

Towards a Green EU Constitution



GREENING THE EUROPEAN CONVENTION PROPOSAL

August 2003

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Towards a Green EU Constitution

GREENING THE EUROPEAN CONVENTION PROPOSAL

The drafting of a constitution for the European Union creates a unique opportunity to consolidate the EU's position as the world leader in putting sustainable development into action by creating a coherent legal framework with ambitious and innovative policies.

PURPOSE OF THIS POSITION PAPER

This paper presents the view of the leading European environmental organisations on the draft European Constitution. We present simple, realistic and concrete suggestions for amendments to the text of the draft Constitution as finalised by the European Convention.

Our paper is addressed to:

- ▶ the **European Commission** and the **European Parliament**, who must agree on a recommendation on the Constitution this September.
- ▶ the **governments of the Member States and Accession Countries**, who will start negotiations in the Intergovernmental Conference.
- ▶ Members of **National Parliaments**. National Parliaments were represented in the European Convention. We hope they will continue their active involvement through their respective governments.
- ▶ **anyone** interested in promoting the improvement of the environment and sustainable development inside and outside the European Union. We hope this publication will help them to take an active part in the public debate, and in particular in approaching political decision makers.

| The Green Eight and the European Convention |

The *Green Eight* are the eight leading environmental organisations active at EU level. Green Eight members have a long tradition of acting together on “constitutional” issues. They presented joint positions on the Maastricht, Amsterdam and Nice Treaties and thus contributed to provisions for sustainable development and environmental policy integration in the existing Treaty.

Since the start of the work of the European Convention, the *Green Eight* have presented common positions and undertaken a range of actions to approach the Convention members.

However, as part of the larger ‘civil society’ agenda, the *Green Eight* are also part of the Civil Society Contact Group. This wider Group brings together development, environmental, human rights and social NGOs and the European Trade Unions Confederation. It has campaigned for dialogue between the Convention and organised civil society. It has also formulated common positions on, in particular, sustainable development and participatory democracy. It has initiated a campaign called Act4Europe (www.act4europe.org).

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Introduction

From October 2003, the EU Member States and Accession Countries will negotiate an EU Constitution to replace the existing Treaties of the European Union, European Community and Euratom. The European Convention was given a mandate to produce a comprehensive draft for this Constitution. However, we do not believe that the Convention's draft is sufficient to allow the European Union to develop in a sustainable manner:

- ▶ **Union Policies:** The biggest weakness is in the policy chapters (Part III) of the draft Constitution. Many of them were drawn from the existing European Community Treaty without reconsidering their objectives. As they stand, they make EU sectoral policies conflict with the overall objectives of sustainable development and improvement of the environment. Not taking up this will not be understood by civil society. We cannot stick with policy priorities that were agreed decades ago in a completely different context.
- ▶ **Participatory Democracy:** "participatory democracy" is an essential element of sustainable development. The Constitution should define minimum requirements for public participation and give citizens the right to challenge EU institutions at the European Court of Justice in cases where these Institutions violate EU law and policies.
- ▶ **Parliamentary Democracy:** The Convention has proposed to expand co-decision in many areas important for environment and sustainable development. This work needs to be completed. Co-decision for the European Parliament should be the rule for all areas relevant to the environment.
- ▶ **Sustainable Development Protocol:** We support the initiative of Commissioner Wallström to add a Protocol on Sustainable Development. This will ensure that sustainable development, properly defined, is central to the EU's day to day activities.
- ▶ **The Euratom Treaty** dates from the 1950s, when nuclear energy was perceived as a safe energy source. Now that the dangers, cost and problems related to nuclear waste have been recognised, the Euratom Treaty must be abolished.

Assessment of the work of the European Convention

The European Convention worked on the basis of a mandate agreed by the European Council in Laeken, Belgium, December 2001. This mandate focussed on institutional issues, on the political role of the European Union in the world, and on further integration of some specific policies, foreign policy and defence, justice and economic cooperation. The Laeken Mandate also asked: *“How can we intensify cooperation in the field of social inclusion, the environment, health and food safety?”* While social inclusion was certainly an important item for the Convention, “environment, health and food safety” received hardly any attention.

The Laeken Mandate summarized the challenge as follows: *“citizens are calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world. An approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care. There can be no doubt that this will require Europe to undergo renewal and reform.”*

As regards the aim of “bringing the EU closer to its citizens”, the integration of the Charter of Fundamental Rights and the European Citizenship were put on the agenda. As regards to “the rest” of the Treaties, the mandate remained vague. Which meant that in practice the reformulation of policy chapters such as those on agriculture, transport, cohesion, research, etc. were not given much attention.

This was a mistake. One cannot assume that the EU citizens will feel closer to “Brussels” if one concentrates on the composition of the Commission, the voting procedures in the Council. It also does not help if the role of the European Parliament continues to be confusing,

arranged on a case-by-case basis. But the real question in the minds of the EU citizens, in our opinion, is whether the EU will contribute to protecting and improving the quality of life and the environment, stimulating employment, guaranteeing social justice and inclusion, and ensuring that products are safe and (in the case of food) healthy. These challenges were gravely under-represented in the Convention’s work.

As environmental organisations, we agreed on our first input into the European Convention on 18 April 2002. First of all, we wanted the Convention to respect important elements of the Treaty of the European Community, in particular the objective of sustainable development, the obligation of integration of environmental protection requirement in all Community’s policies and activities, and most parts of the existing chapter on Environmental Policy. Furthermore we called for institutional rights for civil society, in particular with regards to transparency in decision-making, public participation and access to justice at the EU level. The European Parliament should have co-decision powers in all areas relevant for the protection of the environment (which includes agriculture, transport, research, the single market, etc.). This extension of co-decision should have been combined with the elimination of remaining unanimity requirements in these areas. Finally, we insisted that in any case the agricultural chapter should be updated. Later in the process we expanded this demand to a range of areas.

We had only one occasion to present our views to the Convention directly, at its only public hearing in June 2002. Furthermore we had considerable contact with Convention members throughout the process.

In October 2002, the President of the Convention, Mr Giscard d'Estaing, presented a draft text for the objectives of the Union. It was clearly based on article 2 of the existing Treaty, but the concept of sustainable development was deleted, as well the objective to 'improve the quality of the environment'.

A further, worrying proposal of the Convention's Praesidium was to integrate the Euratom Treaty into the future EU Constitution. This would have given nuclear energy a preferential financial and institutional legal framework

We are satisfied that, in the end, our first objective of "no steps backwards" compared with the existing Treaties has been achieved. The objective of "a high level of protection and improvement in the quality of the environment" has been agreed, the integration principle has been restored, and the Euratom Treaty has not been fully integrated into the Convention's final text.

We also welcome the inclusion of the Charter of Fundamental Rights, even though the right to a clean and healthy environment is still missing.

We welcome the proposals to improve the accountability and transparency of EU decision making.

The chapter on participatory democracy is positive, including the proposal for a citizens' initiative. Still, improvements to the relevant article are necessary, in order to further clarify the minimum requirements for public participation, and to recognise access to justice as a logical and essential element of participatory democracy.

We are satisfied with the proposal of the Convention to strengthen the position of the European Parliament in decision making with regards to:

- ▶ economic, social and territorial cohesion,
- ▶ agriculture and fisheries,
- ▶ specific research and technological development programmes,
- ▶ industry.

If these proposals are adopted, the European Parliament will become the co-legislator with the Council of Ministers in most areas relevant for the promotion of sustainable development. However, work in this area is still incomplete: in particular, fiscal policies are still the exclusive domain of the Council.

Green Eight proposals for the European Constitution

| Introduction |

With regards to the work of the IGC, we call for transparency and public participation. The EU Constitution is going to be THE legal and moral basis for the functioning of the European Union, internally as well as towards the world outside, for decades. The Constitution should motivate the EU citizens to support the EU, and to invest in its effective functioning. Civil society should therefore be able to follow the negotiations and give input, as was the case with the European Convention. Especially in areas that the Convention disregarded or hardly touched.

The following proposals are all related to the final proposal from the European Convention (CONV 850/03), submitted to the President of the European Council on the 18th July 2003. So all basic texts presented here come from this proposal

We call for further improvements to the draft Constitution so that the European Union will have a robust constitutional framework for delivering sustainable development, inside and outside the Union. This should protect wildlife and peoples' health, improve the quality of the environment and preserve scarce natural resources so that future generations shall also be able to prosper. Such a Union can succeed only if its citizens are in agreement and are involved. Participatory democracy is therefore a pre-requisite, in our view, to sustainable development. Furthermore, we are convinced that sustainable development cannot be achieved without the eradication of poverty, through social inclusion, equity and justice.

Our proposals are based, in particular, on the following principles/objectives of the EU as proposed by the Convention:

Regarding the importance of democracy and civil society

Preamble [...] *Believing that reunited Europe intends to continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world. [...]*

Regarding the Union's objectives (Part I, article 3)

3.3 *The Union shall work for the sustainable development of Europe based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a high level of protection and improvement of the quality of the environment. [...]*

(this originates from Article 2 of the current Community Treaty)

3.4 *In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.*

Regarding consistency and environmental policy integration (Part III, articles 1 and 4):

III-1 *The Union shall ensure consistency between the different policies and activities referred to in this Part, taking all of the Union's objectives into account and in accordance with the principle of conferring of powers.*

III-4 *Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities referred to in this Part, in particular with a view to promoting sustainable development.*

(this originates from Article 6 of the Community Treaty).

| PROPOSED AMENDMENTS |

[the amendments are seen as ***bold+italic+underlined***, or as deleted words/sentences, inside the Convention proposals.]

PART I.

| TITLE VI: The Democratic Life of the Union |

Article 46: The principle of participatory democracy

1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned ***in an early, appropriate and adequate manner and provide the public with the opportunity to comment during each stage of decision-making*** in order to ensure that the Union's actions are coherent and transparent.

3bis The citizens and their organisations shall have a right of access to the European Court of Justice to challenge the decisions of the European Commission or other EU Bodies which concern them directly.

4. No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative.

EXPLANATION FOR THE AMENDMENTS:

Regarding 3: Drawing from our experience, consultations make sense only if they respond to certain criteria.

Regarding 3bis: Access to justice constitutes an essential element of participatory democracy. This has been defined, for instance, in the Aarhus Convention "on access to information, public participation and access to justice in environmental matters", a Convention the EU is about to ratify.



PART I.

| TITLE VI: The Democratic Life of the Union |

Article 49: Transparency of the proceedings of Union Institutions

1. In order to promote good governance and ensure the participation of civil society, the Union Institutions, bodies and agencies shall conduct their work as openly as possible.
2. The European Parliament shall meet in public, as shall the Council of Ministers when examining and adopting a legislative proposal. *The Conciliation Committee will have all of its meetings in public.*
3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State shall have a right of access to documents of the Union Institutions, bodies and agencies in whatever form they are produced, in accordance with the conditions laid down in Part III.
4. A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.
5. Each Institution, body or agency referred to in paragraph 3 shall determine in its own rules of procedure specific provisions regarding access to its documents, in accordance with the European law referred to in paragraph 4.

EXPLANATION FOR THE AMENDMENT:

Co-decision will now become the rule for law-making in the EU. In practice, in most cases the meetings of the Conciliation Committee will be the place where the final decisions are taken. Accountability of the Parliament and the National Governments to the citizens is served by making these meetings public as well. The public has the right to know how Parliament and Council come to their decisions.



PART II.

| The Charter of Fundamental Rights of the Union |

Article II-37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Replace with:

Every person has the right to live in a clean and healthy environment as well as the duty to safeguard the quality of the environment for present and future generations

EXPLANATION FOR THE AMENDMENT:

The Charter of Fundamental Rights lays down rights for its citizens in various areas, but not with regards to the environment. The environment article does nothing but confirm the duty of the Union Institutions to integrate environmental concerns into other policies.

The notion of a right to a clean and healthy environment is not new. Thirteen years ago, the European Council in Dublin, in a declaration on “the environmental imperative” endorsed the right to a clean and healthy environment for the citizens of the EU (June 1990).

The inclusion of a right to a clean and healthy environment would guide the EU Institutions in the exercise of their duties and encourage them to act in a manner that upholds this right (e.g. when developing policies or legislation). Further, such a right more clearly establishes the link between environmental and public health policies, two important concerns for EU citizens.

A number of Member States and Accession countries have laid down the right to a clean and healthy environment in their national constitutions. It is also part of the Aarhus Convention on access to information, public participation and access to justice in environmental matters, signed by all Member States and Accession countries as well

as by the European Community, and ratified by a growing number of them. It opens by recognising “the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”

In our amendment we have tried to underline the fact that citizens do have a certain responsibility towards the environment as well.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 3 FREE MOVEMENT OF GOODS

Subsection 1: CUSTOMS UNION

Article III-40

In carrying out the tasks entrusted to it under this Subsection the Commission shall be guided by:

- (a) ~~the need to promote trade between Member States and third countries;~~
- (b) (a) developments in conditions of competition within the Union insofar as they lead to an improvement in the competitive capacity of undertakings;

(e) (b) the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;

(d) (c) the need to avoid serious disturbances in the economies of Member States and to ensure rational and environmentally sound development of production and an expansion appropriate level of consumption within the Union.

EXPLANATION FOR THE AMENDMENTS:

Increase of external trade and expansion of consumption should not be objectives as such, rather they should contribute to the achievement of the overall objectives of the Union, as these are laid down in Article I-3.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 3 FREE MOVEMENT OF GOODS

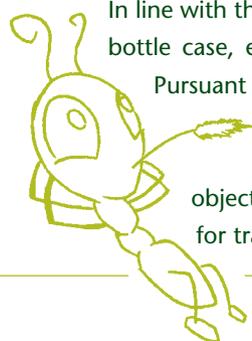
Subsection 3: PROHIBITION OF QUANTITATIVE RESTRICTIONS

Article III-43

Article III-42 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; *the protection of the environment*; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

EXPLANATION FOR THE AMENDMENT:

In line with the jurisprudence of the European Court of Justice in the Danish bottle case, environmental protection should be explicitly included here.



Pursuant to this decision, the measures undertaken on the basis of mandatory requirements shall respect the principles of non-discrimination and proportionality, shall be necessary for the objective pursued and shall represent the least restrictive alternative for trade in the Union.

PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 5 RULES ON COMPETITION

Subsection 1: Rules applying to undertakings

Article III-50

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. Paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic *or environmental* progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

EXPLANATION FOR THE AMENDMENTS:

Cooperation between companies, with an explicit environmental objective, for example green procurement systems between companies should be allowed.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 5 RULES ON COMPETITION

Subsection 2: Aids granted by Member States

Article III-56

1. Save as otherwise provided in the Constitution, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market.
2. The following shall be compatible with the internal market:
 - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
 - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
 - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(c.bis) aid to promote activities for the protection of the environment, including to accelerate the introduction and use of environmentally sound products and services.
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by European regulations or decisions adopted by the Council of Ministers on a proposal from the Commission.

EXPLANATION FOR THE AMENDMENT:

This amendment would expressly authorise the Commission to approve of programmes for state aid serving environmental protection interests. The amendment is not intended to create a derogation from the application of the polluter pays principle established under Article III-128. Therefore, as a general rule, companies should not be able to obtain state aid for clean-up costs. For some countries, i.e. the Cohesion countries and the Accession countries, a temporary derogation to this rule may apply.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 6 FISCAL PROVISIONS

Article III-59

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products; *unless this is essential for creating a level playing field for domestic producers who have to comply with specific environmental regulations.*

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

EXPLANATION FOR THE AMENDMENT:

If we foresee environmental tax reforms in some countries in the future, they should have a tool to prevent major market distortions.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 6 FISCAL PROVISIONS

Article III-62

1. A European law or framework law of the Council of Ministers shall lay down measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary for the functioning of the internal market and to avoid distortion of competition. The Council of Ministers shall act unanimously after consulting the European Parliament and

the Economic and Social Committee, *unless the fiscal measures proposed relate to environmental objectives, in which case the regular procedure, as laid down in article 33-1, will apply.*

2. Where the Council of Ministers, acting unanimously on a proposal from the Commission, finds that the measures referred to in paragraph 1 relate to administrative cooperation or to combating tax fraud and tax evasion, it shall act, notwithstanding paragraph 1, by a qualified majority when adopting the European law or framework law adopting these measures.

EXPLANATION FOR THE AMENDMENT: Fiscal measures can form part of environment policies. In fact, effective limitation of climate change or natural resource (over-)use is difficult to achieve without environmental fiscal reform. The unanimity requirement for agreements on fiscal measures is a serious bottle-neck for effective EU environmental policies, making it difficult to achieve the EU's objectives as laid down in the Treaty. Therefore we propose to bring the procedures for such decisions in line with those for other environmental law and bring them under qualified majority in the Council and co-decision with the Parliament.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER I. INTERNAL MARKET

Section 7 APPROXIMATION OF LEGISLATION

Article III-65

1. Save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in Article III-14. European laws or framework laws shall establish measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Such laws shall be adopted after consultation of the Economic and Social Committee.
2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons.
3. The Commission, in its proposals submitted under paragraph 1 *affecting* concerning health, safety, environmental protection and consumer protection, will take as *the* a base a *the* highest level of protection *prevailing in any Member State and will also take into account higher levels prevailing elsewhere,* taking account in particular of any new development based on scientific

facts.—Within their respective powers, the European Parliament and the Council of Ministers will also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by means of a European law, framework law or regulation of the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article III-43, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a European law, framework law or regulation of the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment *or on the precautionary principle,* or the working environment on the grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions and the reasons for them.

[.....]

EXPLANATION FOR THE AMENDMENTS: The first amendment is to ensure that the impact of legislation is also considered, rather than just the main purpose of the legislation.

The second amendment is to encourage harmonisation upwards, rather than at the level of the lowest common denominator.

The deletion of “scientific fact” has been done because, in environmental matters, the precautionary principle should also apply as well. “Scientific fact” is also a new concept in the Treaty, where until now (also see para. 5) the concept of “scientific evidence” is used.

In para. 5 we insist that national governments can also take national measures on the basis of the precautionary principle, a basis of environmental policies, as laid down in art. III-129, para.2.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

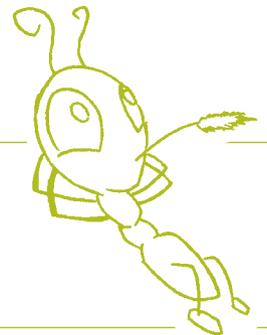
CHAPTER II. ECONOMIC AND MONETARY POLICIES Section 1 ECONOMIC POLICY

Article III-70

Member States shall conduct their economic policies in order to contribute to the achievement of the Union's objectives, as defined in Article I-3, the environmental policy integration and policy consistency principles as laid down in Articles III-1 and III-4 and III-193, para. 3 and in the context of the broad guidelines referred to in Article III-71(2). The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article III-69.

EXPLANATION FOR THE AMENDMENTS:

The additional text makes the Article consistent with the Union's principles of environmental integration and policy coherence.



PART III.

| The Policies and Functioning of the Union |

Title III Internal Policies and Action

CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 3 ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article III-116

In order to promote its overall harmonious, *balanced and sustainable* development, the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion *and environmental protection and improvement in keeping with the objectives set out in Article I-3.*

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions, *including* and ~~the backwardness of~~ the least favoured regions or islands, ~~including~~ *and* rural areas, *and promoting environmental protection and improvement in the various regions.*



EXPLANATION FOR THE AMENDMENTS:

This chapter needs to be brought into line with the preamble of the Council Regulation laying down general provisions on the structural funds (1260/1999/EC, 21 June 1999), which refers to 'harmonious, balanced and sustainable development of economic activities'. The preamble refers explicitly to the need for the structural funds to achieve a high level of environmental protection in the need 'in particular to integrate the requirements of environmental protection into the design and implementation of the operations of the structural funds' (preamble, paragraph 5).

The EU Sustainable Development Strategy, adopted by the European Council in Göteborg (June 2001), is an integral part of the Lisbon Strategy. This recognises that, now and in the future, economic growth, social cohesion, and environmental protection must go hand in hand.

EU Heads of State recently reiterated their commitment to sustainable development at the Spring Summit (21 March 2003). Their declaration included calls to strengthen the EU's Cardiff Process of integrating the environment into sectoral policies. Objectives were to be developed that 'decoupled' economic growth from environmental degradation and resource use. (In Cardiff in June 1998 the European Council called upon the Councils to each develop environmental integration strategies).

Article III-144 on Trans-European networks refers to the objectives in Article III-116. With the proposed amendments, the requirement of compatibility with the objectives of environmental protection and improvement is also made applicable to the Trans-European networks articles.

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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 3 ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article III-117

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article III-116 and the objectives and principles set out in Article III-129 and the Union's sustainable development objectives. The formulation and implementation of the Union's policies and action and the implementation of the internal market shall take into account those objectives and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments. The Union shall ensure that the requirements

of the protection and improvement of the environment are incorporated into the definition and implementation of the operations of the Funds.

The Commission shall submit a report to the European Parliament, the Council of Ministers, the Committee of the Regions and the Economic and Social Committee every three years on the progress made towards achieving economic growth, social and territorial cohesion, the protection and improvement of the environment, and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

European laws or framework laws may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

EXPLANATION FOR THE AMENDMENTS:

In order to ensure the sustainable use of Structural Funds, and in the interest of having a Treaty which is coherent, with no internal contradictions, policies must be fully consistent with the objectives set out in Article III-116 and the objectives and principles of Article III-129. This is especially important given the well-documented damage to nature and natural resources often contributed to the Structural Funds.



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Article III-118

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the *sustainable* development and structural adjustment of regions whose development is

lagging behind and in the conversion of declining industrial regions *and the protection and improvement of the environment in the various regions.*

EXPLANATION FOR THE AMENDMENTS:

To ensure that also this Fund is also applied in agreement with Article I-3 of the Constitution.



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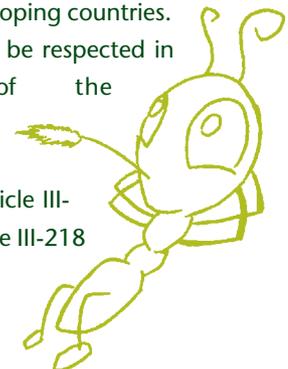
Article III-123

1. The objectives of the common agricultural policy *and the common fisheries policy* shall be:
 - (a) ~~to increase agricultural productivity~~ *to ensure the environmentally sustainable and rational development of agricultural production* by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour *and natural resources*;
 - (b) thus to ensure a fair standard of living for the agricultural *rural* community, in particular by increasing the individual earnings of persons engaged in agriculture *agricultural and rural activities*;
 - (c) ~~to stabilise markets~~; *to protect and improve the quality of the environment and nature, as well as to conserve the diversity of cultural landscapes*;

- (d) to assure the availability of supplies *high quality food-stuff and renewable resources*;
 - (e) to ensure that supplies reach consumers at reasonable prices.
 - (f) *to stabilise markets.*
2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:
 - (a) the particular nature of *rural*, agricultural *and fisheries* activities, which results from the social structure of agriculture *and fisheries* and from structural, *environmental* and natural disparities between the various agricultural regions;
 - (b) the need to effect the appropriate adjustments by degrees;
 - (c) the fact that in the Member States *rural development*, agriculture *and fisheries* constitutes sectors closely linked with the economy as a whole;
 - (d) *the economic, social, and environmental sustainable development of developing countries.*

EXPLANATION FOR THE AMENDMENTS:

1. The objectives of the Common Agricultural Policy (CAP) in this article were formulated in 1957. They no longer reflect the problems and concerns faced by today's agriculture sector, nor the priorities of Europe's citizens. There are a number of reasons why the agricultural articles of the Treaty require fundamental rewording and amendment:
They aim at increasing agricultural productivity, a paramount concern after the Second World War, but no longer a European priority;
they have led to agricultural surpluses and high budget costs without effectively easing agricultural income problems. Just under half of the total EU budget is spent on the CAP;
they make no reference to the environment, nature or landscape although the Treaty explicitly states that "environmental protection requirements must be integrated into the definition and implementation of the Community policies" (Article III-4);
they do not reflect the second pillar of the CAP as adopted under Agenda 2000 and introduced by the Single European Act, 1986;
they do not explicitly refer to international impacts and responsibilities of the Union's agricultural products;
they create inappropriate structures and procedures for participation and decision making.
2. Some of the concerns have already led to significant changes in the way the CAP is designed and implemented. However, many of the new policy approaches are not explicitly backed by the Treaty. The debate on the Future of Europe provides the opportunity for the review of the legal basis of the CAP of the 21st century.
3. The agriculture sector is of central importance in shaping rural Europe and a key element of European policy.
4. Today's European citizens, farmers, consumers, rural communities and environmental organisations have new needs that a CAP oriented towards these new objectives would result in a more effective integration of agricultural, rural and environmental concerns at all levels of policy implementation. Thus, it would provide new perspectives for sustainable and rural development in Europe.
5. A CAP based on these objectives would offer the European agricultural sector a wider set of economic opportunities, recognition of their multiple functions and thus a better chance of achieving sustainable standards of living. This would result in healthy food in a healthy environment for all European citizens.
6. Sustainable development with the primary aim of eradicating poverty applies to all developing countries as agreed by the United Nations (UN Millennium Declaration) and the OECD (list of developing countries). All EU Member States have endorsed this objective and agreed to the OECD list of developing countries. This objective should be respected in the all the policies of the the Union according to the principle of policy coherence (Article III-193, para.3 and Article III-218 para.1).



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Article III-124

1. In order to attain the objectives set out in Article III-123, ~~a common organisation of agricultural markets~~ *the following instruments* shall be established.

~~This organisation shall~~ *The instruments may* take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.
- (d) rural and environmental structural measures.*

2. The ~~common organisation~~ *instruments* established in accordance with paragraph 1 may include all meas-

ures required to attain the objectives set out in Article III-123, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports ~~or exports~~.

The ~~common organisation~~ *instruments* shall be limited to pursuit of the objectives set out in Article III-123 and shall exclude any discrimination between producers or consumers within the Union.

Any common price policy shall be based on common criteria and uniform methods of calculation. *The instruments shall take into account their impact on the objectives of the Union's External Action regarding poverty eradication in developing countries.*

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

EXPLANATION FOR THE AMENDMENTS:

Reference to organisations of agricultural markets is obsolete. 'Instruments' is a term that reflects more appropriately current CAP measures.



Rural and structural measures are already applied by the CAP. Promotion of exports cannot be included in this indicative list of instruments available for the achievement of the CAP objectives.

The eradication of poverty in developing countries is included in the objectives of the Union's External Action. This objective should be respected in all the policies of the Union, according to the principle of policy coherence (Article III-193, para. 2 and III-218, para.1).

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Article III-125

To enable the objectives set out in Article III-123 to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

(a) a broad range of rural development measures aimed at promoting the adaptation and development of rural areas relating to agricultural structures,

processing and marketing, promotion, an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;

(b) ~~joint measures to promote consumption of certain products~~ agri-environment measures, specific environmental measures in Natura 2000 areas, targeted rural development, support for less favoured areas and forestry measures.

EXPLANATION FOR THE AMENDMENTS:

The wording in this article is proposed in order to ensure that the Article is consistent with the measures included in the 'Council Regulation 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations'.



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 4 AGRICULTURE AND FISHERIES

Article III-127

1. The Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by *adaptations to the policy in line with one of the forms of common organisation instruments* provided for in Article III-124(1), and for implementing the measures referred to in this Section. These proposals shall take account of the interdependence of the agricultural matters mentioned in this Section.
2. A European law or framework law shall establish ~~the common organisation of the market~~ *the instruments* provided for in Article III-124(1) and the other provisions necessary for the achievement of the objectives of the common agricultural policy and the common fisheries policy.
3. The Council of Ministers, on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

4. In accordance with [paragraph 2] the national organisations *instruments* may be replaced by the common organisation *instruments* provided for in Article III-124(1) if:
 - (a) ~~the common organisation~~ *instruments* offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
 - (b) such ~~an organisation~~ *instruments* ensures conditions for trade within the Union similar to those existing in a national market.
5. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Union.

EXPLANATION FOR THE AMENDMENTS:

See explanation to amendments to Article III-124, on page 23.

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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 5 ENVIRONMENT

Article III-130

1. European laws or framework laws shall establish what action is to be taken *adopt the measures necessary* in order to achieve the objectives referred to in Article III-129. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.
2. ~~By way of derogation from paragraph 1 and without prejudice to Article III-65, the Council of Ministers shall unanimously adopt European laws or framework laws establishing:~~
 - (a) ~~measures primarily of a fiscal nature;~~
 - (b) ~~measures affecting:~~
 - (i) ~~town and country planning;~~
 - (ii) ~~quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;~~
 - (iii) ~~land use, with the exception of waste management;~~
 - (c) ~~measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.~~

~~The Council of Ministers may unanimously adopt a European decision making the ordinary legislative pro-~~

~~cedure applicable to the matters referred to in the first subparagraph of this paragraph.~~

~~In all cases, the Council of Ministers shall act after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.~~

- ~~3.~~2. General action programmes which set out priority objectives to be attained shall be enacted by European laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or paragraph 2, according to the case.

- ~~4.~~3. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

- ~~5.~~4. Without prejudice to the principle that the polluter should pay, if a measure based on paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall provide in appropriate form for:

- (a) temporary derogations, and/or
- (b) financial support from the Cohesion Fund.

EXPLANATION FOR THE AMENDMENTS: The first amendment is to emphasise the direct responsibility of the EU for good environmental policies.

The second amendment relates to a core concern of the environmental organisations: exceptions to the usual rule of majority decision-making in the Council and to Parliament's participation in the legislative process (co-decision) undermine the potential for an effective performance of the EU. Maintaining, from the past, the unanimity requirement in the Council, combined with a weak role for the Parliament, means the EU cannot act as decisively as necessary. For us, the most urgent decision is to remove the first exception, on measures of a fiscal nature. We appreciate the initiative of the Convention to include a possibility for the Council to remove this particular exception by a (unanimous) decision of the Council, therefore without the need to change the Constitution. However we call upon the decisionmakers to take this necessary step now, without delay.

In particular, the derogation from majority voting for environmentally related fiscal matters has effectively stifled the use of these crucial measures. Decision makers have therefore been denied a major building block in the range of policy options available to achieve the objectives of this article. The effects of this derogation have also been felt in a range of other policy and legislative decisions already taken and will continue to be so if left unamended.



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 7 TRANSPORT

Article III-134

European laws or framework laws shall implement Article III-133, taking into account the distinctive features of transport transport *and the provisions of Article 3 and Article III-4*. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall contain:

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve *the environmental, social and economic performance of transport and* transport safety; *taking due account of the precautionary principle;*
- (d) framework guidelines for Trans-European Transport Networks;*
- (e) with particular reference to Article III-4, provisions for movement towards environmentally friendly transport modes and decoupling transport and economic growth;*
- (f) any other appropriate measure.*

EXPLANATION FOR THE AMENDMENTS:

The references to Article 3 and Article III-4 as well as the specific reference to environment, social and economic performance in part (c) makes the text consistent with the Union objective of sustainable development. Without this explicit reference, unnecessary and regrettable conflict with the objectives of the environment chapter will continue to occur.

At present, the framework guidelines for Trans-European Transport Networks are to be found under Articles III-144-145 – we propose deletion of the reference to transport in these Articles (see page 30).



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 7 TRANSPORT

Article III-137

Any measures adopted within the framework of the Constitution in respect of transport rates and conditions shall take account of the economic circumstances of carriers *and the requirements of Articles I-3 and III-4. The Community shall progressively internalise the external costs of transport to ensure that the polluter pays principle is fully respected.*

EXPLANATION FOR THE AMENDMENTS:

The additional text makes the Article consistent with the Union's objective of sustainable development and the environmental integration principle as well as the Union's stated commitment to the polluter pays principle. These explicit references are now necessary in view of past regrettable incompatibilities with the objectives laid out in the Environment Chapter and in the overall objective of the Union, which is balanced sustainable development.



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 7 TRANSPORT

Article III-139

1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by a European decision of the Commission.
2. The Commission, acting on its own initiative or on application by a Member State, shall examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of

such rates and conditions on competition between the different modes of transport on the other; *with a view to promoting a level playing field between all modes of transport.*

After consulting each Member State concerned, the Commission shall adopt the necessary European decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

EXPLANATION FOR THE AMENDMENTS:

The Community has frequently acknowledged the lack of a level playing field between transport modes and identified this as one of the key barriers to economically efficient transport in the European Union.



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Section 7 TRANSPORT

NEW ARTICLE

Article 143a

All infrastructure development which is developed by the Union or funded by Union sources shall undergo a thorough evaluation prior to commencement. This shall involve relevant stakeholders and shall incorporate the results of a Strategic Environmental Assessment as well as a thorough Cost Benefit Analysis.

EXPLANATION FOR THE AMENDMENTS:

This is a logical consequence of the commitment of the Union to work for sustainable development (Article 3).

This reference is necessary, and has regularly been shown to be necessary, in order to activate sustainable development aspirations laid out in Article 3.



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 8 TRANS EUROPEAN NETWORKS

Article III-144

1. To help achieve the objectives referred to in Articles III-14 and III-116 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks in the areas of ~~transport~~, telecommunications and energy infrastructures.
2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union. *In its actions, the Union shall respect the objectives and principles set out in Articles I-3 and III-4.*

Article III-145

1. In order to achieve the objectives referred to in Article III-144, the Union:
 - (a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;
 - (b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;
 - (c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in point (a), particularly through feasibility studies, loan guarantees or interest-rate subsidies; ~~the Union may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.~~The Union's activities shall take into account the potential economic, *environmental and social* viability of the projects. [.....]

EXPLANATION FOR THE AMENDMENTS:

We propose deletion of the reference to transport in the Section on Trans-European Networks (TENs). TENs on Transport (TEN-Ts) are undeniably transport-related and affect other transport policies. **Treating them under a separate heading would be to give them too much emphasis and risk prejudicing Community funding in favour of these projects at the expense of other transport projects which may be more appropriate from an economic, environmental and social perspective.** It would also risk failing to decouple transport growth and economic growth, a principle to which the Community has repeatedly committed itself. For this reason, TEN-Ts should be subsumed under Section 7 Transport.

Other amendments are aimed at ensuring coherence with sustainable development and environmental policy integration which has regularly been shown to be lacking. A case in point is the proposed extension of the Trans European Transport Network into accession countries as laid out in the Transport Infrastructure Needs Assessment (TINA).



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS Section 9 RESEARCH AND TECHNOLOGICAL DEVELOPMENT AND SPACE

Article III-146

1. The Union shall aim to strengthen the scientific and technological bases of the Union industry economy, in keeping with the objectives of sustainable development, and encourage it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of the Constitution.
2. For this purpose, the Union shall, throughout the Union, encourage undertakings, including small and

medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling researchers to cooperate freely across borders and undertakings to exploit the internal market potential, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

3. All the Union's activities under the Constitution in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with this Section.

EXPLANATION FOR THE AMENDMENTS:

- Union funding for research disproportionately favours non-sustainable technologies, particularly in the energy area. The proposed amendment would require that in its research priorities, just as in other areas of policy, the Union's actions should advance the objective of sustainable development through, for example, more intensive support for renewable energy technologies and not for the promotion of nuclear energy.
- The replacement of the word industry would therefore not encourage research to be biased towards one particular sector.



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CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS

Section 10 ENERGY

Article III-157

1. In establishing an internal market and with regard for the need to ~~preserve~~ protect and improve the environment, to minimise short term and long term risks to human health and to prevent dangerous anthropogenic interference with the climate system, Union policy on energy shall aim to:

- (a) ensure the undisturbed functioning of the a free energy market for all customers,
- (b) ensure security of energy supply from sustainable sources in the Union, and

(c) ~~promote~~ ensure continuous increase of energy efficiency and saving and the development of and support for new and sustainable renewable forms of energy, and,
(d) ensure internalisation of external costs in energy production, transmission, use and storage.

2. The measures necessary to achieve the objectives in paragraph 1 shall be enacted in European laws or framework laws. Such laws shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

~~Such laws or framework laws shall not affect a Member State's choice between different energy sources and the general structure of its energy supply, without prejudice to Article III-130(2)(c).~~

EXPLANATION FOR THE AMENDMENTS:

► Together with the improvement and the protection of the environment, any Union policy on energy must also be based on the need to minimise short term and long term risks to human health. Moreover, any Union action under this article must contribute to Article 2 (the objective) of the United Nations Framework Convention on Climate Change (UNFCCC, 1992), and the Kyoto Protocol and shall be consistent with their requirements. Article 2 of the UNFCCC: *"The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. (...)"*

► The Chapter on energy should integrate sustainable development as a primary goal. In line with the European Commission Communication on environmental integration within energy policy ('Cardiff follow-up: Report to the Vienna European Council, 11-12 December 1998 on environmental integration and sustainable development within the area of energy policy', 1998), any action of the Union on energy under this article should include clear objectives for ambitious policies on energy efficient and sustainable renewable energy. The energy article in the Constitution should give priority to the development of and support for sustainable renewable energy sources. The Chapter should ensure that all external costs associated with energy are fully internalised.

► Paragraph 2 constitutes a reference to Article III-130 para. 2.c, which we propose to delete (see page 26).



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Title III Internal Policies and Action

CHAPTER V. AREAS WHERE THE UNION MAY TAKE COORDINATING, SUPPLEMENTARY OR SUPPORTING ACTION

Section 2 INDUSTRY

Article III-180

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist *and that this industry contributes fully to the achievement of the objectives laid down in Article I-3, in particular with regards to sustainable development.*

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

(a) speeding up the adjustment of industry to structural changes;

(b) encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings;

(c) encouraging an environment favourable to cooperation between undertakings;

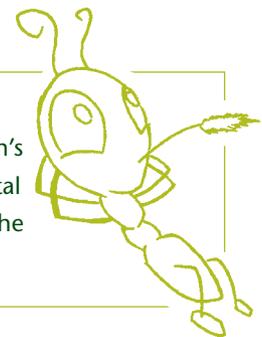
(d) fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

(e) taking all necessary measures to stimulate and guide the industrial sector of the Union to minimise its impact on the environment.

[.....]

EXPLANATION FOR THE AMENDMENTS:

The additional text makes the Article consistent with the Union's objective of sustainable development and the environmental integration principle as well as the Union's stated commitment to the polluter pays principle.



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Title V The Union's External Action

CHAPTER III. COMMON COMMERCIAL POLICY

Article III-216

By establishing a customs union between the Member States, the Union aims to contribute, in the common interest, to the harmonious development of world trade, ~~the progressive abolition of restrictions on international trade and to foreign direct investment, and the lowering of customs and other barriers~~ *where this contributes to the primary aims of sustainable development and poverty eradication.*



EXPLANATION FOR THE AMENDMENTS:

- ▶ Trade instruments present a tool for delivering specific policy outcomes. The Union's common commercial policy should function as an instrument for the achievement of sustainable development and poverty eradication, taking into account the principles in Article III-129, para. 2, such as the precautionary principle and the polluter pays principle. By so linking commercial and environmental policy, the integration requirements laid down in Article III-4 shall be given effect. The Common Commercial Policy (CCP) should avoid making specific policy recommendations which merely reflect the current economic vogue and which will inevitably be superseded. Instead it should focus on the desired outcomes of the specific trade policies, not the pursuit of the specific trade policies as an end in themselves.
- ▶ An expansion of Commission competence to cover the negotiation of foreign direct investment (FDI) represents a major increase in the Commission's powers. FDI has implications for many other areas of EU policy – including developmental, environmental, social – while the current text of the Convention places the negotiation of FDI in a purely commercial context and ignores the multifaceted, cross-cutting nature of the issue. We have strong reservations about the Commission being given sole competence to negotiate on investment, and have little confidence that this change will lead to the formulation of investment policy that supports (rather than actively undermines) sustainable development. The current EU decision-making system on trade policy is exercised in a non-transparent manner, without democratic legitimacy, and we believe that it is premature to extend the scope of this system to another major area of competence, while sustainable development concerns are still inadequately expressed in trade policy making. At the very least, any increase in the Commission's powers in this area has to be matched with a full increase in parliamentary oversight to ensure that sustainable development is at the heart of investment policy.

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Title V The Union's External Action

CHAPTER III. COMMON COMMERCIAL POLICY

Article III-217

1. The common commercial policy shall *promote sustainable development and* be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, ~~foreign direct investment~~; the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies *where these measures do not undermine sustainable development*. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action *and contribute to the primary aims of sustainable development and poverty eradication*.
2. European laws or framework laws shall establish the measures required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the relevant provisions of Article III-227 shall apply. The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations *after consulting the European Parliament. The Council and the European Parliament shall agree upon a time-limit for Parliament's opinion*. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council of Ministers to assist the Commission in this task and within the framework of such directives as the Council of Ministers may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

[.....]

EXPLANATION FOR THE AMENDMENTS:

The Union's common commercial policy should function as an instrument for the achievement of sustainable development, taking into account the principles in Article III-4 and Article III-129, para.2, such as the precautionary principle and the polluter pays principle. By so linking commercial and environmental policy, the integration requirements of Article III-4 and Article 3 shall be given effect.

An expansion of Commission competence to cover the negotiation of foreign direct investment (FDI) represents a major increase in the Commission's powers. See page 34 for more details.

In the absence of formal consultation of the European Parliament on EU trade policy, there has to date been almost no democratic control of the trade aspects of the Common Commercial Policy. The lack of democratic accountability is widely acknowledged. The revised articles on Common Commercial Policy and on the conclusion of International Agreements (Article III-227, see next page) provide the power of European Parliament assent on international trade agreements. In order for European Parliament consultation to be meaningful, consultation should start formally at the negotiating mandate stage. The European Parliament would then provide input into the Union's negotiating priorities. The Parliament and the Council should agree on the time-line for delivering the European Parliament opinion.



PART III.

| The Policies and Functioning of the Union |

Title V The Union's External Action

CHAPTER VI. INTERNATIONAL AGREEMENTS

Article III-227

1. Without prejudice to the specific provisions laid down in Article III-217, agreements between the Union and third States or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council of Ministers shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.
3. The Commission, or the Union Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council of Ministers, which, *after consultation of the European Parliament*, shall adopt a European decision authorising the opening of negotiations.
- [...]
7. The Council of Ministers shall adopt a European decision concluding the agreement on a proposal by the agreement negotiator.

Except where agreements relate exclusively to the common foreign and security policy, the Council of Ministers shall adopt the decision referred to in the first subparagraph after consulting the European Parliament. ~~The Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter.~~ *The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for Parliament's opinion.* In the absence of an opinion within that time-limit, the Council of Ministers may act.

The European Parliament's consent shall be required for:

- (a) association agreements;
- (b) Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (c) agreements establishing a specific institutional framework by organising cooperation procedures;
- (d) agreements with important budgetary implications for the Union;
- (e) agreements covering fields to which the legislative procedure applies.

The European Parliament and the Council of Ministers may, in an urgent situation, agree upon a time-limit for consent.

[...]

EXPLANATION FOR THE AMENDMENTS:

The revised articles provide the power of European Parliament assent on international trade agreements. In order for European Parliament consultation to be meaningful, consultation should start formally at the negotiating mandate stage. The European Parliament would then provide input into the Union's negotiating priorities. The Parliament and the Council should agree on the time-line for delivering the European Parliament opinion.



PART III.

| The Policies and Functioning of the Union |

Title VI The Functioning of the Union

CHAPTER I.

PROVISIONS GOVERNING THE INSTITUTIONS

Section 1. THE INSTITUTIONS

Subsection 5: THE EUROPEAN COURT OF JUSTICE

Article III-270

1. The Court of Justice shall review the legality of European laws and framework laws, of acts of the Council of Ministers, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies or agencies of the Union intended to produce legal effects vis-à-vis third parties.
2. It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council of Ministers or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.
3. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
4. Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures *has, or is likely to have, a substantial adverse effect on his interests.*
5. Acts setting up bodies and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies intended to produce legal effects.
6. The proceedings provided for in this Article shall be instituted within two months of the publication of the act, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

EXPLANATION FOR THE AMENDMENTS:

The amendment to this article will allow the Union to be compliant with the provisions of the Aarhus Convention. The Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters is the most important international legal agreement to date on participatory democracy. It has been signed by all 15 Member States and the European Community as well as by each of the candidate member states, except Turkey. In the meantime, 12 of these states have ratified the Convention, which came into force in 2001.

Access to the Court of Justice is an essential element of participatory democracy as it provides accountability to the citizens for decisions reached at the European level.

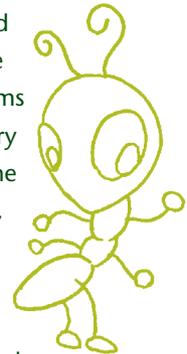


Protocol amending the Euratom Treaty

The Protocol amending the Euratom Treaty should be deleted. The IGC should either revise the Euratom Treaty to remove the bias towards promoting nuclear energy, or abolish it altogether and incorporate the Treaty's regulatory aspects in other legislation.

EXPLANATION:

The Euratom Treaty is designed to promote nuclear energy. Signed in 1957, it is clearly out of date, given the evidence which has since emerged about the environmental, safety and security problems associated with nuclear power. By treating the nuclear industry as a 'special case' it contradicts the aims behind reforming the internal market for electricity, distorting the single energy market, so disadvantaging other energy options, including renewables. It is also contrary to the provisions of the Article III-4 requiring the integration of a high level of environmental protection into all other Union policy areas. The Euratom Treaty is now the only remaining sector specific treaty.



The draft Protocol on Euratom put forward by the Convention only amends administrative aspects of the Treaty, to bring them into line with general institutional and financial changes proposed in the draft Constitution. It does not address the promotional aspects of the Euratom Treaty, and would allow it to continue giving special and exclusive help to nuclear energy. The promotional aspects of Euratom should be abandoned.

Euratom also regulates the nuclear industry. Specific functions in Euratom, such as those relating to public safety or nuclear safeguards, should be re-cast in some other way. These regulatory powers could, for example, be incorporated into the Constitution, with specific measures then enacted as directives (framework laws) as appropriate.

Inclusion of a “Protocol on Sustainable Development”

The text below is the one proposed by Commissioner Wallström in early May.

The Green Eight has included some *amendments* to improve the text.

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that the Union shall work for a Europe of sustainable development and that it shall contribute to the sustainable development of the earth, as stated in Article 3(2) and (4) respectively of the Constitution;

RESOLVED to establish the conditions for a proper achievement of these fundamental objectives of the Union, and to establish a system for monitoring the achievement of those objectives,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The Union contributes to the sustainable development of the earth.
2. Sustainable development is a fundamental principle and objective of the Union.

2.a. “The European Union shall have a Sustainable Development Strategy, which will be reviewed and updated periodically. This shall include concrete objectives, targets and timetables for the Union with regards to sustainable development.”

3. All institutions shall ensure that all major policy proposals and all legislative acts comply with sustainable development.

4. Before proposing any major policy initiatives or legislative acts, the Commission shall consult widely on the sustainability dimensions of its proposals, except in cases of particular urgency or confidentiality. The European Parliament and the Council shall ensure that a similar procedure is followed for any major amendments they propose.
5. To achieve the objective set out in paragraphs 1 and 2 all major policy proposals and all legislative acts of the Union, as well as major amendments thereto, shall:
 - (a) be preceded by a sustainability impact assessment covering their potential economic, social and environmental consequences; contain a detailed statement explaining the reasons on which it is based with a view to justifying its compliance with sustainable development; the reasons must be:
 - (b) substantiated by qualitative or, whenever possible, quantitative indicators;
 - (c) based upon the principle that their economic, social and environmental effects should be assessed in an *integrated* co-ordinated way and taken into account;
 - (d) incorporate an appropriate balance of short and long term impacts, taking into account the needs of future generations, *including the impact on the sustainable development of developing countries, according to the principle of policy coherence;*

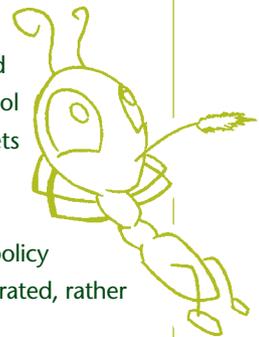
- (e) take account of how the action may promote and contribute to a sustainable development, i.e. the potential advantages and disadvantages of action or lack of action.
6. The European Parliament, the Council and the Commission may conclude an inter-institutional agreement to lay down the modalities of the impact assessment.
7. The European Parliament, the Council, the Commission or any Member State may obtain the opinion of the Court of Justice as to whether any major policy proposal or any legislative acts envisaged is compatible with the provisions of this Protocol.
8. The rules of procedure necessary for implementing paragraph 5 shall be adopted in accordance with the provisions of the Constitution on the adoption of the Rules of Procedure of the Court of Justice. During the procedure, any Institution or any Member State of the Union, as well as any concerned party, including relevant NGOs, may intervene on an « amicus curiae » basis.
9. The European Parliament, the Council and the Commission shall take account of the opinion of the Court of Justice.

EXPLANATION:

The Green 8 welcome the initiative of Commissioner Wallström for the addition of a Protocol on Sustainable Development to the Constitution of the European Union. We consider it complementary to the explicit reference to sustainable development as an objective of the Union (Article 3).

We also seek to strengthen its purpose of adding clarity to the objective of sustainable development:

- ▶ In a Protocol that seeks to identify the instruments through which the Union will achieve sustainable development, it is important that the Sustainable Development Strategy of the Union, as established at the European Council in Gothenburg (June 2001), is explicitly mentioned. Moreover, the Protocol must ensure that the Strategy will be periodically reviewed and updated so that its objectives, targets and timetables for the achievement of sustainable development are made more concrete.
- ▶ Although we welcome the reinforcement of the requirement of such an assessment for all the Union's policy initiatives and legislative acts, it is important that when these assessments are conducted, it is in an integrated, rather than a co-ordinated way, using as its basis the objectives of the Sustainable Development Strategy.
- ▶ The responsibility of the Union to the achievement of global sustainable development needs to be strengthened by requiring that the impact that Union's policies have on the sustainable development objectives of developing countries is also considered during their design and implementation. Such a requirement would reinforce the objectives of the Union's external action and the principle of policy coherence (Article III-193, para.3 and III-218, para.1).



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