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Social Policy and Employment Aspects of the Treaty of Amsterdam

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Abstract

Commenting on employment and social policy gives me the opportunity to start by pointing out how positive the outcome of the Treaty of Amsterdam (or “Treaty”) was in those fields. Indeed, the following four main fields are concerned with substantial extensions or reinforcements of European Community (“EC” or “Community”) competencies and responsibilities following the Amsterdam Summit: employment, social policy, equality between men and women, and fundamental rights and non-discrimination. Last but not least, the strengthening of the co-decision procedure, which is now the principal legislative procedure and requires a joint decision of the Council and the European Parliament, does affect a number of articles concerning employment and social policy. I will comment briefly on each of these four issues and their likely policy consequences.

SOCIAL POLICY AND EMPLOYMENT ASPECTS OF THE TREATY OF AMSTERDAM

*Patrick Venturini**

Commenting on employment and social policy gives me the opportunity to start by pointing out how positive the outcome of the Treaty of Amsterdam¹ (or "Treaty") was in those fields. Indeed, the following four main fields are concerned with substantial extensions or reinforcements of European Community ("EC" or "Community") competencies and responsibilities following the Amsterdam Summit:

- employment,²
- social policy,³
- equality between men and women,⁴ and
- fundamental rights and non-discrimination.⁵

Last but not least, the strengthening of the co-decision procedure,⁶ which is now the principal legislative procedure and re-

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1. Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, O.J. C 340/1 (1997) (not yet ratified) [hereinafter Treaty of Amsterdam].

2. Employment consists of three complementary elements: the introduction of a new title on Employment, the European Council's Resolution on Growth and Employment flanking the Stability Pact, and the European Council's conclusions. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 33-35 (1997) (inserting tit. VIa into EC Treaty); Consolidated version of the Treaty establishing the European Community, tit. VIII, O.J. C 340/3, at 235-36 (1997), 37 I.L.M. 79, 107 (not yet ratified) [hereinafter Consolidated EC Treaty] (tit. VIa of EC Treaty), *incorporating changes made by Treaty of Amsterdam, supra*. By virtue of the Treaty of Amsterdam, articles of the Treaty establishing the European Community ("EC Treaty") will be renumbered in the Consolidated version of the Treaty establishing the European Community ("Consolidated EC Treaty"). Treaty of Amsterdam, *supra*, art. 12, O.J. C 340/1, at 78-79 (1997).

3. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 35-39 (1997) (replacing arts. 117-20 of EC Treaty); Consolidated EC Treaty, *supra* note 2, arts. 136-43, O.J. C 340/3, at 239-43 (1997), 37 I.L.M. at 109-11 (arts. 117-20 of EC Treaty).

4. Treaty of Amsterdam, *supra* note 1, art. 2(2), O.J. C 340/1, at 24 (1997) (replacing art. 2 of EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 2, O.J. C 340/3, at 181 (1997), 37 I.L.M. at 80 (art. 2 of EC Treaty).

5. Treaty of Amsterdam, *supra* note 1, art. 2(7), O.J. C 340/1, at 26 (1997) (inserting art. 6a into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 13, O.J. C 340/3, at 185 (1997), 37 I.L.M. at 82 (art. 6a of EC Treaty).

6. Treaty of Amsterdam, *supra* note 1, art. 2, O.J. C 340/1, at 26-48 (1997) (extending co-decision procedure under art. 189b of EC Treaty to arts. 6, 8a(2), 51, 56(2),

quires a joint decision of the Council and the European Parliament, does affect a number of articles concerning employment and social policy.

I will comment briefly on each of these four issues and their likely policy consequences.

I. EMPLOYMENT: A NEW AGENDA

The Treaty made a substantial step forward along the path marked out in 1993 by President Delors' White Paper on Growth, Competitiveness, and Employment.⁷ In Amsterdam, decisive recognition was given to the need to balance the Stability and Growth Pact⁸ with a stronger commitment to employment. In other terms, the European Council topped off the reform of the Treaty with the decision to give immediate effect to the employment provisions and to convene a special Jobs Summit ("Summit") in November 1997 without waiting for ratification.

57(2), 73o, 75(1), 109r, 116, 118(2), 119(3), 125, 127(4), 129(4), 129d, 130e, 130i(1), 130o, 130s(1), 130w(1), 191a(2), 209a(4), 213a(1), and 213b(1) of EC Treaty); see Consolidated EC Treaty, *supra* note 1, arts. 13, 18(2), 42, 46(2), 47(2), 67, 71(1), 129, 135, 137(2), 141(3), 148, 150(4), 152(4), 156, 162, 166(1), 172, 175(1), 179(1), 255(2), 280(4), 285(1), 286(1), O.J. C 340/3, at 185, 186, 194, 196, 196, 203-04, 205, 236, 238, 239-40, 242, 244, 245, 247, 249, 251, 252-53, 254, 255, 257, 282, 293, 294, 294 (1997), 37 I.L.M. at 82, 82, 86, 87, 87, 91, 92, 107, 108, 109, 110, 111, 112, 113, 114, 115, 115-16, 116, 117, 118, 130, 136, 136, 136 (arts. 6, 8a(2), 51, 56(2), 57(2), 73o, 75(1), 109r, 116, 118(2), 119(3), 125, 127(4), 129(4), 129d, 130e, 130i(1), 130o, 130s(1), 130w(1), 191a(2), 209a(4), 213a(1), and 213b(1) of EC Treaty).

7. E.C. BULL., no. 12, at 34-35 (1993).

8. The Stability and Growth Pact of June 1997 is composed of one political recommendation and two regulations. Council Recommendation of 7 July 1997 on the broad guidelines of the economic policies of the Member States and of the Community, O.J. L 209/12 (1997); Council Regulation No. 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, O.J. L 209/1 (1997); Council Regulation No. 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, O.J. L 209/6 (1997); see Roger J. Goebel, *European Economic and Monetary Union: Will the EMU Ever Fly?*, 4 COLUM. J. EUR. L. 249, 310-13 (1998); see also Jan Meyers & Damien Levie, *The Introduction of the Euro: Overview of the Legal Framework and Selected Legal Issues*, 4 COLUM. J. EUR. L. 321, 330-31 (1998) (discussing two components of Stability and Growth Pact). The European Council issued a resolution on the Stability and Growth Pact that set forth firm commitments of the Member States, the Commission, and the Council regarding the implementation of the pact. See Resolution of the European Council on the Stability and Growth Pact of 17 June 1997, Amsterdam, O.J. C 236/1 (1997).

A. *New Provisions in the Treaty*

The Intergovernmental Conference ("IGC") agreed, and this was a first, to incorporate an Employment Title⁹ into the Treaty, not, I stress, a mere chapter, which would in fact have been a sub-heading of the Title on Social Policy.¹⁰ This new Title provides that:

- a high level of employment is now an objective of the European Union ("EU" or "Union");¹¹
- Community activities are to include "the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment";¹²
- the Member States "shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council";¹³
- "[t]he objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities";¹⁴
- at the Community level, a detailed procedure for the definition and implementation of this strategy has been established, including multilateral surveillance of national poli-

9. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 33-35 (1997) (inserting tit. VIa into EC Treaty); Consolidated EC Treaty, *supra* note 2, tit. VIII, O.J. C 340/3, at 235-36 (1997), 37 I.L.M. at 107 (tit. VIa of EC Treaty).

10. Treaty establishing the European Community, Feb. 7, 1992, tit. VIII, O.J. C 224/1, at 45-47 (1992), [1992] 1 C.M.L.R. 573, 657-61 [hereinafter EC Treaty], *incorporating changes made by* Treaty on European Union, Feb. 7, 1992, O.J. C 224/1 (1992), [1992] 1 C.M.L.R. 719 [hereinafter TEU]. The Treaty on European Union ("TEU") amended the Treaty establishing the European Economic Community ("EEC Treaty"), Mar. 25, 1957, 298 U.N.T.S. 11, *as amended by* Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741, in TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES (EC Off'l Pub. Off. 1987).

11. Treaty of Amsterdam, *supra* note 1, art. 2(2), O.J. C 340/1, at 24 (1997) (replacing art. 2 of EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 2, O.J. C 340/3, at 181 (1997), 37 I.L.M. at 80 (art. 2 of EC Treaty).

12. Treaty of Amsterdam, *supra* note 1, art. 2(3)(c), O.J. C 340/1, at 25 (1997) (inserting art. 3(1)(i) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 3(1)(i), O.J. C 340/3, at 181 (1997), 37 I.L.M. at 80 (art. 3(1)(i) of EC Treaty).

13. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 33 (1997) (inserting art. 109o(2) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 126(2), O.J. C 340/3, at 235 (1997), 37 I.L.M. at 107 (art. 109o(2) of EC Treaty).

14. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 33 (1997) (inserting art. 109p(2) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 127(2), O.J. C 340/3, at 235 (1997), 37 I.L.M. at 107 (art. 109p(2) of EC Treaty).

cies. Moreover, "the Council, acting by a qualified majority on a recommendation from the Commission, may . . . make recommendations to Member States";¹⁵

- incentive measures may be adopted by a qualified majority for the financing of initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular, by recourse to pilot projects;¹⁶ and
- lastly, an Employment Committee is to be set up.¹⁷

I would point out that the fifteen heads of the Member States' governments underlined employment as a matter of common concern because it has now been acknowledged that Europe's employment problems are common to all Member States. Consequently, the success or failure of one Member State affects the employment situations in other Member States. It has also been acknowledged that European economies are increasingly interdependent. We need, therefore, to perceive Europe as a single economic entity in an increasingly open global economy.

The failure to fight unemployment effectively in one country has a negative impact on the economy and labor markets of other Member States. Working more closely is of mutual benefit. Cooperation is productive. Over the last twenty years, the passive approach of employment policy in most Member States has created a vicious cycle in Europe of low employment and high unemployment—especially among young people—and massive long-term unemployment. Acting together can overcome this impasse. Along with cooperative macroeconomic policies, strong and coordinated employment policies pave the way to restoring confidence and open the door to job growth.

Let me also say a few words about the procedure set out for employment action in the Treaty of Amsterdam, for some of its

15. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34 (1997) (inserting art. 109q(4) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 128(4), O.J. C 340/3, at 236 (1997), 37 I.L.M. at 107 (art. 109q(4) of EC Treaty).

16. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34 (1997) (inserting art. 109r into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 129, O.J. C 340/3, at 236 (1997), 37 I.L.M. at 107 (art. 109r of EC Treaty).

17. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34-35 (1997) (inserting art. 109s into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 130, O.J. C 340/3, at 236 (1997), 37 I.L.M. at 107 (art. 109s of EC Treaty).

features are extremely important. First, Community institutions are involved in the process at their highest level, for example, the European Council where heads of state and government meet on an annual basis.¹⁸ Second, the guidelines to be drawn up by the Council will be consistent with the broad guidelines of the economic policies adopted in the framework of the economic and monetary policy.¹⁹ We are seeing the Union bringing its macroeconomic, structural, and labor market policies into a much closer relationship than ever before. Third, the Council may make recommendations, by a qualified majority, to Member States.²⁰ This provision is the one that gives teeth to the multilateral surveillance process. Fourth, management and labor²¹ will have their say in this process through the Employment Committee.²²

B. Immediate Action

With this new legal framework, the Council authorized the initiation of the new employment process with—and this is most important—immediate effect, prior to adoption of the Treaty; hence, the special Summit held in Luxembourg on November 21, 1997.

In accordance with Article 109q in the new Employment Title of the Treaty establishing the European Community²³ ("EC Treaty"), the Commission submitted draft guidelines for Member States' employment policies to the Summit. The guidelines identified the following two main factors behind Europe's em-

18. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34 (1997) (inserting art. 109q(1) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 128(1), O.J. C 340/3, at 235 (1997), 37 I.L.M. at 107 (art. 109q(1) of EC Treaty).

19. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34 (1997) (inserting art. 109q(2) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 128(2), O.J. C 340/3, at 235-36 (1997), 37 I.L.M. at 107 (art. 109q(2) of EC Treaty).

20. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34 (1997) (inserting art. 109q(4) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 128(4), O.J. C 340/3, at 236 (1997), 37 I.L.M. at 107 (art. 109q(4) of EC Treaty).

21. The European "social partners" include, for example, employers' and employees' organizations at the European level.

22. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34-35 (1997) (inserting art. 109s into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 130, O.J. C 340/3, at 236 (1997), 37 I.L.M. at 107 (art. 109s of EC Treaty).

23. Treaty of Amsterdam, *supra* note 1, art. 2(19), O.J. C 340/1, at 34 (1997) (inserting art. 109q into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 128, O.J. C 340/3, at 235-36 (1997), 37 I.L.M. at 107 (art. 109q of EC Treaty).

ployment failures: first, our inability to handle macroeconomic shocks and second, our inability to modernize our labor markets. The guidelines also provided two answers. First, the Economic and Monetary Policy establishes convergence and coordination in economic policies, helps manage shocks, and enables companies to plan and to price for exchange-rate stability rather than fluctuations. Second, the European Employment Strategy helps Member States, management, and labor to modernize structural policies. That certainly does not mean that responsibility for employment policy shifts from the Member States to the Union. Primary responsibility lies in the hands of the Member States, but Europe also has a part to play.

The Summit was held in the light of the proposals presented by the Commission. It put in place a convergence process, based on agreed, quantified, and comparable targets with the aim of increasing employment on a lasting basis and of fighting unemployment—especially long-term unemployment. The Summit also endorsed the four priorities identified by the Commission. For each priority a number of common targets were set to be detailed and shaped by each Member State in accordance with its own specific circumstances in a “National Action Plan.”

On the first priority, improving employability, the Summit made significant and concrete commitments to unemployed people. It set target figures to provide “new start” training and/or work experience for young people before these young people reached six months of unemployment. The Summit provided similar support for adults before they reached twelve months without work. At present, the Member States offer real training opportunities and active measures to only ten percent of the unemployed, a statistic about which Europe has nothing to boast. The Summit fixed the goal of gradually achieving not only the average of the three most successful Member States, but also at least twenty percent coverage.

The second priority is developing entrepreneurship. The Summit committed the Council and the Member States to make it easier to start and to run businesses, including new facilities of ECU30 billion offered by the European Investment Bank to support investment. It also recognized the opportunities for job creation at local levels in the social economy and in new activities linked to needs not yet satisfied by the market.

On the third priority, encouraging adaptability, the Summit invited the social partners to negotiate, at the appropriate levels, agreements to modernize the organization of work. In addition, it asked Member States to give consideration to more adaptable types of contracts. In order to improve skill levels within enterprises, it also urged Member States to re-examine investment in human resources and incentives for in-house training.

The commitments made by the Summit on the fourth priority, strengthening equal opportunities, are also extremely significant. The need to modernize our societies so that men and women can work on equal terms, with equal responsibilities, was fully endorsed. Yet given our demographic prospects, the future of employment in Europe largely depends on increased employment rates for women. The Summit agreed on the need for action to reverse occupational under-representation. It identified the importance of raising levels of care provision and of eliminating obstacles to returning to work after a career break. The Summit recognized all of these measures as important to enabling women and men to develop modern approaches to meeting the new demands of working and family life.

Where are we now three months later? Work is well underway on the next stage. Member States have already undertaken to submit action plans by April 15, 1998. Within the Commission, we have embarked on a series of national seminars with Member States to help shape the national action plans that will provide the substance of the new process. We now have an unprecedented opportunity for progress in European employment policy provided that Member States fully apply the commitments they have made to each other. The next regular European Councils, in Cardiff at the end of June and in Vienna at the end of December, will let us see how far Member States have been able, or are willing, to go together.

II. *SOCIAL POLICY: MORE THAN THE END OF AN OPT-OUT*

Let me move on now to the broader social policy advances of the new Treaty. The Protocol on Social Policy, annexed to the Maastricht Treaty in December 1991, expressed the determination of all EU countries except the United Kingdom to make

significant advances in social policy.²⁴ Indeed, as stated repeatedly by the Council in the early nineties, the economic and social dimensions should make progress at a similar pace. The establishment of European works councils and the right to parental leave are among the main results achieved thanks to this Social Protocol.

As the United Kingdom has now decided to adhere to the Social Protocol, its substance has been incorporated into the body of the Treaty. This move, however, is more than the mere end of an opt-out by one Member State, as important and significant as this may be, in regard to both political cohesion and risks of distortions of competition. This move means that the Union, acting by a qualified majority in the Council, can now come to grips with wide-ranging problems such as the changes resulting from new ways of organizing production and work. The Union can also consider the improvement of the working environment to protect workers' health and safety, working conditions, and the information and consultation of workers.

There are, however, subjects such as pay and the right to strike or to impose lockouts that remain purely matters for national governments.²⁵ Other important questions such as social security, redundancies or workers' representation, and collective defense require unanimity among Member States.²⁶

Competitiveness, job creation, flexibility, and job security are the challenges now facing the so-called European social model. There is no doubt that this model will have to be adapted if we are to retain it, at least because of the demographic outlook. A new balance between flexibility and security must be found. Yet the fight against exclusion and poverty, affecting more than fifty million people in Europe, must complement the efforts made to meet these challenges. The Treaty provides tools in both these areas. Moreover, the new single coherent framework will enable the social partners to meet fully their

24. TEU, *supra* note 10, Protocol on social policy, O.J. C 224/1, at 126 (1992), [1992] 1 C.M.L.R. at 776-80.

25. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 37 (1997) (replacing art. 118(6) of EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 137(6), O.J. C 340/3, at 240 (1997), 37 I.L.M. at 109 (art. 118(6) of EC Treaty).

26. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 36 (1997) (replacing art. 118(3) of EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 137(3), O.J. C 340/3, at 240 (1997), 37 I.L.M. at 109 (art. 118(3) of EC Treaty).

responsibilities and to exploit their potential as agents of change in the Union. This ability is of crucial importance in the essential task of modernizing the European labor markets.

This development brings me to a very important procedural aspect, for the Social Protocol introduced an original, innovative procedure. Not only does the Treaty enable the social partners to conclude binding agreements at the European level, but also new Articles 118a and 118b of the EC Treaty give the contractual procedure precedence over the legislative option because, in the course of the consultation procedure on proposals envisaged by the Commission, management and labor may decide to negotiate agreements.²⁷ As a consequence, a kind of double subsidiarity emerges specific to the social field. To the classic subsidiarity principle,²⁸ we should now add the possible choice between the legislative procedure and the agreement-based one at the European level. This addition may give rise to certain problems for the European Parliament, which is somewhat excluded from the negotiations leading to agreements.

There should not, however, be any misunderstanding. The great potential offered by the new Treaty does not imply that the Union will put forward a big legislative program in the coming years. The reverse is true. There are several reasons why. First, a lot has already been done, notably in the field of health and safety in the workplace. Priority must now be given to its effective implementation in the Member States and counseling for small and medium-sized businesses. Second, as I mentioned earlier, the ball is in the social partners' court. Finally, and most important, all Member States are reviewing, simplifying, and adapting their labor laws. The European level can provide a useful framework for debate and common analysis by developing a forward-looking approach to the world of work.

III. *STRENGTHENING THE EUROPEAN UNION'S COMMITMENT TO EQUALITY FOR WOMEN AND MEN*

In the past, EU legislation played a pioneering role in pro-

27. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 37 (1997) (replacing arts. 118a and 118b of EC Treaty); Consolidated EC Treaty, *supra* note 2, arts. 138-39, O.J. C 340/3, at 241 (1997), 37 I.L.M. at 110 (arts. 118a and 118b of EC Treaty).

28. See EC Treaty, *supra* note 10, art. 3b, O.J. C 224/1, at 9 (1992), [1992] 1 C.M.L.R. at 590.

moting equal opportunities in some Member States. Following Amsterdam, the principle of equal treatment is now enshrined in the very foundations of the Community. Mainstreaming activities will be reinforced because “[i]n all [its] activities . . . the Community shall aim to eliminate inequalities, and to promote equality, between men and women.”²⁹

The new Treaty also broadens the scope of existing provisions, from equal pay to equal treatment in matters of employment and occupation.³⁰ Measures to ensure the application of equal opportunities and equal treatment for men and women in matters of employment and occupation may be adopted by a qualified majority vote in the Council.³¹ Member States may also maintain or adopt specific advantages, in other words, “positive discrimination” measures, for the “under-represented sex.” Gender discrimination, however, has been included in a new, general anti-discrimination clause.³²

More could have been done to expand the new Article 119³³ of the EC Treaty so that its directly effective provisions would apply to occupational issues beyond the area of equal pay. Such an expansion would have enabled individuals to rely on Article 119 in national courts, in a broader number of areas than has so far been possible. Moreover, societal, and not only occupational, issues could have been covered. The same verdict, however, applies. The outcome is quite positive because these provisions are linked, on one hand, with the implementation of the Employment Strategy, and on the other, with the anti-discrimination approach.

29. Treaty of Amsterdam, *supra* note 1, art. 2(3)(e), O.J. C 340/1, at 25 (1997) (inserting art. 3(2) into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 3(2), O.J. C 340/3, at 182 (1997), 37 I.L.M. at 80 (art. 3(2) of EC Treaty).

30. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 38 (1997) (replacing art. 119 of EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 141, O.J. C 340/3, at 242 (1997), 37 I.L.M. at 110 (art. 119 of EC Treaty).

31. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 38 (1997) (replacing art. 119(3) of EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 141(3), O.J. C 340/3, at 242 (1997), 37 I.L.M. at 110 (art. 119(3) of EC Treaty).

32. Treaty of Amsterdam, *supra* note 1, art. 2(7), O.J. C 340/1, at 26 (1997) (inserting art. 6a into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 13, O.J. C 340/3, at 185 (1997), 37 I.L.M. at 82 (art. 6a of EC Treaty).

33. Treaty of Amsterdam, *supra* note 1, art. 2(22), O.J. C 340/1, at 38 (1997) (inserting art. 119 into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 141, O.J. C 340/3, at 242 (1997), 37 I.L.M. at 110 (art. 119 of EC Treaty).

IV. *NEW PROSPECTS FOR NON-DISCRIMINATION AND FUNDAMENTAL RIGHTS*

The new Treaty makes substantial progress on the fundamental rights of the citizens of the Union. Under the new Article 13 of the EC Treaty, the Council "may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion and belief, disability, age or sexual orientation."³⁴ Contrasting views have been voiced on this new provision. It is seen by many as a landmark in European human rights because its broad scope, and some of the grounds upon which action could be taken are controversial. Undoubtedly, this new article enables the Community to take, for instance, a stronger stance against racism and xenophobia, building on the work begun during 1997, the European Year Against Racism.

Some may consider this provision to be timid because it has no direct effect and requires unanimity within the Council. These critics would also argue that the matter of rights has not been addressed adequately. The practical and political problems of failing to match intent with means, especially concerning citizens' expectations, may still exist. In any case, the exact scope and meaning of the expression "appropriate action" needs to be specified. For example, does it confer broad powers to propose the adoption of legal instruments as well as incentive measures? We need broad, forward-looking reflection on all these issues in light of the existing anti-discrimination rules in the Member States.

In parallel, the Commission is still left with much work to develop a clear role and status for the European Civil Dialogue, the process of including Europe's voluntary and non-governmental organizations in decision-making. It pursues its efforts to secure due recognition for, and to develop stronger partnership with, these groups. Although contrary to what the Commission proposed to the IGC, no specific provision was included in the Treaty despite Declaration 23,³⁵ annexed to the Maastricht Treaty.

34. Treaty of Amsterdam, *supra* note 1, art. 2(7), O.J. C 340/1, at 26 (1997) (inserting art. 6a into EC Treaty); Consolidated EC Treaty, *supra* note 2, art. 13, O.J. C 340/3, at 185 (1997), 37 I.L.M. at 82 (art. 6a of EC Treaty).

35. TEU, *supra* note 10, Declaration on cooperation with charitable associations, [1992] 1 C.M.L.R. at 787, 31 I.L.M. at 368.

V. TAKING THE TREATY FORWARD

How do we proceed with the provisions of the new Treaty? First of all, the Treaty must be ratified. While the ratification process goes on, the Union will be making certain strategic decisions. In particular, the Union will make decisions involving the move towards European Monetary Union, the launching of the Union's fifth and most challenging enlargement, the reforms of the main structural policies, and the setting-up of a new EU financial framework for the period of 2000 to 2006. Indeed, the EU timetable for the coming months is quite impressive. We will thus be implementing the Treaty in the social area against the backdrop of probably the most testing series of challenges the Union has faced. None of this process will be achieved without the full involvement and cooperation of EU citizens. We have to take them with us. The best way to do this is to transform the provisions of the new Treaty, especially those on fundamental rights and employment that can directly affect citizens, into concrete action. So I come back once again to the importance of delivering on the new employment strategy. This step offers Member States an opportunity to demonstrate quickly their political will to engage in the spirit of the new Treaty.

CONCLUSION

Jobs are not created by treaties, governments, or institutions; jobs are created by people and their initiative, at both the enterprise and local levels. The task of public policy is to enable the process of job creation and skill development to work well. It has to be a catalyst for change and a confidence builder for security during change. The Employment Strategy agreed to in November 1997 at the special Council in Luxembourg is a clear expression of its new role. The implementation of this strategy will therefore serve as the backbone for European social action. Once again, Europe is certainly not going to provide all, or even the main, answers, especially in this complex and controversial social field. Solutions are to be found above all in the Member States and at more decentralized levels. But Europe can provide frameworks for action and help in different ways. The new Treaty certainly enables the European Community to do so.