The Environment in the Future European Constitution

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This article is based on a brochure the author wrote for the project "ECO-Futurum - Europe's Democratic Challenge. Actively Shaping European Environmental Policy" which was co-funded by the European Commission. In the framework of this project Ecologic published a number of policy papers and carried out a series of workshops throughout the enlarged European Union to discuss the impact of the future Constitution on European environmental policy. The character as a policy paper has been retained. Following an introduction (I.) and some general remarks on the character and structure of the new Treaty (II.), the contribution focuses on the articles of the Treaty directly dealing with the environment (III.), although the modifications of the institutional set-up of the Union and the hierarchy of norms might have an even greater impact on the future of environmental policy.

I. Introduction

The news that "Europe is giving itself a Constitution" made headline in June 2003 when the Convention on the Future of Europe adopted the "Draft Treaty establishing a Constitution for Europe". After 16 months of debate Chairman of the Convention Valéry Giscard d'Estaing presented the draft Treaty to the European Council as hosted by the Greek Presidency in Thessaloniki.

Reactions throughout Europe to the draft Constitution varied between confusion, hope, fear, outrage and boredom. Some considered it "a lamentable piece of work" while others welcomed it as a big step forward and an excellent draft. But both "Federalists" and "Euroskeptics" will certainly agree on one point: the Constitution is essential to the gradual development of European primary law and will be decisive for the future of the European Union.

The Thessaloniki Summit welcomed the draft as "a good basis for starting in the Inter-Governmental Conference". The Inter-Governmental Conference then debated the draft beginning in October 2003 with a meeting of the European leaders in Rome. In the following two months, the Ministers for Foreign Affairs and the Heads of State or Government met several times to hammer out a compromise on different controversial issues, in first line the question of the future arrangements for qualified majority voting in the Council and the composition of the European Commission. However, at the end of the year and the Italian Presidency no overall agreement on the Constitution was reached. This was mainly due to the fierce opposition from Spain and Poland against the reform of qualified majority voting in the Council. The arrangements proposed by the Convention would have meant a loss of influence for these two countries in comparison to the current situation under the Nice Treaty. Hence, the Irish Presidency had to pick up the issue and continue the consultations. On the basis of a report submitted by the Presidency in March 2004 finally Member States overcame their power struggles and passed the European Constitution at their June 2004 summit. In October this year they will gather again this time in Rome to sign the Treaty establishing a European Constitution in the same room where the founding Treaty of Rome was signed in 1957. The new Treaty is then due to go into effect
in 2006 under the condition that all 25 Member States are going to ratify it. Whether this will be the case is difficult to say as several Member States, including the UK, France and Poland plan to hold referendums on the constitution. The outcome of these referenda is, especially in the UK, rather uncertain.

II. Character and structure of the new Treaty

1. The work of the Convention

The European Council convened the Convention to address three major challenges it had raised in the Laeken Declaration on the Future of Europe; 
- the lack of proximity of European institutions to Europe's citizens and the desire of citizens for better democratic controls of the EU,
- the development of the Union as a stabilising factor and a model in a globalised world, and
- expectations held by Europe's citizens regarding matters of internal security, migration, social and environmental policy and their concern about increasing European bureaucracy and hyper-regulation.

To meet this challenge the Council identified four areas of action:
- competence
- instruments
- democracy
- constitution

On the basis of this mandate, the Convention's draft Constitution reformed the division of competencies between Member States and the European Union, simplified the instruments, and introduced measures to increase democracy, transparency and efficiency within the Union. The Constitution replaces the current Treaties, and merges the European Union and the European Community into a single legal entity, the future European Union.

That is not to say that Member States will lose their sovereignty or that the Constitution creates something resembling a European State. On the contrary: The draft overhauls the existing primary law and merges the different Treaties into a new basic European Treaty, creating reform in different fields. These reforms naturally call for the willingness of Member States to concede some elements which might touch their sovereignty, such as expansion of majority voting in the Council, or in the enhancement of a common foreign and security policy.

If ratified by the 25 Member States of the Union, the new European Constitution will determine the politics of the Union in the coming decades. For our well being and that of future generations it is crucial that the Constitution formulates a solid basis for environmental preservation. Conservation of our natural resources is the prerequisite for a sound and sustainable economic and social future in Europe.

The development of the basic Treaties to date has played a major role in European environmental policy. Although the Treaty of Rome (1957) made no mention of the environment or sustainable development, it impacted the environment through its influence on community economic politics. The "environmental" breakthrough came with the Single European Act in 1987, which introduced Title VII "Environment" — finally creating an explicit legal foundation for European environmental policy. It introduced basic environmental principles, such as the environmental policy integration principle. Meanwhile, the Treaties of Maastricht and Amsterdam brought significant improvements: inter alia the precautionary principle, and the requirement of "a high level of protection and improvement of the environment" in Article 2 EC Treaty.

2. The difference between the current European Treaties and the future Constitution

The Treaty has the basic characteristics of a constitution. The future Constitution will organise Community life by delivering the basic legal system. It defines goals and values underlying the Community. It erects, organises, and directs public power in order to attain and maintain these goals while