to the "real" problems, i.e. those which preoccupy Europeans most. A majority of personal representatives include unemployment, internal security and environmental degradation among the problems to be tackled as a matter of immediate urgency." As regards the European citizenship "there is a tendency by the majority to regard European citizenship as an essential aspect of making the Treaty acceptable to European public opinion, and they therefore strongly support its development in two ways: Firstly, by means of deepening the specific rights of European citizens already included in the Treaty and the inclusion of new rights, and also through reform and unification of the legal bases relating to citizenship, which are currently subject to excessively complex and disparate procedures (national ratification).

The other type of action to be taken in this area, according to the majority view, consists in spelling out the general principle of respect for fundamental rights laid down in Article F(2) and making it more workable."

There is consensus within the Group on the need to insert an Article into the Treaty providing for the suspension of its rights or even the expulsion of a Member State which infringes fundamental human rights or basic democratic principles.

"With regard to the content of the rights in question, the following were mentioned:

- * express condemnation of racism and xenophobia by means of an analogous provision to the one proposed in 1991 by the European Parliament
- * general clause prohibiting discrimination (in addition to the one prohibiting discrimination on grounds of nationality in Article 6) on grounds of gender, religion, opinion, sexual preferences, etc. In the

opinion of some, the principle of equality between women and men should have general application and not be restricted as currently to the economic sphere (Article 119). There was general support for the amendments listed in the two previous subparagraphs; the same does not apply to the following, at least on a first reading:

- * Prohibition of the death penalty;
- * Protection of minorities;
- * Socio-economic rights: specifically, inclusion in the Treaty of the content of the European Social Charter. Some representatives pointed out the disadvantages which this possibility entailed because of its legal and economic consequences, and one was fundamentally opposed."
- * Employment and quality of the environment.

Most of the members of the Reflection Group think that the Union must strengthen the social content of the Treaty. In order to achieve this goal it is mentioned under topic 8, "Instruments available to the Union" that "in addition to including economic and social rights in the text, the Treaty should incorporate practical provisions geared to maintaining a high level of employment in the Union. These members also propose rewording Article 103 to incorporate the idea of giving priority to employment. As regards the organisation and working methods of the Institutions, they propose setting up a High-Level Committee on Employment to ensure permanent supervision to the impact of Community policies on job creating; such supervision should moreover be one of the essential tasks of the Employment and Ecofin Councils of Ministers. A considerable majority thinks it urgent to incorporate the Social Protocol in the Treaty. It has also been suggested that a "social acceptability clause" be inserted in the Treaty obliging the Commission to evaluate its proposals in the light of social objectives.

One member rejects this line of argument outright. He thinks that job creating is achieved not by more Community regulation but by less. He feels that the real employment challenge comes from the global economy and that the Community's response should be deregulation and emphasis on greater competitiveness."

5. Position of the Commission:

In the report on the operation of the Treaty on the European Union (SEC(95)731) the Commission states that: "Further enlargement will not only require the Union to strengthen its decision-making capacity, but will also force us to look more closely at the possibility of different speeds of integration. This concept already exists both in the context of economic and monetary union and in the system set up under the Schengen Agreement - although the latter regrettably remains outside the Community framework. There is nothing unusual in allowing some Member States a longer period to adjust to certain policies. In the Commission's view, however, this must be done within a single institutional framework and must centre on a common objective. Those states concerned must play their part by not blocking any of their partners who wish to move ahead more quickly.

Permanent exemptions such as that now applying to social policy, which in the last analysis have had the regrettable effect of excluding the Social Charter from the Treaty, create a problem, as they raise the prospect of an à la carte Europe, to which the Commission is utterly opposed. Allowing each country the freedom to pick and choose the policies it takes part in would inevitably lead to a negation of Europe."

6. Position of the Council Presidency:

In an introductory note from Coreper and the Secretary-General of the Council to the General Affairs Council on 10 and 11 April 1995 (5082/95 5 April 1995), the following points regarding social policy emerged: 1) there are 2 legal bases for social policy; 2) it has not been possible to agree on the inclusion of third-country nationals in the basic principle of Art. 8a.

7. Previous position of the EP:

Resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 IGC:

"The monetary policy provisions should have their counterweight in reinforced economic policy coordination and a clear link to Article 2 of the Treaty which implies that all the Union's institutions must work to promote ... a high level of employment and of social protection, the raising of the standard of living and the quality of life, and economic and social cohesion and solidarity among Member States'. Working towards full employment should be an explicit goal of the Member States and the Union, and an Employment Committee, endowed with the same powers as the Monetary Committee, should be set up. Greater substance should be provided for the concept of EU citizenship.

The application of the provisions in the Treaty on equal rights not only to economic rights but to all aspects of equality for women. In addition, the Treaty should contain a clear rejection of racism, xenophobia, sexism and all forms of discrimination and guarantee adequate legal protection against discrimination for all individuals resident within the EU.

The principle of economic and social cohesion should be reinforced in the Treaty. Social policy should be a core area of EU competence, with incorporation of the Social Charter, and an ending of the United Kingdom opt-out, and should be better integrated with economic policy as a whole. Equal opportunities policy should be improved through a redrafting of Article 119 of the Treaty broadening its scope to cover all aspects of employment and social security.

There should only be three decision-making procedures, the co-decision, assent and consultation procedures. The existing cooperation procedure should be abolished and the consultation procedure should be restricted to decisions in the field of common foreign policy and security.

8. Summary of the topic problems:

- 1) The British opt-out of the Social Agreement. The other Member States believe that the opt-out gives the UK a competitive advantage.

- 2) Inclusion of the Social Agreement in the Treaty.
- 3) Inclusion in the Treaty of the content of the European Social Charter.
- 4) Strengthening the following aspects:
 - employment and the fight against unemployment;
 - wider use of qualified majority voting in social matters;
 - promoting equality between the sexes;
 - concept of EU citizenship;
 - fight against racism, xenophobia, sexism etc.

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