PRAESIDIUM NOTE
Subject: Draft Charter of Fundamental Rights of the European Union
- New proposal for the Articles on economic and social rights and for the horizontal clauses
  (reference docs: CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19, CHARTE 4227/00 CONVENT 26, CHARTE 4235/00 CONVENT 27)

Members of the Convention will find attached the version of the social rights and horizontal clauses which is being submitted for their consideration. The deadline for filing amendments is 5 June. When drafting amendments, it would be helpful if they could be presented using the form which you have been sent (see CHARTE 4303/00 CONVENT 29).
Article 31. Social rights and principles

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter.

Statement of reasons

This provision takes account of the particular nature of social rights and highlights the implications of the scope of the Charter in their regard. Social rights are binding on the Community legislature, on national legislation enacted in implementation of Union law, and on the social partners at Community level, who can conclude agreements at Community level pursuant to Article 139 of the TEC. All these bodies must respect those social rights; when laying down rules they may not act counter to them, save where allowed by the general clause on limitations. Given that social rights are constantly evolving, and that they often only acquire tangible form by means of implementing measures, it must be stipulated, when they comprise a right to an actual benefit, that these are principles whose application will, in a certain number of cases, be subject to the adoption of implementing measures. In this case, it is clear that the adoption of such measures will depend on the allocation of responsibilities in the Treaties, with due regard for the principle of subsidiarity. In other words, it is not possible, for example, to adopt rules that would undermine the right to a social benefit or prevent its implementation. However, such rights can only be claimed within the framework of existing Community or national measures.

Article 32. Freedom to choose an occupation

Everyone has the right to choose and to engage in an occupation.
Statement of reasons

This right is recognised without any ambiguity in the case law of the Court as a fundamental right (see judgment of principle in Case 4/73 Nolde [1974] ECR 491). Pursuant to Article 48, this right is exercised under the conditions and subject to the limits laid down by the Treaties, which includes the rules on the pursuit of occupations.

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

Statement of reasons

Text based on the revised European Social Charter (Article 21) and the Community Charter (Article 17). There is a considerable Community acquis in this field: Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, under the conditions laid down by national legislation and practice.
Statement of reasons

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. The rights of collective bargaining and collective action are recognised by the revised Social Charter (Article 6) and by the Social Charter. They are mentioned in point 12 of the Community Charter. The right to collective action is recognised in the case law of the European Court of Human Rights as stemming from Article 11 of the Convention (Swedish train drivers union 1976). Finally, Articles 138 and 139 TEC deal with social dialogue at a Community level and provide for the conclusion of collective agreements. The concept of collective action includes, amongst other things, the right to strike.

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Statement of reasons

This Article is based, inter alia, on Directive 93/104/EC and Article 2 of the Social Charter.

Article 36. Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.
Statement of reasons

This Article is based on Directive 89/391/EC and Article 3 of the Social Charter. See also paragraph 19 of the Community Charter.

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Statement of reasons

This text is based on Article 7 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 20 to 23). First of all it reproduces the main thrust of point 20, which provides for a minimum employment age, linked to the end of compulsory schooling, which cannot under any circumstances be less than 15 years. However, the Charter begins as follows: "Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, …"

The second paragraph is based on point 22 of the Charter, which stipulates that labour regulations applicable to young workers must be adjusted to take account of their development and vocational training needs. The wording of the paragraph comes chiefly from Article 1(3) of Directive 94/33/EC on the protection of young people at work.
Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment.

Statement of reasons

This Article simply provides for protection against arbitrary termination of employment.

Article 39. Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Statement of reasons

Articles 8 and 27 of the revised Social Charter. Directive 92/85/EEC of 19 October 1992 concerning the right to maternity leave of at least 14 weeks and Directive 96/34/EC concerning the right to parental leave of at least 3 months.

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.
Statement of reasons

Community competence in this area is established by the fourth indent of Article 137(3). The rule laid down here is simply that of non-discrimination in respect of working conditions.

Article 41. Social security and social assistance

1. Provision shall be made in accordance with each Member State’s rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.

2. Provision shall be made for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.

Statement of reasons

This is a principle implemented according to national legislation, in compliance with Community law.

Article 42. Health protection

Everyone shall have access to medical care and prophylactic measures in accordance with each Member State's rules.
Statement of reasons

This is a principle implemented essentially by national legislation.

Article 43. The disabled

Provision shall be made for social and vocational integration measures for the disabled.

Statement of reasons

Article 13 of the Treaty establishing the European Community authorises the adoption of positive measures to prevent discrimination on grounds of disability. The fourth indent of Article 137(1) establishes Community competence with a view to integrating persons excluded from the labour market.

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Statement of reasons

Community competence as regards the environment is established by Title XIX of the Treaty. This too is a principle given tangible form by means of implementing measures which define the scope of the right. The wording is similar to Article 174 of the EC Treaty.
Article 45. Consumer protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Statement of reasons

Community competence is established by Title XIV of the Treaty. The Charter enshrines a principle which takes form through Community or national legislation. The wording is similar to Article 153 of the EC Treaty.

Article 46. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.

2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Statement of reasons

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, within the framework of the Union’s powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council.
The term "institutions" is enshrined in the Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation. It follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). The second paragraph confirms that the Charter does not affect the competences and tasks which the Treaties confer on the Community and the Union.

Article 47. Limitation of guaranteed rights

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Statement of reasons

The purpose of this provision is to lay down general arrangements for the limitation of rights. The Article provides that the limitations laid down by the European Convention on Human Rights, which constitutes a minimum standard, may not be exceeded in any circumstances. It follows that when the Convention does not permit limitations on certain rights, they may not be limited on the basis of Community law either. As regards the Union's own limitation régime, the wording is based on the case law of the Court of Justice "...it is well established in the case law of the Court that
restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds).

Article 48. Conditions and limits defined by the Treaty.

The rights enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Statement of reasons

This Article has the effect of referring back to the Treaty where the rights in question are defined by the Treaty itself. The same applies to certain rights such as freedom of movement, the right to participate in European and municipal elections, the right to refer to the Ombudsman, the right to petition, etc.

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.
Statement of reasons

The aim of the provision is clear - to maintain the level of protection currently afforded by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes a minimum standard in all cases. The reference to the European Convention on Human Rights obviously means the Convention as interpreted by the European Court of Human Rights, whether now or in the future, by virtue of the principle that any interpretation is incorporated into the text interpreted. The same holds for the case law of the Court of Justice of the European Communities with respect to Community law.

Article 50. Prohibition of abuse of rights

Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in this Charter.

Statement of reasons

This Article reproduces Article 17 of the European Convention on Human Rights:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."
New .eu Domain

Changed Web and E-Mail Addresses

The introduction of the .eu domain also required the web and e-mail addresses of the European institutions to be adapted. Below please find a list of addresses found in the document at hand which have been changed after the document was created. The list shows the old and new address, a reference to the page where the address was found and the type of address: http: and https: for web addresses, mailto: for e-mail addresses etc.

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