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The future of the European Union depends on the social issue

The European unification process has come to a halt. Reforms that are urgently required with regard to the way institutions operate have not materialised, despite the enlargement to 27 member states, clear competence delimitations are lacking just as is a definition of the values and targets of the EU. The European constitution – after the attempts of Amsterdam (1997) and Nice (2000) – marks an important breakthrough for an EU more capable of taking action, more democratic and more transparent. It is regrettable that despite the citizen-oriented approach striven for, it is exactly these citizens themselves who, in France and the Netherlands, rejected the constitution with their No, even if this No only marginally and to a slight extent applied to the treaty itself.

Many opponents of the constitution criticize that the EU policies are too orientated towards economy, the constitution itself does not make an adequate contribution towards the development of a socially-minded EU. Corrections in this respect were necessary to achieve greater acceptance of the constitution among the citizens of the Union. Particularly in France, where a repeated referendum is possible, modifications of the social alignment may be essential for the success of the constitution in face of the current discussion. A greater emphasis should be placed on the social components and thus be a prerequisite for the democratisation of the EU as intended by the constitution. In this connection Chancellor Angela Merkel and

other politicians, contributed the idea of a European social protocol to the debate. This paper is to objectivate and to check various options in the discussion concerning the social dimension of the European constitution. A social protocol is the only option which makes it possible to align the constitution, on the one hand, to be more social, on the other hand, to avoid conjuring up a total failure by opening up the entire contents for new negotiations.

Summary

The European Peace and Single Market Project is no longer enough as foundation for the European integration for many a citizen. They demand a more active composition of the globalisation by the EU based on the understanding of a European social and community model. The future of the European Union thus depends decisively on the social problem.

The revival of the European constitutional process paves the way to the opportunity to lay down the contents of a "Social Europe" at contractual level for the member states. The paper discusses the various options on the way to a more social EU constitution and advocates a supplementary social protocol. Such a social protocol must contain a commitment to social market economy and equality between the targets of competitiveness on the one hand, and combating social marginalisation and unemployment on the other hand.

It has to be borne in mind in the debate, that apart from the social argument, other reasons are given for the rejection of the constitution. It is therefore necessary to supplement the European constitution by a climate and energy protocol and a protocol on national sovereignty. Thus a "bridge", particularly for the citizens of Great Britain and the Netherlands, could be built to accept the constitution after all. As already found in the protocols appended to

the constitution, the additional protocols must be binding for all the member states.

The criticism concerning the lacking social orientation of the European constitution particularly refers to the contradiction regarding the significance imparted to the social dimension in the EU. In the first section, the constitution supplies qualitative progress in comparison to the current treaties. Pluralism, non-discrimination, tolerance, justice, solidarity and the equality of man and woman are defined as values of the Union. The set-up of a social market economy, full employment and social progress are among the targets of the European Union. In addition, a fixed constant is that the Union fights against social marginalisation and

discrimination in general and promotes social justice and social protection. Upon enforcement of the constitution the Charter of Fundamental Rights would become legally binding, the citizens would be guaranteed extensive social rights – from the right to strike to the right to education all the way to protection from unjustified notice and dismissal. These points of progress as made were, however, not taken into account when the third section of the constitution was revised. A high level of employment instead of full employment is still spoken of, an open market economy with free competition instead of a social market economy is dealt with. Furthermore, the third section of the constitution gives precedence to ruling competitiveness and the completion of the Single Market in contrast to the targets of social justice drawn up in the first section. In addition it has not been possible to integrate new policies and new instruments for the implementation of the named targets in the third section of the constitution.

Despite these weaknesses, the ratification of the constitution would be an important prerequisite for the EU to make progress. Based on the Treaty of Nice which is applicable today, the Union is centrally weakened on the long run in its ability to take action. The EU needs the reforms induced by the constitution to be able to fulfil its tasks. They have to be supplemented by a reinvigoration of their social dimensions, not only to cut back conflict potentials in France, but also to make the EU fit for the challenges of the 21st century.

Demands made on a social Europe

The call for a social Europe has not only become audible since the constitution failed in France. The European Peace and Economic Growth Project is no longer adequate for many, particularly the young Europeans, as a reason for the European integration. They demand steps from the EU to close the increasing crevice between poor and rich and to make a contribution towards more qualitative employment. In the range of European social policies some progress can, indeed be noted in the past years. To name among others the posting of workers directive, the anti discrimination policy, the equality polices, the Euro works councils, occupational health and safety, and the regulations governing the transferability of social insurance contributions. The Lisbon strategy also includes some approaches of social aspects to enhance the EU policies. If the EU is to come up to the expectations of the

citizens, it must, however, be more aligned to the social aspect. The citizens expect the EU to actively structure globalisation based on the idea of a European social and community model which is considerably different to that found on other continents.

The social dimension of the EU is a complex interaction of different policies, dimensions and institutions. Full employment, „good work“, social coherence, and a high level of the quality of life of the citizens of the Union call for investments in education and a healthy environment just as an all-embracing health and consumer protection scheme. To enhance the social dimension as a whole, on the one hand the necessary policies have to be shaped in those respective socio-political areas for which the EU is responsible. Among these, due to the priority given to the economic integration for decades, is the task of reformulating some of the policies and realigning institutions. On the other hand, equality of social and economic tasks has to be provided, both to have a well-balanced relation in the sense of the European community model and to achieve endorsement and acceptance by the population of the EU and its added value. For this purpose the effects on employment, social coherence and the quality of life of the Union's citizens are to be considered in all the European resolutions. There are many phases on the way to a social Europe of which only four requirements of central importance are to be drawn up here:

1) *The introduction of minimum social standards:* In the EU the Single Market and the directly involved liberalisation policy is essentially within the competence of the European level, whereby social policies are still solely of national competence level. The protection of the market is within the European responsibility, whereby the social protection is a national matter. As a result of the effects of the Single Market, competition and liberalisation policy, the member states have ever less effective instruments with which a social protection can be formed in an appropriate manner. A possibility to reduce the two-way dumping competition between the member states without ceding national competence in social policies would be in the introduction of minimum standards. Apart from the harmonisation of corporate taxes, binding minimum wages, graduated and classified in industries, should be introduced throughout Europe. These could be defined by a percentage rate which is determined to be attained in relation to the living standard in the respective member state. It would have to be ensured that the rate guarantees for the livelihood and social participation of the employees. The introduction of binding

maximum working hours, notice protection regulations or the rights of temporary workers are also to be aimed at throughout Europe within this scope.

2) *Introduction of an „Economic Government“*: The members of the Eurozone collaborate in extensive areas of their economic and currency policies. Nonetheless the Eurozone lacks an identifiable, steering committee for its common economic policies which is capable of acting democratically and responsibly. The main task of this steering body, a European "Economic Government", would be to co-ordinate the economic policies of the member states while involving the European Parliament and the social partners.

3) *Realignment of the European Central Bank*: The paramount aim of the European Central Bank is to guarantee price stability. The general economic policies within the Union may only receive its support, provided such action does not endanger the aim of price stability. This limitation of the aims competes with the social targets anchored in the first section of the constitution. The support of EU economic growth must be a target of the ECB. In case of deflation danger, an expansive currency policy is required, in case of revaluation pressure of the Euro an intervention on the currency markets.

4) *Reform of the Stability and Growth Pact*: A further reform of the stability and growth pact with the aim of striving for equal growth and stability would be an important contribution towards the reorientation of the EU. Its function as anchor for the stability of the economic policy can only be fulfilled by the pact if it also contributes towards the reduction of unemployment and towards social integration of the Union's citizens.

Options on the Way to a more Socially-minded Constitution

1. Reformulation of individual articles

A possibility by which the social dimension can be up-valued would be to reformulate some articles and to supplement others. In this way the four above-mentioned points could be included in the constitution. In the third part of the constitution the introduction of binding minimum standards and corridors for social rules could be provided in the section concerning social policies and/or in the section on economic policies. The precise formulation of these standards would be the object of European framework legislation. The call for the introduction of an "Economic

Government" would be possible by amending article I-15 on the co-ordination of the economic and monetary union and new articles in the third part of the constitution. A re-alignment of the European Central Bank requires a modification of article I-30 and III-185, and a reform of its statutes. The realignment of the growth and stability pact would be possible by a reformulation of article III-184 in which the targets of the pact are drawn up. Furthermore, the third part could be adapted to the formulations in the first part of the constitution. In the third part of the constitution full employment would have to be pursued by the EU policies, not as currently formulated „a high level of employment." The economic policy would have to follow the principle of a social market economy which contributes to the social progress and social justice.

Even if these improvements to the constitution would make an important contribution towards enhancing the social dimension of the EU, it may not be expected that a consensus can be brought about concerning these points. Neither are all governments prepared to accept this further development of the EU, nor are there any uniform ideas on central demands in the civil society. Furthermore, there is a danger that due to these modifications all the contents of the constitution will be at disposal again. The result would be a time-consuming renegotiation of the entire constitution. In the face of the current composition of the European Council, it may not be assumed that the result would truly be a greater emphasis on the social aspects, but rather a weakening thereof. This also applies if the reformulations are limited to the third part of the constitution as called for by some politicians. This would also lead to opening Pandora's box. The advice is therefore against the option of a reformulation of the constitution.

2. Separation of the third section of the constitution

Another option with which the inconsistency between the targets in the first part and the policies in the third part of the constitution may be encountered would be in the division of the constitutional agreement. It is not possible to simply cancel the third section as proposed by some players. Many rules of the first part of the constitution are only drawn up more precisely in the third part and supplemented therein. It would, however, be possible to summarise the articles in separate agreements on the basic principles, values and targets of the EU, on the competencies and on the institutions and procedures on the one hand, and the legal stan-

dards on the individual policies on the other hand, in separate agreements.

The result would be a constitutional treaty – that could as alternative be called fundamental or basic treaty – and a treaty on the policies of the EU. The former would consist – with the exception of the technical adaptations – of the unmodified parts I, II and IV of the constitution. The latter would be worked out on the basis of the EC treaty. The third part of the constitution anyway consists by up to 85% of articles that were taken over unchanged from the Nice Treaty. These articles have already been ratified and do not require renewed confirmation. Only the modified and new articles would then have to be integrated into the existing EC treaty that would then have to be ratified in its reformed version.

This modification would have three effects which could make their contribution towards France and other countries accepting the treaties:

1. Many citizens criticised that the constitution was too long and too complicated. The actual constitution or fundamental agreement would be considerably shorter after division than the hitherto proposed constitution. In some countries only the first constitutional agreement would have to be presented to the citizens in a referendum after the division in a constitution and a treaty, in two treaties respectively.
2. The social dimension of the EU would be enhanced. The values, targets and principles which mirror the commitment of the EU to a stronger socio-political alignment of their policies would be sanctioned in the fundamental agreement.
3. The word "constitution" awakened fears in many citizens of a European super state. If the text no longer was called constitution but rather fundamental treaty on the policies of the EU, these fears could be stayed abreast of.

A great advantage of this procedure would be that the modification would primarily be of technical nature which would not endanger the consensus of the constitution where contents were concerned and thus would also not lead to the necessity to re-negotiate individual articles. In order to align the policies of the EU to the targets it would be sensible to introduce a so-called "Sunset clause" for the treaty on the policies. Within a fixed period of, for example, 10 years, the articles would have to be revised by a new convention to be called up and could then be aligned to the current challenges of the EU.

3. Supplement of the constitution by a social protocol

A further option to lay out the European constitution in a more social manner would be to supplement the latter by a social protocol. In such a supplement of the constitution the already mentioned contradictions between the parts I and III could be solved in favour of the socio-political values and targets. In the legal initiatives made by the EU commission, primarily the targets of the Single Market and a high competitiveness are referred to. It understands a higher employment ratio and social progress as a self-evident consequence of this policy. The current development of the EU, however, reveals that this automatism has not set in. A social protocol should therefore be the clear commitment of the EU to the equal pursuit of the targets of competitiveness and Single Market, on the one hand, and the combat of social marginalisation and unemployment as well as consideration for the social dimension on the other hand, in the sense of a social market economy, while showing respect for the principles of a sustained development. Furthermore, the social compatibility clause (Art. III-117) already included in the constitution could be enhanced by making the evaluation of socio-political consequents of EU ruling and the social dialogue basic principles of EU policy.

In such a protocol a statement should also follow in which it is made clear which economic system the Union will pursue on the long-term. Here again there are contradictory details in the constitution. The EU should face up to its responsibility in the protocol regarding the target of a social market economy while, at the same time, respecting the principles of a sustained development.

A further option is the introduction of an "Economic Government" as an economic-political steering committee for the Eurozone. As this will not be put together of representatives of all member states to begin with, it is absolutely possible, to anchor such an institution in a social protocol and not in the articles of the constitution. In later reforms of the constitution they can then be integrated in the Community acquis.

In addition, the EU should commit itself in a social protocol to the protection of services of general interest, particularly to the protection of acquired rights of health and social services.

Furthermore, the protocol could include a commitment of the EU to take legal action to realise European minimum standards in the sectors of social politics, social protection and employment policies.

Indeed, there is a possibility that a social protocol is only signed by a few member states. An opt-out social

protocol would be contra-productive. If some member states withdraw from their trans-European social responsibility, this would be to the disadvantage of the other states which are prepared to face this task. It would not be possible to stop a negative spiral of competition for the lowest and cheapest social standards; a further weakening of the national social systems would be the result. Therefore the social protocol should become an integral constituent of the constitution and be ratified by all the member states just as the 36 protocols that have already been resolved, and which contain important constitutional aspects from the role of national parliaments all the way to the modification of the Euratom treaty.

The social protocol is an option which certainly promises to be successful as this would not call for an opening of the constitution, nevertheless, however, binding supplements could be resolved which cannot be considered as being simple window-dressing by the opponents.

4. Resolution of a political declaration on a social Europe

As alternative to a binding protocol the resolution of a political declaration of all EU heads of state and government could be conceivable. General declarations of intent of the heads of governments could be drawn up in this declaration in which they commit themselves increasingly to a social Europe. Similar as in a protocol it could be emphasised therein that the social targets and tasks are set at the same level as the economic tasks and in future new funds and instruments will be introduced to achieve these. Contrary to a social protocol a declaration is, indeed, easier to achieve as it is only resolved by the heads of state and government, however need not be ratified. However, it is only a declaration of intent without binding legal effect which, at best, may develop a political binding effect.

Conclusions

From the point of view of large sections of the population, a constitutional crisis is only part of a wider crises and of the question as to whether the EU is of benefit in connection with their life and plans for their future life. Not only in France, but also in many other EU states there are doubts as to whether the EU is striving for a sufficient balance between maintaining competitiveness and the protection of the European social model. Quite rightly the demand is that the policies of

the EU should be oriented at the target of adapting the conditions of living of the citizens of the Union at a high level. Without doubt the EU also has to accept and practice social responsibility in the scope of its policies.

This has only been inadequately considered in the European constitution so far. The target of an inter-governmental conference on the constitution should be, neither to endanger the compromise achieved in the constitutional convention and in the subsequent government conference, nor to fob the citizens with symbolic Sunday knick-knack. Of the options drawn up here, the option of a binding social protocol that becomes a constituent of the constitution and which has to be signed and ratified by all member states seems to be the most convincing in this case. When deciding for this option of negotiation the result is not a renegotiation of the constitution and it can be plausibly imparted to the citizens that their fears are taken seriously and dealt with. To provide evidence that the EU is certainly able to deal with the challenges and to dissipate the fears of a European super state, a social protocol should be supplemented by a climate/energy protocol and a protocol on national sovereignty. If, in addition, the third part of the constitution is also outsourced, a further argument of the opponents in France, the Netherlands and other states could be dealt with: the European constitution would be shorter and more comprehensible without being weakened in its substance.