The Reform Treaty – a first look at its social and citizenship dimension by Solidar

This article retraces main steps in setting the basic legal framework for the functioning of the European Union. It gives an overview on the social and citizenship dimensions of the so-called Reform Treaty. Some comparisons between the Reform Treaty and the Treaty on the Constitution for Europe are made. The contribution clearly focuses on stipulations of high relevance for social service providers and civil society organisations in general. It does not comprehensively cover all topics of relevance for Solidar member organisations as this article does not deal with the regulatory framework set by the Reform Treaty in the fields of migration or international co-operation and development issues. It gives a summary assessment of the Reform Treaty by Solidar.

In the meantime, more precisely on 13 December, the Reform Treaty has been signed in Lisbon by the heads of States and Governments and is since then officially referred to as “Lisbon Treaty”. The text was written begin of December and the terminology will therefore not be changed. You can look up the Lisbon Treaty at http://europa.eu/lisbon_treaty/index_en.htm.

The Treaty of Rome (1957) has been considerably changed and amended since it was enacted fifty years ago. During the last two decades the treaties in place did undergo successive amendments, as Intergovernmental Conferences adopted the Single European Act (1986), the Treaty of Maastricht on the European Union (1992), the Treaty of Amsterdam (1997) and the Treaty of Nice (2001). As a major improvement, the Amsterdam Treaty introduced a new article (Art. 13) on discrimination. The European Council meeting of December 2001 in Laeken (Belgium) gave a mandate for a European Convention as in 2002 and 2003 it had became clear that the ‘Europe 15’ needed to be prepared to guarantee an effective functioning and governance also after the major enlargement round planned for 2004. The challenges mainly consisted in adapting decision making processes to the reality of EU 25, to recalibrate the distribution of competencies between Community and national levels in several major policy fields (this did, however, not concern the fields of social, health and employment policy) and to take into consideration the extended powers of the European Parliament (e.g. co-decision; budgetary rights).

A European Convention in 2002 and 2003 debated a new legal foundation for the European Union, the Treaty establishing a Constitution for Europe, which was adopted by its members based on a declaration of 18 July 2003. The Constitutional Treaty could be considered as basic landmark in establishing fundamental and social rights as guiding principles of the EU. It incorporated, as its Part II, the Charter of Fundamental Rights already proclaimed at the Nice European Council. Its character insofar changed from a mere declaratory document to a legally-binding element of a ‘European Constitution’. The Constitutional Treaty bringing about major changes to the institutional framework of the EU (e.g. qualified majority voting) was agreed in June 2004 and signed in October 2004 by the heads of States and Governments.

The people of France and the Netherlands voted against it in the referenda held in May and June 2005. As we know from surveys conducted before and after the French and Dutch referenda their outcome to a non negligible extent was attributable to concerns about the social dimension of Europe, strongly influencing women and men in their decision on how to vote. In addition the judgment of the actual text became entangled with the disappointment about political realities at the national level, and also other issues clouded the debate.

The rejection in two Member States brought the ratification process, already on its way or successfully concluded in 18 Member States (as this was the case in Spain with a high
percentage of popular support obtained in the consultative referendum of 20 February 2005, with 77% yes votes, based on a 42% turnout of the electorate), to a definitive standstill during 2006. The EU was in a crisis, the heads of States and Governments proclaimed a ‘period of reflection’.

Linked to the implementation of the so-called Lisbon Strategy (conceptually designed as an integrated approach of economic, employment, social and environmental policy) after 2000, the climate for social policy was changing. Social NGOs, trade unions, social democratic parties in general noticed and raised their concerns about an increased sidelining and subordination of social policy to an economic growths and jobs strategy at all costs.

Although critical with regard to some stipulations of the Constitutional Treaty, Solidar had unequivocally advocated for its ratification during 2004 and 2005. Together with the main European NGOs it believed that it marks an improvement on the Treaty of Nice, with a stronger social thread by consolidating some of the gains in the social policy area, by incorporating the Charter of Fundamental Rights and also in offering a readable and coherent text. The analysis of advances and setbacks made by Solidar is summarised in the publication ‘The Constitutional Treaty of the EU and beyond. What's in it for the citizens of Europe’ (available in English, French, German, Estonia) which can be downloaded from our website http://www.solidar.org.

Based on a mandate agreed at the European Council on 21 and 22 June 2007 at the end of the German EU Presidency, an Intergovernmental Conference was convened to draw up a ‘Reform Treaty’ serving as legal basis for future legislation and policy making at Community level. Social NGO were relieved to see that issues the recognition of which they were fighting for a long time and which already had been incorporated in the Constitutional Treaty also became part of the mandate of the Intergovernmental Conference 2007. This mandate comprised

1) A reference to the Charter of Fundamental Rights
2) Four horizontal social clauses – referring to gender equality, social objectives, non-discrimination and services of general interest – and
3) The article on participatory democracy, recognising the importance of the participation of civil society organisations and introducing the right to petition for 1 million or more European citizens.

On their informal meeting of 18 October 2007 in Lisbon, EU heads of State and Government reached an agreement on the text as presented by the Portuguese EU Presidency on 5 October. The Reform Treaty, already referred to as ‘Lisbon Treaty’, will be split up into two treaties, a Treaty of the EU and a Treaty on the Functioning of the EU. Amongst key institutional innovations the single legal personality of the EU, the double majority rule for Council decisions (i.e. (55% of member states and 65% of the EU's population need to support a proposed EU legislation to pass by qualified majority) and the strengthening of national parliaments stand out. The articles on the values and objectives of the European Union were slightly amended but kept as to their substance and their relevance for social NGOs. The new Art. 1a on the values of the EU now reads: ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’ All these values are shared by and their full implementation advocated for by Solidar. Amongst the objectives of the European Union figure a sustainable development based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. (Art. 2, Para. 3). Solidar also will support the EU in working
towards the realisation of other objectives set out under the same paragraph: The EU ‘... shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States.’ This broad range of explicitly mentioned objectives in our view constitutes a basis supportive to build upon activities and projects to advance social cohesion, equal opportunities, social inclusion, decent working and living conditions and sustainable social, economic and environmental development goals.

The Reform Treaty comprises all major issues Solidar already advocated for in connection to the Constitutional Treaty. Although the wording has been changed at several places, the main stipulations dealing with the social and citizenship dimensions of the European Union all were taken over. Of specific importance for Solidar and other social NGOs are the following six issues:

1) The reference to the Charter of Fundamental Rights of 7 December 2000 under Art. 6. It will have the same legal quality as the Treaties. The Union recognises the rights, freedoms and principles set out in the Charter. This comprises a set of rights which help safeguarding and promoting decent working conditions throughout Europe fully in line with Solidar’s objectives and campaign on ‘Decent Work, Decent Life’, such as the access to placement services (Art. 29), the protection in the event of unjustified dismissal (Art. 30), fair and just working conditions (Art. 31) and the prohibition of child labour and protection of young people at work (Art. 32) under Chapter IV ‘Solidarity’. The Charter of Fundamental Rights also sets out rights and guarantees in the related to social security and social assistance (Art. 34), health care (Art. 35), the access to services of general economic interest (Art. 36) and consumer protection (Art. 38).

Solidar rejects the opt-out clause which could be negotiated by the United Kingdom and Poland and will support any action to convince the respective governments to revise their decision in this regard.

2) The horizontal clauses on social objectives, non-discrimination and gender equality have been included (under different articles), the one concerning the social objectives under Art. 9. Two of the three other elements, gender equality and non-discrimination, figure under Art. 10. The role and importance of SGI are referred to in Protocol No 9, see below.

3) Art. 14 of the Treaty on the Functioning of the EU confirms the shared responsibilities of the Member States and the European Union to set up conditions for a smooth and effective functioning of services of general (economic) interest, also including social, health, employment, and education services. It also refers to the Protocol No 9 on Services of General Interest. This protocol conveys a clear political message by underlining that the shared values of the Union in respect of services of general economic interest include three main elements: first the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users; second the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations; third a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights. The Protocol will have to be used by social NGOs to obtain recognition of the specific characteristics of social services of general interests and their users and to have this reflected in secondary Community
legislation like regulations or directives. This in turn will help to safeguard the provision of services which are accessible, affordable, of high quality, continuously delivered and open to the participation of users when the legal and political framework for these services in the context of the internal market will be shaped in the near future.

4) The role for the open method of co-ordination (OMC) in the field of social protection and social inclusion has been strengthened. Solidar is in favour of this form of European governance based on common objectives and jointly agreed indicators. The OMC also provides for an adequate framework for mutual learning by exchanging on experiences and good practice and particularly for involving all stakeholders, including social NGOs, in the process of preparing, implementing and evaluating action plans in the field of the fight against poverty and social inclusion. The OMC also facilitates a better link between processes at European level and activities done by Solidar member organisations at local and regional level, both in their service provider role and as civic movements.

5) Last but not least the Reform Treaty incorporates in a more or less identical way the 'old Art. I-47 of the Constitutional Treaty entitled 'The principle of participatory democracy'. This means the Reform Treaty also includes important stipulations safeguarding the civil dialogue and the right of petition at European level. This can be considered an important progress because both the element of an open transparent and regular dialogue and the element of broad consultations with civil society organisations have been upgraded and anchored alongside the long established social dialogue involving employers' associations and trade unions.

The text of the future Lisbon Treaty will need to be ratified by all 27 MS until begin of 2009, a process which could include a risky agenda in a number of countries. Ireland is the only country which is constitutionally bound to hold a referendum. High parliamentary thresholds are required in the Czech Republic, France and Slovakia (three-fifth majorities) and in Austria, Belgium, Finland, and Poland. (two-third majorities). Governments in the Czech Republic, Denmark, the Netherlands, Portugal, and the United Kingdom have come under strong pressure to call referenda.

Solidar will closely monitor the next roughly 12 months of the ratification period, also by developing background documents and possibly, together with our member organisations, also a tool-kit on the Lisbon Treaty and its social and citizenship dimension. This material then could be used by our member organisations and their partners for their advocacy work related to the forthcoming campaigns at national level in relation to the election of the European Parliament in summer of 2009. The adoption of the Lisbon Treaty by the heads of States and Governments on 18 December 2007 will define the core legal framework for future work and activities of Solidar member organisations. In our opinion it is a valuable starting point to promote our aims and values, but surely needs to be filled with life. The instruments put in place to promote civil dialogue and participatory democracy will have to be broadly used to help making a more social and just Europe a reality.

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