

GREENING PART THREE OF THE PROPOSED DRAFT CONSTITUTION OF THE EUROPEAN UNION

A proposal prepared by the Green 8



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Introduction

Greening Part Three of the Proposed Draft Constitution of the European Union presents the proposals of the eight largest European environmental organisations, the Green Eight, in view of the need to make the Constitution of the European Union internally coherent. As environmental organisations we concentrate our comments on those items of the Constitution that fall under our environmental mandate.

The current revision of the European Treaties and the drafting of a Constitution for the European Union creates a unique opportunity to provide the EU with legal frameworks for truly innovative policies that would make the EU the world leader in putting sustainable development into practice.

While the general provisions included in Part One of the Constitutional Treaty are extremely important, the day-to-day practice of the EU will be determined by Part Three: The Policies and Functioning of the Union. A major weakness of the current draft Constitution is that it leaves the ageing EU policies untouched besides adapting the terminology to the other parts of the Constitution. Outdated policy texts, such as agriculture, transport and economic and social cohesion need to be revised thoroughly, in order to contribute rather than contradict sustainable development. New or significantly changed chapters such as energy and common commercial policy also need a thorough discussion to be made consistent with the objective of sustainable development.

It is imperative that the wording of relevant policies be updated so that it does not contradict but rather reinforce the Union's fundamental principles of environmental policy integration and policy coherence in support of the Union's objective of sustainable development. Not taking up this challenge will not be understood by civil society. We cannot stick with policy priorities that were agreed decades ago in a completely different context.

Access to justice, an essential element of participatory democracy and accountability of the European Institutions to the Union's citizens, has been an outstanding demand of environmental organisations. The European Convention, in its deliberation on the articles on the Democratic Life of the Union was expected to take bolder steps in bringing the Union closer to its citizens according to the Laeken mandate. By supporting an amendment to the articles on the European Court of Justice we reiterate the obligation, under the provisions of the Aarhus Convention, for the Union to grant civil society organisations access to the Court of Justice, in particular on issues that relate to environmental matters.

The paper is based on the most recent draft of Part III of the draft Constitution (CONV802/03 of 13 June 2003). It also includes Green 8 proposal for amendments to the Protocol Amending the Euratom Treaty and the draft Protocol on Sustainable Development.

OBJECTIVE OF SUSTAINABLE DEVELOPMENT

Objective of Sustainable Development	<p>Article I-3 The Union's objectives The Union shall work for a Europe of sustainable development 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. It shall promote scientific and technological advance.</p>
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PRINCIPLES OF ENVIRONMENTAL POLICY INTEGRATION AND POLICY COHERENCE

Principle of Environmental Policy Integration	<p>Article III-2 Clauses of General Application 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.</p>
Principle of Policy Coherence	<p>Article III-188.3 Provisions Having General Application The Union shall respect the principles and pursue the objectives listed above in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of other Union policies. The Union shall ensure consistency between the different areas of its external action and between these and its internal policies. The Council and the Commission, assisted to that end by the Union's Minister for Foreign Affairs, shall be responsible for ensuring this consistency and shall cooperate to that effect.</p> <p>Article III-213 par.2 Development Cooperation Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries</p>

A STRENGTHENED ROLE FOR THE EUROPEAN PARLIAMENT

The draft Constitution, as has been revised by the Convention over the past months, provides a greater role for the European Parliament in the decision-making process of several important policy areas. This paper highlights few of the policy areas, such as the internal market and the environmental fiscal provisions, in which the Convention did not strengthen the role for the European Parliament.

In those policy areas that have an impact on the quality of the environment and the achievement of the objective of sustainable development we support an extension of the co-decision powers of the European Parliament.

TITLE III POLICIES AND INTERNAL ACTION
CHAPTER I. INTERNAL MARKET
Section 3 FREE MOVEMENT OF GOODS

Subsection 1: CUSTOMS UNION

Article III-37 (ex Article 27)

In carrying out the tasks entrusted to it under [this ex-chapter] 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;
- ~~(c)~~ **(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.

Explanatory note:

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.

Subsection 3: PROHIBITION OF QUANTITATIVE RESTRICTIONS

Article III-40 (ex Article 30)

Article III-39 (ex 28) 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.

Explanatory note:

In line with the jurisprudence of the European Court of Justice in the Danish bottle case, environmental protection should be explicitly included in the text of [Article 30/Article III-40]. 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.

CHAPTER I. INTERNAL MARKET
Section 5 RULES ON COMPETITION

Subsection 1: Rules applying to undertakings

Article III-47 (ex Article 81)

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:

- (a) any agreement or category of agreements between undertakings;
- (b) any decision or category of decisions by associations of undertakings;
- (c) 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:
- (d) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- ~~(e) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.~~

Explanatory note:

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

Subsection 2: Aids granted by Member States

Article III-53 (ex Article 87)

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, in so far 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, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.

(d) aid to promote activities for the protection of the environment, including to accelerate the introduction and use of environmentally sound products and services.

Explanatory Note:

1. This amendment would expressly authorise the Commission to approve of programmes for state aid serving environmental protection interests.

2. This amendment is not intended to create a derogation from the application of the polluter pays principle established under [Article 174/Article III-124]. 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.

Chapter I. INTERNAL MARKET
Section 6 FISCAL PROVISIONS

Article III-56 (ex Article 90)

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

Explanatory Note:

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

Article III-62 (ex Article 95)

1. By way of derogation from [Article III-61 (ex 94)] and save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in [Article III-11 (ex 14)]. A European law or framework law 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. It shall be adopted after consulting the Economic and Social Committee.

2. Paragraph 1 shall not apply to fiscal provisions, **except when having environmental objectives,** 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 a base ~~the a-highest~~ level of protection **prevailing in any Member State and taking 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 will also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by means of European law or framework law or a Commission regulation, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in [Article III-40 (ex 30)], 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 or framework law or a Commission regulation, 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 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.

Explanatory note:

1. The requirement of unanimity prevented the Union from agreement on an energy/CO2 tax. The proposed amendments to paragraph 2 would make it possible to adopt tax measures for environmental purposes in accordance with the procedure specified in [Article 95(1)/Article III-62(1)], and the Union legislative procedure, namely qualified majority voting and co-decision.

2. The amendment to [Article 95(3)/Article III-62(3)] is intended to encourage harmonisation upward, rather than the level of the lowest common denominator. The proposed basis for Commission proposals should be seen as a minimum starting point, since in some cases, the highest level of protection prevailing in any member state may fall short of what is technically feasible and environmentally necessary. Where necessary or appropriate, a system of temporary derogations and financial assistance could be established under this Article.

3. See that in par.3 "scientific facts" is used, where in the par. 5 "scientific evidence".

CHAPTER II. ECONOMIC AND MONETARY POLICIES

Section 1 ECONOMIC POLICY

Article III-67 (ex Article 98)

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 coherence principles as laid down in [Article III-2 and III-188.3]** and in the context of the broad guidelines referred to in [Article III-68(2) (ex99(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 [ex Article 4].

Explanatory note:

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

CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS

Section 3 ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article III-111 (ex Article 158)

In order to promote its overall harmonious, **balanced and sustainable** development, the Union shall develop and pursue its actions 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-31]**.

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.**

Explanatory Note:

1. 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).
2. 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.
3. 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.
4. In Cardiff in June 1998 the European Council called upon the first round of Councils (Transport, Energy, and Agriculture) to each develop environmental integration strategies.
5. [Article 154/Article III-139] on Trans-European networks refers to the objectives in [Article 158/Article III-111]. By amending [Article 158/Article III-111], the requirement of compatibility with the objectives of environmental protection and improvement is also made applicable to the Trans-European networks articles.
6. The EU is a signatory to the 1992 United Nations "Rio Declaration" which made a commitment to draw up strategies for sustainable development in time for the 2002 World Summit on Sustainable Development.

Article III-112 (ex Article 159)

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-111 (ex 158)] **and the objectives and principles set out in [Article 124 (ex 174)] and the Union's sustainable development objectives**. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account those the 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, the Committee of the Regions and the Economic and Social Committee every three years on the progress made towards achieving economic **growth**, social ~~and~~ cohesion **and 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.

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

Explanatory note:

1. **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 158/Article III-111] and the objectives and principles of [Article 174/Article III-124]. This is especially important given the well-documented damage to nature and natural resources often contributed to by Structural Funds.**

Article 113 (ex Article 160)

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**.

Explanatory note:

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

Article III-118 (ex Article 33)

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 protect and improve the quality of the environment as well as to conserve the diversity of cultural landscapes**;
 - ~~(e) to stabilise markets;~~
 - (d) to assure the availability of supplies **high quality foodstuff 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.**

Explanatory note:

1. The objectives of the Common Agricultural Policy (CAP) are set in [Article 33/Article III-118]. 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 6/Article III-2];
 - 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. The sustainable development with the primary aim to eradicate 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 all the policies of the Union according to the principle of policy coherence [Article 178/Article III-188.3 and Article 213.1].

Article III-119 (ex Article 34)

1. In order to attain the objectives set out in [Article 118 (ex 33)], ~~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 measures required to attain the objectives set out in [Article 118 (ex 33)], 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 118 (ex 33)] 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.

Explanatory note:

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

2. 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.

3. 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 178/Article III-188.2 and Article III-213.1].

Article 120 (ex Article 35)

To enable the objectives set out in [Article 118 (ex 33)] 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.**

Explanatory note:

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’.

Article III-122 (ex Article 37)

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-199 (ex 34(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-199 (ex 34(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, acting on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitation 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-199 (ex 34(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.

Explanatory note:

CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS

Section 5 ENVIRONMENT

Article III-125 (ex Article 175)

1. A European law or framework law shall ~~establish what action is to be taken~~ **adopt the measures necessary in order** to achieve the objectives referred to in [ex Article 174]. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

2. ~~By way of derogation from paragraph 1 and without prejudice to [ex Article 95] the Council shall adopt unanimously 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.~~

~~A European law of the Council may by unanimity define those matters referred to in this paragraph on which it shall act by a qualified majority.~~

~~In all cases, the Council shall act after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee. **(delete this paragraph)**~~

3. General action programmes which set out priority objectives to be attained shall be enacted by a European law or framework law. It shall be adopted after consulting 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. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of 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.

Explanatory note:

1. [Article 175/Article III-125]: **The proposed amendments would require all environmental measures, including those of fiscal nature, to be adopted by qualified majority voting in the Council pursuant to the co-decisions procedure with the Parliament.**

CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS

Section 7 TRANSPORT

Article III-129 (ex Article 71)

1. A European law or framework law shall implement [Article III-128 (ex 70)], taking into account the distinctive features of transport **and the provisions of [Article I-3] and [Article III-2]**. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

The European law or framework law 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;**
- (d) framework guidelines for Trans-European Transport Networks;**
- ~~(e)~~ any other appropriate measure.

Explanatory note:

1. **The references to [Article I-3] and [Article III-2] as well as the specific reference to environment, social and economic performance in [Article 71(c)/Article III-129(c)] makes the text consistent with the Union objective of sustainable development.**
2. **Presently the framework guidelines for Trans-European Transport Networks are subsumed under [Articles 154-156/Articles III-139-140/ Article 156 has been deleted].**

Article III-132 (ex Article 74)

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 sustainable development goals set out in the Constitution [Article I-3] and the principle of environmental policy integration [Article III-2]. The Community shall progressively internalise the external costs of transport to ensure that the polluter pays principle is fully respected.**

Explanatory note:

1. **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.**

Article III-134 (ex Article 76)

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 shall, acting on its own initiative or on application by a Member State, 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 of 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.

Explanatory note:

1. **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.**

NEW ARTICLE

Article 138a

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

Explanatory note:

This is a logical consequence of the Union of the commitment of the Union to work for sustainable development [Article I-3].

~~Section 8 TRANS EUROPEAN NETWORKS~~ Delete Section and move [Articles III-139-III-140] to Section 7 TRANSPORT.

Explanatory note:

1. Trans-European Transport Networks may be large-scale, expensive projects, and they may be intended to enhance cohesion to a greater extent than smaller-scale transport policies. Nevertheless, 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].

Article III-139 (ex Article 154)

1. To help achieve the objectives referred to in [Articles III-11 and III- 111 (ex 14 and 158)] 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 **provide access to and from** ~~link~~ island, landlocked and peripheral regions with the central regions of the Union.

3. Notwithstanding the goals set out in paragraph 2, the Union shall respect the objectives and principles set out in Article I-3 and III-2 of the Constitution and [Article 81/Article III-47].

Explanatory note:

1. ‘European networks’ is a more appropriate term than ‘Trans-European Networks’. This is because European infrastructure networks should help attain cohesion objectives of the Community; and discussing trans-European networks places the focus on trans-national transport corridors, which although providing links between countries does not particularly aid European integration. This makes the shift from corridors to networks and from mobility to local accessibility and improved communication; closer to the stated goal of developing European cohesion.

2. The wording of [Article 154.2/Clause 106.2] becomes more comprehensive and provides better for real integration rather than promoting transport hubs in central regions.

Article III-140 (ex Article 155)

1. In order to achieve the objectives referred to in [Article III-139 (ex 154)], 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, **social and environmental** viability of the projects.

Explanatory note:

The additional text makes the Article consistent with the Union's objective of sustainable development.

CHAPTER III. POLICIES IN OTHER SPECIFIC AREAS

Section 9 RESEARCH AND TECHNOLOGICAL DEVELOPMENT AND SPACE

Article III-141 (ex Article 163)

1. The Union shall have the objective of strengthening the scientific and technological bases of Union ~~economy industry~~ **in keeping with the objectives of sustainable development**, and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other chapters of the Constitution.

Explanatory note:

1. **Union funding for research disproportionately favours non-sustainable technologies, particularly in the energy area.**
2. **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.**
3. **The replacement of the word industry is because research should not be encouraged only for one particular sector.**

CHAPTER III POLICIES IN OTHER SPECIFIC AREAS

Section 10 ENERGY

Article III-152 (new)

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 a European law or framework law. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

~~The law or framework law shall not affect a Member State's choice between different energy sources and the general structure of its energy supply. Such measures shall be adopted in accordance with Article [III 125(2)(c) (ex 175(2)(c))].~~

Explanatory note:

2. 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. (...)”*

3. 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.

4. The Chapter should ensure that all external costs associated with energy are fully internalised.

5. Paragraph 2 of Article III-152.2 constitutes a duplication of the [ex Article 175(2)(c)/Article 125(2)(c)] and therefore can be deleted.

6. The institutions of the Union must ensure maximum transparency on such policy, and ensure early stakeholder participation in energy decisions.

**CHAPTER 5 AREAS IN WHICH THE UNION MAY TAKE COORDINATING,
SUPPLEMENTARY OF SUPPORTING ACTION
Section 2 INDUSTRY**

Article 175 (ex Article 157)

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.**

Explanatory note:

**TITLE V THE UNION'S EXTERNAL ACTION
CHAPTER III. COMMON COMMERCIAL POLICY**

Article III-211 (ex Article 23)

By establishing a customs union between themselves Member States aim 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.**

Explanatory note:

1. 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 174.2] such as the precautionary principle and the polluter pays principle. By so linking commercial and environmental policy, the integration requirements of present [Article 174.2] and [Article III-2] shall be given effect. The 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.

2. 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.

Article III-212 (ex Article 24):

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, as set out in Article 1 of this Title **and contribute to the primary aims of sustainable development and poverty eradication**.

2. A European law or framework 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, the relevant provisions of [Article III-222 (ex 33)] of this Title shall apply. The Commission shall make recommendations to the Council, 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 to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and the European Parliament on the progress of negotiations.

Explanatory note:

1. 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-2 and [Article 174.2/Article III-124.2] such as the precautionary principle and the polluter pays principle. By so linking commercial and environmental policy, the integration requirements of Article III-2 and Article I-3 shall be given effect.

2. An expansion of Commission competence to cover the negotiation of foreign direct investment (FDI) represents a major increase in the Commission's powers. See above note.

3. 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-222/ex Article 33] provide the power of European Parliament assent on international trade agreements. In order 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.

CHAPTER VI. INTERNATIONAL AGREEMENTS

Article III-222 (ex Article 33)

1. Agreements between the Union and third states or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.
3. The Commission, or the Union's Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council, which, **after consultation of the European Parliament**, shall authorise the opening of negotiations.
4. In connection with the decision authorising negotiations, depending on the subject of the future agreement, the Council shall nominate the negotiator or leader of the Union's negotiating team.
5. The Council may address negotiating directives to the negotiator of the agreement and may designate a special committee in consultation with which the negotiations must be held.
6. On a proposal from the agreement negotiator, the Council shall decide on the signing and, if necessary, provisional application of agreements before the entry into force.
7. The Council shall conclude agreements on the proposal of the agreement negotiator. Except where agreements relate exclusively to the common foreign and security policy, the Council shall not conclude any agreement until the European Parliament has been consulted. ~~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 may act. The European Parliament's assent shall be required for association agreements, for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and for agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the Union and agreements covering fields to which the legislative procedure applies. The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the

Explanatory note:

The revised articles provide the power of European Parliament assent on international trade agreements. In order 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.

TITLE VI THE FUNCTIONING OF THE UNION
CHAPTER I. PROVISIONS GOVERNING THE INSTITUTIONS
Section 13 THE INSTITUTIONS

Subsection 5: THE EUROPEAN COURT OF JUSTICE

Article III-266: The Court of Justice

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.**

Explanatory Note:

- 1. We fully support the amendment presented by Mr. Andrew Duff and Lord MacLennan (contribution nr.335, CONV 758/03). The proposal seeks to facilitate access to justice by amending Article III-266.4. We consider that the amendment provides clarity while being less restrictive than the proposal of Praesidium, which is also inaccessible to the layman.**
- 2. The amendment to this article will allow the Union to be compliant with the provision 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, 11 of these states have ratified the Convention, which entered into force in 2001.**
- 3. Access to the Court of Justice is an essential element of participatory democracy as it provides for accountability of decisions reached at the European level to the citizens.**

PROTOCOL AMENDING THE EURATOM TREATY

The Green 8 find unacceptable the proposal of the Praesidium, to annex the Treaty establishing the European Atomic Energy Community (EURATOM), virtually unchanged, to the Constitution of the European Union.

Instead, we support the contribution of Ms. Marie Nagy, Ms. Renée Wagner and Mr. Neil MacCormick, alternate Members of the Convention, (CONV 563/03) which endorses a recommendation of the European Parliament to phase out the Euratom Treaty after 50 years in operation (2007). Such a process would mirror the lapse of the European Coal and Steel Treaty (ECST) in July 2002, exactly fifty years after it was first signed.

Explanatory Note:

The Euratom Treaty, signed in 1957, is clearly biased, out of date and undemocratic. It is contrary to the aims for reforming the internal market for electricity, and contrary to the provisions of the Article III-2 requiring the integration of a high level of environmental protection into all other Union policy areas. The Euratom Treaty now is the only remaining sector specific treaty.

Setting the date of phase of the Euratom Treaty at 2007 allows the current Euratom research programme (FP6) to run its course, completing as planned in 2007. After this, aspects of nuclear research could continue under the general EU research programme.

General powers with respect to public safety and material safeguards could be incorporated into the constitutional treaty, with specific measures then enacted as directives (framework laws) as appropriate.

DRAFT PROTOCOL ON SUSTAINABLE DEVELOPMENT

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.

3. **Additional paragraph: "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."**

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

5. 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.

6. 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 ;
- b) 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 substantiated by qualitative or, whenever possible, quantitative indicators ;
- c) be 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.

7. The European Parliament, the Council and the Commission may conclude an inter-institutional agreement to lay down the modalities of the impact assessment.

8. 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.

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.

10. The European Parliament, the Council and the Commission shall take account of the opinion of the Court of Justice.

Explanatory note:

1. The Green 8 welcome the initiative of Commission Wallstöm for the addition of a Protocol on Sustainable Development to the Constitution of the European Union. We consider it, however, complementary to the explicit reference to sustainable development as an objective of the Union [Article I-3].

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

3. 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 Göthenburg (June 2001), is explicitly mentioned. Moreover, the Protocol must ensure that Strategy will be periodically reviewed and updated so that its objectives, targets and timetables for achievement of sustainable development are made more concrete.

4. Although we welcome the reinforcement of the requirement of such an assessment for all Union's policy initiatives and legislative acts, it is important that when these assessments are conducted in an integrated, rather than a co-ordinated way, using as its basis the objectives of the Sustainable Development Strategy.

5. 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-188.3 and III-213.1].