

A Constitution for a Europe of Citizens?

In how far the Presidium's draft falls short of expectations (27 May 2003)

SOLIDAR is the alliance of social and economic justice NGOs involved in social welfare, development and humanitarian aid. We bring together organisations across the European Union who regroup over 8 million citizens. In March 2002, SOLIDAR formulated 7 key demands to the Convention for a more democratic and transparent European Union, closer to the needs and aspirations of its citizens.

At the time of the presentation of the final draft of all four parts of the Constitution, SOLIDAR wants to review these key demands, assess the progress made and draw attention to where the draft does not meet the expectations.

In order to ensure that the European Constitution meets the expectations of its citizens and establishes a social Europe, SOLIDAR calls upon the members of the Convention to

- **Ensure that European policy frameworks are in accordance with the objectives set out in Art. 3.** SOLIDAR calls for the principle of coherence of EU policy making with the values and objectives, set out in Art. 2 and 3, anchored in Art. 3.
- **Ensure a strong social dimension of EU policy making.** To do so, SOLIDAR calls for the inclusion of a social clause into the General Provisions at the beginning of Part III.¹
- **Make the commitment that economic, employment, social and environmental policies will be integrated to achieve sustainable development, binding.** Sustainable development in Art. 3 should be clearly defined as economic, social and environmental sustainable development, Art. 14 should be amended stating that the broad guidelines for economic policy coordination should be coherent with the social objectives of the European Union and **Art. III-67 should read:**

“The member states and the Union shall act in accordance with the principle of an **social** market economy **based on sustainable**

¹ **Horizontal social clause:** “In all activities falling within its competences, the Union shall aim to eliminate inequalities as well as discrimination on the basis of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation, to promote equality between men and women, to promote full employment and a high level of social protection, protection of human health, advancement of education and training, and to guarantee universal accessibility of services of general interest which are financially viable, of high quality and organized on the basis of solidarity by the individual Member State”.

development, with free competition, favoring an efficient allocation of resources, and in compliance with the principles set out in (ex. Art. 4).

- **Strengthen the fight against discrimination.** Art. III-5 on the fight against discrimination should not be subject to unanimity, but to qualified majority voting and co-decision.
- **Including the equality between women and men in Art. 2 on the values of the Union.**
- **Create a legal basis for services of general interest**
- **Create a real legal basis for a dialogue with organised civil society.** SOLIDAR welcomes the new Art. 46 on participatory democracy. However, Art. 46 does so far not recognise organised civil society as a partner of dialogue. It is important that the article refers to organisations of organised civil society who respect the values enshrined in Article 2 of the Constitution as dialogue partners (Art. 46.2) in all stages of EU policy making – policy planning, implementation, and evaluation (Art 46.3).

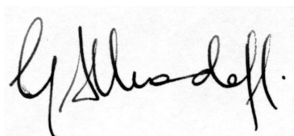
Art. 51.3, setting out a special dialogue for churches and non-confessional organisations should be deleted.

In addition we want to draw attention to the fact that **the drafting of Part III has not been sufficiently transparent and its content has not been discussed in the Convention before the presentation of the final draft.** Under the disguise of purely technical adaptations by a team of legal experts, the Presidium took policy decisions without presenting them to the public and to the Convention for discussion. A one-day plenary session is not enough to discuss crucial policy decisions. We therefore support the call of many Convention members to extend the timeframe of the Convention to discuss and finalise Part III in July and August 2003.

Please find attached a more detailed SOLIDAR assessment of the Constitutional draft.

I very much hope that you will feel able to support this points and make them heard in the plenary session and to the Presidium of the Convention.

Yours sincerely



Giampiero Alhadeff

Secretary General

Expectations and provisional results – May 2003

In March 2002, SOLIDAR formulated seven key demands to the Convention on the future of Europe. Now in the final phase of the Conventions work we want to assess the progress made and draw attention to where the draft does not meet the expectations.

1. a European Union that represents a clear and unified voice for peace, justice and solidarity, within the EU and throughout the world.

Although the draft Constitution is welcome in its attempt to make a step towards the building of the long-awaited joint foreign policy of Europe, there is the danger that development cooperation and humanitarian aid are downsized under the security agenda. In the final draft presented at the end of May, many improvements were made. However, several amendments tabled to improve the section on humanitarian aid have been rejected, and further steps must still be taken in the area of development co-operation.

Development Co-operation:

- The Constitution should ensure that development co-operation will not be used as an instrument of CSDP, CFSP or the solidarity clause. This would be totally contradictory to the independent nature of development aid (Art. I-39.4).
- The Constitution should make clear that EU's trade policy, especially with developing countries, must contribute to sustainable development and poverty eradication (Art. III-212.1).
- The Development co-operation article (III-213) should specify that it targets all developing countries.
- There should be an explicit reference to the principle of partnership with governments and participation of civil society, which is of the greatest importance in the definition and implementation of EU development policies (Art. III-213.3).

Humanitarian Aid:

- Humanitarian aid should be delivered on a needs-basis to the most vulnerable populations. Bringing political considerations into humanitarian aid would prevent this (article III-218.1).
- As in International Humanitarian Law, the principle of neutrality should be added as distinct from and complementary to the principles of impartiality and non-discrimination (article III-218.2).

- Reference to the creation of a voluntary humanitarian aid corps should be removed. Humanitarian aid is a setting for experienced, trained professionals such as NGOs and international organisations (article III-218.5).
- Humanitarian Aid has no place within the fight against terrorism. The only fight to which humanitarian aid should be called is the fight against poverty and human suffering (article III-205.1).

2. The incorporation of the Charter of Fundamental Rights in the Treaty

The incorporation of the Charter of Fundamental Rights in Part two is an important achievement of the Convention and should not be made subject of discussion in the IGC again. Incorporation makes the Charter legally binding and represents a strong political message of common European values.

We also welcome that Art. 6 of the Constitution gives the EU legal personality and thereby the possibility to access to the European Convention on Human Rights and to be presented at organs such as the ILO and the World Bank with one voice.

The Charter will, however, be essentially an instrument of judicial review for the Court of Justice. Within its framework of competences, the EU should respect Human Rights but it has no competences as such to develop a fundamental rights policy. Fundamental Rights must not only be protected from violation, but must also be safeguarded by constant pressure and monitoring. Therefore question that remain open are: how can we create positive obligations for the EU to develop a real human rights policy? How do we ensure access to justice for all? Could the EU accede to other human rights instruments such as the Revised Social Charter or the UN Convention on the Rights of the Child.

3. Inclusion of a treaty article giving a legal basis to civil dialogue

Responding to widespread calls from civil society, Art. 46 anchors the principle of participatory democracy in the future Constitution of the EU. SOLIDAR welcomes the establishment of a legal base for the participation of organised civil society in EU policy making. We also welcome that Art. 47 introduces the in the first draft forgotten autonomous social dialogue. The call for a legal basis for civil dialogue on a EU level does not question the primacy of the political dialogue and the specific importance of the social dialogue involving employers, trade unions and local authorities.

However, Art. 46 does so far not recognise organised civil society as a partner of dialogue. It is important that the article refers to organisations of organised civil society who respect the values enshrined in Article 2 of the Constitution as dialogue partners (Art. 46.2) in all stages of EU policy making – policy planning, implementation, and evaluation (Art 46.3).

Concerning Art. 51, SOLIDAR questions the need for Paragraph 3, which suggests the putting in place of a dialogue with “churches and [non-confessional] organisations”. We believe that Article 46 should include the equal participation of religious and non-confessional organisations. SOLIDAR regrets that the presidium has decided to not alter the substance of the Article, disregarding many calls, from Convention members and civil society organisations, including religious organisations, not to establish a double standard of civil dialogue. A new article would give too much importance to some religious groups whilst demoting others and excluding the secular population. SOLIDAR believes that there are no grounds why Declaration 11, a non-binding declaration currently annexed to the Amsterdam Treaty, should be integrated into a European Constitutional Treaty.

4. Anchorage of the ideas of a social Europe in the Treaty. The Lisbon Process, that is the commitment that economic, employment, social and environmental policies will be integrated to achieve sustainable development, should be made binding.

SOLIDAR welcomes the inclusion of sustainable development and the concept of **social market economy** in the objectives of the EU in Art. 3, as it was suggested by consensus by the working group on Social Europe.

We feel however that the concept is not well defined in the article, stressing the economic aspect of sustainability. **SOLIDAR calls for the inclusion of the objective of an economic, social and environmental sustainable development.**

We also feel that in order to translate the objective of sustainable development into reality, the idea of an integrated policy approach of economic, social and environmental policies should be reflected throughout the treaty. Art. 10.3 and Article 14 as they are drafted at the moment prioritise economic policy objectives above social ones. It is not enough to state that there are also “**initiatives and measures to ensure coordination of Member States’ employment and social policies**”, but the mutual recognition of economic and social policy objectives has to be ensured. SOLIDAR therefore calls for an amendment of Art. 14 stating that the broad guidelines for economic policy coordination should be coherent with the social objectives of the European Union. Without such an addition in Part I of the Constitution, social policy

will stay subordinated to economic policy planning and the aim of economic social and environmental policy planning cannot be pursued.

Art. III-67 should read: "The member states and the Union shall act in accordance with the principle of an **social** market economy **based on sustainable development**, with free competition, favoring an efficient allocation of resources, and in compliance with the principles set out in (ex. Art. 4).

The emergence of the **Open Method of Coordination** was a response to the need for a more flexible, participatory, multi-level governance system for social policy in Europe. To give this method the possibility to be developed further and fulfill its potential of improving democratic EU policy making by involving many actors and stakeholders, it is fundamental to include a specific constitutional provision on the application of the method in the field of social policy, as already introduced in Art. 137 of the Treaty of Nice.

SOLIDAR supports the **call for a protocol on sustainable development**. The protocol should contain a clear definition of economic, social and environmental development and should set out a procedure of sustainability assessment of EU policy making.

5. Making the eradication of poverty an objective of the EU.

Solidar welcomes the fact that the fight against social exclusion has been integrated into Art. 3 of the final draft. However, the eradication of poverty still only features as an external objective of the EU. The eradication of poverty should also be considered as one of the most fundamental internal Union's objectives. To include the eradication of poverty in this section will mean that the EU's internal and external policies are consistent.

6. Strengthening of Art. 13 to fight discrimination, and especially the inclusion of a new title on gender equality in the Treaty.

In the course of the Convention, SOLIDAR was disappointed to find that the developments concerning the fight against discrimination and gender inequalities did not seem to be about strengthening existing legislation but safeguarding the status quo of the Amsterdam Treaty.

SOLIDAR welcomes that Art. III-5 does now reflect the scope of Art. 13 TEC. We are however disappointed that Qualified Majority Voting and co-decision do not apply for this clause. This does not reflect the result of the

Working Group on Social Europe, which pleaded for co-decision with QMV to be applied to Art. 13 and 42 TEC. In an enlarged Europe, unanimity for the former Art. 13 means that it becomes nearly meaningless for the fight against discrimination.

Furthermore, the commitment to gender equality and anti-discrimination should be included in the values and objectives of the EU. Both objectives should figure as titles in part III of the Constitution.

Despite many years of gender legislation in the EU, inequality between women and men remains systematic and institutionalized in all areas of life. Equality of women and men must remain a clearly stated core value of the European Union in order to support the full realization of the rights of all women. The principle of gender mainstreaming cannot be lost.

7. To ensure that the Treaties recognise social services as services of general economic interest and that competition rules take account of the specific added value of this work to the social cohesion of our societies.

The report of the Working Group on Social Europe acknowledged the importance of Services of General Interest and therefore suggested to include the provision of Services of General Interest into the objectives of the EU in Art. 3. This proposal was not reflected in the first draft presented by the Presidium though.

solidar is an independent international alliance of non-governmental organizations (NGOs) working in development and humanitarian aid, social policy and social service provision.

solidar promotes economic and social justice in Europe and worldwide by working in alliance with trade unions and labour movement organizations.

solidar is a member of the Platform of European Social NGOs and of the Civil Society Contact Group that launched the [act4europe](http://www.act4europe.org) campaign on the Convention on the future of Europe.

solidar supports the Europe-wide e-card campaign for a Social Europe, launched by the Social Platform and ETUC, for more details please see www.act4europe.org

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