

Editorial

The Amsterdam Treaty: Some General Comments on the New Social Dimension

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In June 1997, another milestone to the development of the European Union (EU) was added when the Amsterdam Treaty (AT) was signed by the Member States' political leaders. The Amsterdam Treaty includes amendments to the preamble of the Treaty on European Union (TEU) and the three pillars of the EU: the three original European Communities' Treaties, the pillar on a Common Foreign and Security Policy (CFSP) and the pillar on cooperation in the fields of Justice and Home Affairs (JHA).

The amendments are aimed at preparing Europe for the 21st century. It is (still) expected that around the turn of the century, two important developments will take place which will change the face of the Union drastically: the expansion to Eastern Europe and the establishment of European monetary union with a single currency. Unfortunately, Europe's political leaders failed to complete their mission. No agreement could be reached on crucial reforms of the institutional structure and the voting procedures were postponed.

In the areas of employment and social policy, two major amendments to the EC Treaty have been adopted: the addition of a Title on Employment and a Chapter on Social Policy, the latter incorporating the contents of the Maastricht Agreement on Social Policy into the EC Treaty. Both texts are included in the Documentation section of this issue.

The fact that these two policy areas now form part of the EC Treaty should be welcomed. They are an attempt to strike a better balance between the well developed structure towards European economic and monetary union and a much less developed social dimension. It is a reminder that Europe is not about markets alone.

THE EMPLOYMENT TITLE

Unfortunately, those who had hoped that the Community would tackle employment by making it part of the Community policies, must be thoroughly disappointed. The crux of the new provisions is that, although Article 1 of the Employment Title¹ states that Member States and the Community shall work towards developing a coordinated strategy for employment, it is left to the Member States to contribute to achieving this aim. They shall consider it as a matter of common concern and they shall coordinate their action within the Council (Art. 2). The Community contributes by encouraging the cooperation between Member States and, if necessary, shall complement their action, respecting the competencies of the Member States (Art. 3). One can almost hear a mantra of 'subsidiarity, subsidiarity, subsidiarity' in the background...

Article 4 contains a cumbersome reporting procedure, involving the Member States, Commission, Council, the European Parliament, the Economic and Social Committee, the Committee of the Regions and the newly established Employment Committee. All this must result in the production by the Council of guidelines which Member States 'shall take into account in their employment policies' (Art. 4 (2)). The Council shall examine annually whether the Member States have actually done so. If appropriate, recommendations may be issued to the Member States. The results of a preliminary round of exchange of information will be discussed at a special Employment Summit in Luxembourg later this year.

The procedural aspects of Article 4 are reminiscent of the reporting procedure used in the context of the Council of Europe's 1961 European Social Charter. The Charter's procedure, used in the framework of an intergovernmental treaty, is highly ineffective. It has been in use for over thirty years now and has, so far, led to few tangible results. One of the results of the weak procedure is that it has led the Charter into almost complete obscurity, largely disregarded by States as well as organisations representing employers and workers.

Even though it is unlikely that the Article 4 AT procedure would have such disastrous effect, it has all the signs of being capable of producing more paperwork than employment opportunities. It adds yet another international procedure² forcing states to focus on reporting on what they are doing in stead of getting on and doing it. Admittedly, some useful effects may be expected from exchanging information on innovative projects, but surely, there are easier ways of doing that than creating yet another paper merry-go-round.

The only action which may be taken by the Community is that the Council may adopt incentive measures designed to encourage the cooperation between Member States and to support their action (Art.5). This means that financial support *may* be

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1. All references in this contribution are to the draft Amsterdam Treaty, which was available in the Summer of 1997. The insertion of the text into the EC/EU Treaties was to be completed by October 1997. The articles will be then renumbered, which means, for instance, that the principle of equal pay (and treatment) will no longer be included in Article 119.
 2. All EU Member States must periodically report on their progress on employment and social policy to, for instance, the United Nations (the International Covenant on Economic, Social and Cultural Rights), the International Labour Organisation and the Council of Europe (European Social Charter).

given for developing exchanges of information and promoting innovative approaches. A Declaration to the Final Act specifies that the expenditure under Article 5 is to stay within the normal budget of the Community, hence no money from the Structural Funds can be used in this context. This means that expenditure will be relatively modest and cannot be used to finance employment programmes as such.

Although it is a very positive development that employment has now been expressly included in the Treaty, the new Title is hardly a testimony of a dynamic approach to solving the huge unemployment problems in the region. It is hard to have confidence in a paperwork procedure as the most effective way of solving some of Europe's most debilitating problems.

THE NEW SOCIAL CHAPTER

The new Social Chapter incorporates the contents of the Maastricht Agreement on Social Policy (MASP) into the EC Treaty. Some of the new Chapter's provisions are not very clear, which is due to the use of a mixture of sentences from, on the one hand, the Social Policy Agreement's provisions and, on the other, the provisions of the 'old' Social Chapter. The incorporation has been made possible by the change of government in Great Britain with the new Labour government replacing British resistance to creating the contours of a common social policy with a more constructive attitude. The most positive aspect of the new situation is the expansion of the number of social policy areas which can in the future be decided by a qualified majority instead of unanimity. This rules out a virtual dictatorship by one Member State using what is, effectively, a veto to block social policy initiatives.

Of course, it is only upon the entry into force of the amended EC Treaty that the UK can fully participate in decision making on social policy matters. Although the British government will participate in the deliberations under the MASP and will even chair the Social Council's sessions in the first half of 1998, it cannot actually take part in the voting.³

Moreover, it will take some time before the United Kingdom will have implemented the Directives which have already been adopted under the Social Policy Agreement.

The Directives will be made applicable to the UK by using so-called 'one provision Directives' which will be based on Art 100 ECT. Although they contain more than one provision, the crucial one is the provision that stipulates that the - original - Directive applies to the UK as well. That refers to all provisions of the original Directives, including the one that gives Member States two years to implement them. The advantage of this method is that it precludes renegotiation of the contents of the original Directives which remains untouched.

It is likely that the Directives will be applicable throughout the Community by the time the Amsterdam Treaty has been ratified, unless, of course, the completion of the ratification process is upheld for some reason, which would repeat the experience with the 1992 Maastricht Treaty.

3. See Protocol 14, Art. 2.

Another aspect is the confirmation of the crucial role of social partners in the shaping of the Community's social policy. This quasi neo-corporatist form of decision making raises important questions with regard to the issue of representativeness of the social partners and the role of the European Parliament. The underlying issue is, of course, the legitimacy of this form of decision making. The important role given to social partners in shaping the Community's social policy agenda is to be questioned in view of the concern that they neither represent a majority of workers in the Union nor any other categories of European citizens with a legitimate interest in European social policy, like, for instance, the unemployed.

Although a wide number of workers' and employers' representative bodies are consulted, it seems that UNICE, CEEP and ETUC have monopolised the actual negotiations of a proposal.

That is the subject of a complaint brought before the Court of First Instance by UAPME.⁴ UAPME's complaint is that it has so far been 'systematically disregarded' in the negotiations of - *in casu* - the Parental Leave Directive. Although it was consulted in the earlier stages of drafting the agreement, it was excluded from the final stage of the social dialogue, in which, according to UAPME, only UNICE, CEEP and ETUC are allowed to play a role. UAPME submits that clause 2 (3) (f) of the Framework Agreement fails to satisfy the requirement of Article 2(2) MASP 'in that an obligation has become a possibility and medium-sized undertakings are not mentioned. The clause provides for 'the possibility of authorising special arrangements to meet the operational and organisational requirements of small undertakings', while Article 2 (2) MASP holds that Directives adopted under the Agreement 'shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-size undertakings'. UAPME pleads - *inter alia* - breaches of the principle of equality, of Articles 2(2), 3(3) and 4 MASP and of the principles of subsidiarity and proportionality as well as an infringement of the principle of *pater legem quam ipse fecisti* in that the Commission had recognised UAPME as a representative organisation.

UAPME's complaint refers to the representation of organisations involved in the actual negotiation process. The Commission maintains it cannot select the negotiators and urges the social partners to cooperate on this issue.⁵

However, the heart of the matter of representativeness of the partners in the social dialogue is a different one. It refers to the question whether trade unions in particular represent a majority of the category they allege to represent, *i.e.* workers in Europe. The low affiliation of workers in general and the voting system within the ETUC which is - understandably - not based on unanimity of the national unions represented mean, in effect, that, as far as trade unions are concerned, they do not represent a majority of European workers, let alone other categories of people who are affected by European social policy.

4. Case T-135/96, *European Association of Craft, Small and Medium-Sized Enterprises against the Council of the European Union*, pending.

5. See e.g. the Commission's *Communication on the Development of the Social Dialogue*, COM (96) 448 final, at p. 14.

The issue of representativeness needs careful examination if Europe wants to honour its pledge to come closer to its citizens. In the present system the problems of the unemployed, for instance, can hardly be expected to be high on the social partners' agenda. Yet, are they not also European citizens to whom the Union wants to come closer?

One cannot blame trade unions for the deficits of this system. They were offered an opportunity to become actively involved in the shaping of European social policy and they very rightly took that chance. One may question, however, the thinking of Europe's political leaders, who, if they want to be believed that the Union is about creating a Europe of citizens, should strengthen the role of the people through their true representatives.

In the narrower context of social policy, the social partners' new role may be a blessing; it has re-ignited social policy decision making which was caught in political disagreement causing a near standstill.

In the wider context of European integration this system confirms, once again, the consistent marginalisation of the European Parliament which fails to obtain the tools it needs to achieve its *raison d'être*: to represent the peoples of Europe.