



Friends of the Earth Europe



GREENPEACE



To: The President of the Commission Mr. Romano Prodi
The Commission Members of Convention Mr. Michel Barnier
and Mr. Antonio Vitorino
The Commissioner for Environment Ms. Margot Wallström

Brussels, 28 January 2003

Concerning: the contribution of the Commission to the Constitution of the European Union

Dear Madam, Sirs,

On behalf of eight main environmental organisations in Europe I would like to give our input into the ongoing discussions inside the Commission on the content of the future Constitution of the European Union. We have read with concern the Working Document on such a Constitution that was published by the Commission services on the 4th December 2002. We understand its status, not being an official document from the College, and that further work is being done to formulate the official input from the Commission representatives in the Commission. However, we consider the Working Document as an important indication of the line of thinking within the Commission, and indeed, it might be influential in the further work.

As environmental organisations we do not see it as our task to comment on all elements in the discussion. We concentrate on environmental policies, environmental policy integration, sustainable development and environmental governance.

Attached you will find a more detailed response to the Working Paper. Below I am presenting you a short summary of our response:

- ***We are alarmed by the potential deterioration of the requirement of "environmental policy integration" in your proposals as compared with the current European Community Treaty.***
- ***We are concerned about the determination of environmental policy as "flanking policy". We fear this might lead to a serious weakening of the EU role in environmental protection.***
- ***We are also concerned about the disappearance of the objective of "improving the quality of the environment" in different places.
We insist there should be no weakening whatsoever of the sustainable development concept as compared with the current Community Treaty.***
- ***We applaud the attempt to reformulate the agriculture chapter but we are deeply disappointed that this appeared to be the only sectoral policy where integration of environmental, public health and nature interests appears.***
- ***Also in its external policies, the EU should take sustainable development as its main objective, and explicitly include the concept of solidarity in its policies. We are very much concerned with the disappearance of the "coherence" requirement for external policies.***
- ***We are positive about the Commission's intentions to make the decision-making procedures in the EU more consistent and transparent, strengthening the role of the European Parliament, but reject the too powerful role of the Commission in the proposals.***
- ***We are disappointed however, about the lack of clear proposals on "participatory democracy".***
- ***And we insist on the dismantling of the Euratom Treaty, and reduce the role of the EU related to nuclear energy to essential tasks related to health and environment.***

Yours sincerely

John Hontelez
Secretary General European Environmental Bureau

Also on behalf of:

Clairie Papazoglou
Acting Head European Community Office BirdLife International

Karla Schoeters
Director Climate Action Network Europe

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Beatrice Schell
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Directive WWF European Policy Office

ATTACHMENT: GREEN EIGHT RESPONSE TO WORKING DOCUMENT ON A EU TREATY TEXT by Commission Services, December 4, 2002

In April and October, we have produced input into the discussion in the Convention. The opinions that we presented are widely shared among our membership and constituency. They form a basis for the comments and questions that we are raising below. We would appreciate an early opportunity for a discussion on these matters.

In particular we would like to comment on six themes:

- The confirmation of Sustainable Development as an overarching objective for the Union.
- The fate of article 6 of the current Community Treaty, on environmental policy integration, as well as the integration of environmental consideration in specific policies
- The external dimension of the EU
- The objectives, principles and tools of environmental policies as such
- Governance, in particularly in relation to public participation
- Euratom

SUSTAINABLE DEVELOPMENT

The Working Document presents a formulation for the "Objectives" for the EU (page 6). We consider the formulation as a weakening of article 2 of the existing Community Treaty, as formulated by the Amsterdam Summit 6 years ago. We propose that the Convention should maintain the Amsterdam formulation. The Amsterdam formulation explicitly includes the "improvement of the quality of the environment" (a clear objective, in contradiction to "a high degree of protection") as well as essential elements of the social dimension of sustainable development, in particular "equality between men and women", "the raising of the standard of living and quality of life". These elements are absent in the new formulation.

We call upon the Commission to defend the content of the Amsterdam Treaty, rather than present a new text of a poorer quality. The Amsterdam text is a good basis, but could be improved by putting sustainable development even more centrally and making it an overarching objective, rather than introducing a non-defined concept of "the European model society".

Furthermore, sustainable development should come back in the introduction of the Title on Policies (pag. 48-49). It is worrying that in the latter part of the introduction, sustainable development seems to be narrowed down to flanking policies for the "free play of competition". In our view, sustainable development is a model for a society, and in fact the only model that has a future.

ENVIRONMENTAL POLICY INTEGRATION

Another important result of the Amsterdam Summit is Art. 6 in the Community Treaty. It makes the integration of environmental protection requirements obligatory in the definition and implementation of the Community policies and activities, in particular with a view to promoting sustainable development. The issue was not new, but for the first time it was put under "principles" thereby giving it a high political profile, and it was explicitly presented as a way to promote sustainable development.

In the Working Document environmental policy integration does not appear in the part outlining the Principles, but surfaces only in the third part, on Policies. The word "integration" is replaced by "incorporation", a change for which we fail to see the purpose (page 46). And the explicit link with sustainable development has disappeared.

In the chapters on specific policies, we see a positive attempt to rephrase, finally, in a substantial way the general and more specific objectives of EU's agricultural policy (page 7, 55-56). We appreciate the proposals made. We would like to see further changes. We think promoting "competitiveness of production" continues to present the EU agriculture sector as one with a major role in the global marketplace, which will continue to put pressure on the other functions of agriculture that have been put forward. Furthermore we would like to see specific mention of the preservation of biodiversity from agriculture. Finally, we would like to see specific promotion of "organic agriculture", as well as the reference to cross-compliance and environmental policy integration also in the part where measures are being listed.

Unfortunately, the agriculture chapter remains an exception. The transport chapter seems to be ignorant about the requirements for sustainable development enshrined in EU policy, paying no more than lip service to principles enshrined in the environment chapter of the Constitution (Art. 20). Instead, the chapter takes an outdated view of transport, with reference to environmentally friendly modes of transport immediately being put into the straitjacket of "lowest cost". All our specific concerns stem from these fundamental problems. For example, Title IV, Article III-27, contains a list of objectives to be laid down by law (sub-points a-h), but fails to refer to "provisions for ensuring environmentally sustainable transport;" and the section on the transport TENs (Title X, Articles III-54&55) does not take account of the need for thorough evaluation before construction, which would be in keeping with Article 20 of the Constitution.

The contributions on internal market again fail to make explicit reference to environment and sustainable development (page 7, 48-52). We want to repeat: sustainable development, environmental policy integration are not add on's or flanking policies. They need to be brought into the heart of the policies. When it comes to description of the "legislative action", "improvement of the environment" is absent, while using, the term "a high level of protection of the environment" only. A specific concern we have with the linking of "scientific fact" with policies of protection of health, security, the environment and consumers. Here is the place to introduce the precautionary principle instead.

Article 18 on Economic and Social Cohesion (page 8, 57-58) continues the imprecise language of the Treaty of European Union (Article 158) in speaking about the need 'to promote the harmonious development in the Union and to reduce disparities between

the levels of development of the various regions.' The revision of this chapter is long overdue. It needs to be brought into line with the preamble of the Council Regulation laying down general provisions on the structural funds (EC NO 1260/1999, 21 June 1999) which refers instead 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 and 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 chapter on "aid granted by states" (page 54) should include aid in the framework of environmental policy as compatible.

EXTERNAL DIMENSION

The current EU Treaty states the unequivocal objective for coherence of EU external relations, in particular related to security, economic and development issues (art. 3). And it insists that EC co-operation development objectives of the EU, in particular fighting poverty and sustainable economic and social development, is taken into account in other EC policies (Art. 178).

This coherence principle constitutes the principal and most important Treaty reference for ensuring that key EU competencies contribute to actions to secure the external sustainable development strategy of the EU.

Alarming, the Working Document does not use this coherence principle. Instead it introduces a "consistency" principle, for the conduct of an external relations policy. And this principle does not make clear how EU policies, either internal or external, will affect developing countries and will contribute to the fight against poverty and the promotion of sustainable development in the developing countries.

In article 1 of the Working Document the solidarity principle is expressed to promote progress in the world, but it is not coming back in the chapters of the external relations policy. This gravely undermines the future role of the EU in the world as a promoter of sustainable development and poverty eradication.

So Article III-94 should explicitly mention that the overall objective of "consistency" is to guarantee the economic, social and environmental sustainable development of developing countries in direct application of Art. 1 of the proposed text.

Furthermore, art. 26 concerning external relations should prioritise as a primary objective an external sustainable development strategy that directly supports the sustainable development strategy of Europe's developing partner countries, and specifically in the fight against poverty.

ENVIRONMENTAL POLICY

We welcome attention to the environment in the preamble. We encourage you to stick with that idea. It could become very helpful in promoting the upgrading of environment in the legally binding parts.

Environmental Policy is presented as flanking policy (page 8). Therewith it risks to remain on a lower level of priority, with more ambiguous roles and responsibilities for the EU Institutions, and more uncertainty for the Commission, than what is grouped as "principal policies". We call upon you to reconsider this. Environmental policy has become an essential part of the EU's role in the region and globally. It is an essential feature for an economy that also on the longer term can prosper. Environmental policy needs to have a prominent place between internal market, competition, cohesion and external policies.

The chapter on environmental policy (page 62-63) is another place where the explicit objective of "improving the quality of the environment" is missing. We call upon the Commission to re-introduce this concept here, following art. 174 of the existing Community Treaty.

Two other proposals we would like to put into question:

- under "common provisions" (page 22-23) a potentially far-reaching proposal is made to always look for the "least binding" action upon Member States. This opens the door widely for opposition against environmental legislation, insisting on voluntary agreements and other forms of soft policies. We think this proposal, which is not existing in the current Treaties, is to be withdrawn or limited to the current rule of working with Directives rather than Regulations where possible.
- The "environmental guarantee" survives in your proposal, and is reflected both in art. III-48 (page 63) and in more horizontal terms in art. III-12 (page 51-52). However, the Working Document does not include an important element of art. 95 of the existing Community Treaty, being that the Commission should consider whether national provisions going beyond common provisions need to lead to improvement of EU law

GOVERNANCE

As said, we appreciate the proposal to come to a consistent and system of decisionmaking, based on (qualified) majority vote in the Council and co-decision with the European Parliament (page 14 and 129-131). A consistent system will certainly help for the public to understand better how decisions are taken, the first step to possible more public support and active involvement. We are however strongly against the proposal to require unanimity in the Council for making amendments to Commission proposals and opinions. That would make it very difficult to share the responsibility for the end result between Commission and national governments, which could have negative impacts on the preparedness for proper implementation.

With regards to public participation, the Working Document is poor. The President of the Convention presented in his preliminary draft, the concept of a chapter on "participatory

democracy", clarifying that *"the Institutions are to ensure a high level of openness, permitting citizens' organisations of all kinds to play a full part in the Union's affairs"*.

We support this very much, and we would have liked to see a proposal for elaboration of this concept in the Working Document. We do appreciate the proposal on access to documents to broaden the existing art. 255 to all EU Institutions and bodies, and the introduction of an article on consultation (page 26). However, this last proposal is put in functional terms, not in terms of a right of the public.

The European Community is in the process of ratifying the "Aarhus Convention". This convention obliges the parties to grant the public certain rights concerning access to information, public participation and access to justice, in environmental matters. For that matter, in particular in environment related issues (which goes far beyond "environmental policies") rights should be granted, on consultation and on standing to the European Court of Justice. Both proposals are absent.

In that connection, we repeat our about the absence of the right to a clean environment in the Charter of Fundamental Rights, and we insist on an amendment if the Charter is integrated in the Constitution.

EURATOM

We disagree with the listing of "the peaceful use of atomic energy" as one of the principal policies of the EU. And we insist that the Euratom Treaty as it currently exists is to be abolished. We do not accept the proposal of the Commission for a special act on nuclear power in order to give it specific, favourable, treatment.

The proposed text in the Working Document retains most of the obsolete aims and objectives of the Euratom Treaty. Any new, revised or consolidated European agreement relating to the nuclear energy sector should be solely about safeguarding the health and safety of the public, the protection of the environment and the physical security of nuclear materials and any facilities to promote nuclear technology, such as Euratom loans, should be removed.

Any new, revised or consolidated European agreement relating to the energy sector should integrate the principle of sustainable development as a primary goal, be based on all energy options to be considered on the basis of full internalisation of associated costs, and therefore give special attention to energy efficiency and renewable energy sources.