

The EU's new Constitution: Assessing the Environmental Perspective

November 2004



Evaluation by the “Green Nine” of the content of the EU Constitution as compared with the ambitions these organisations had formulated at the start of the work of the European Convention.



The nine organisations include:

Birdlife International, Climate Action Network Europe, European Environmental Bureau, European Federation for Transport and Environment, European Public Health Alliance Environmental Network, Friends of the Nature International, Friends of the Earth Europe, Greenpeace, WWF.



Summary analysis

The EU's new Constitution retains the key provisions on environment, public health and sustainable development found in the existing EU Treaty. This is positive.

At the same time, the new Constitution also retains many of the Treaty's outdated provisions in key EU policy areas such as agriculture and transport. This is unfortunate.

The new Constitution does make progress in terms of participatory democracy, transparency and democratic control of decisionmaking.



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Set out below is a comparison of our demands and the results.



1. Retain environmental and sustainable development objectives and the integration principle.

This demand refers mainly to the objectives of environmental protection and sustainable development (I-3) and to the integration principle (III-4). The statement of the objectives is, if anything, somewhat stronger than in the existing Treaty. The integration principle has been moved but the move is logical, placing the principle prominently at the beginning of the section concerning competences and policies. The move is unlikely to reduce the strength of the principle. In fact, the principle now applies to all EU policies, including those previously covered by the second and third pillars of the Treaty.

The principles of environmental policy (polluter pays, precautionary Principle, etc.) have likewise been retained unchanged.

Conclusion: positive

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Europe's voice for sustainable transport



2. Amend the outdated provisions of key policy areas.

This demand was aimed in particular at the agricultural and transport policies as well as a number of other policy areas identified in the Green-8's document '*Greening Part III*' of May 2003. This demand was not met. This is unfortunate but not insurmountable. It is clear that neither the Convention nor the IGC dealt with Part III on policies in any substantive way. The new Constitution does however re-affirm the key overarching objectives of sustainable development and environmental policy integration (see above, point 1). These general provisions should govern the EU's activities in the particular policy areas of Part III. Moreover, as the measures to reform the CAP and CFP make clear, the Commission does not feel reform is restricted by these outdated provisions. Finally, in one important policy area, energy, a new chapter has been added with a clear statement of environmental objectives. (This is less true of the new provisions on tourism, however.)

Conclusion: unfortunate lack of progress partly compensated for by the re-affirmation of the general provisions and evident recognition of environmental objectives in the new chapter on energy policy.

3. Participatory democracy and transparency

The new Constitution introduces the principle of participatory democracy into the EU's primary legal text. Despite the general terms in which it is stated, the principle forms a solid basis for the right to be heard and the right to information.

Another innovation is the citizen initiative right whereby a million citizens can invite the Commission to propose legislative action.

Access to information obligations have now been extended to all EU bodies, whereas previously only the Council, Commission and Parliament were covered.

Transparency of decision-making is improved by requiring the Council to meet and vote in public on all legislative matters.

Conclusion: positive.

4. Co-decision powers of the European Parliament

Parliament's co-decision powers have been extended in a number of areas (CAP/CFP generally, research, trade), although many of these are not directly related to environmental policy. Significant is Parliament's increased control over the entire EU budget, including agricultural spending. Parliament's say over the multi-annual budget appears to have been somewhat weakened, however.

Conclusion: positive.

5. Eliminate unanimity requirement from environmental decision-making

This demand concerns primarily the unanimity requirement for the adoption of fiscal instruments for environmental purposes. The new Constitution leaves this requirement in place. The Convention's proposal for a limited form of majority voting on fiscal measures was dropped.

Whether the so-called passarelle clause could be effective to break the unanimity blockade is unclear.

Conclusion: negative.

6. Access to justice

For the first time for environmental cases, the door to the European Court of Justice appears to have opened a little. The scope of the new provision remains limited and uncertain. Nevertheless, a change has been made and it would be contrary to doctrines of legal interpretation for the Court to ignore the change altogether.

Conclusion: positive, slightly.

7. Charter of Fundamental Rights/ Legal personality of EU

The Charter includes a provision on environmental principles which is not phrased in terms of right. The Charter is fully taken up in the new Constitution and will have binding effect. It is unclear whether the Court would rely on the Charter in environmental cases.

It is worth noting that the new Constitution establishes legal personality for the Union which will make it possible for the EU to accede to the European Convention on Human Rights. The European Court on Human Rights has established jurisprudence on environmental rights which may be of use.

Conclusion: neutral/positive.

8. Subsidiarity and the role of national parliaments

The new Constitution provides national parliaments with an extra measure of control over Commission initiatives. National parliaments will henceforth have the opportunity to object to new proposals on the grounds that they violate the principle of subsidiarity. It remains to be seen how national parliaments make use of this power and whether

environmental measures will be targeted. It should be recalled that the subsidiarity clause (just like the integration principle) originated in the Treaty's environmental article and that more than any other policy area environmental proposals have always had to face subsidiarity scrutiny.

Conclusion: neutral.

9. Euratom

The Euratom Community will maintain a separate legal personality from the EU's new legal personality. The Euratom treaty will remain a separate treaty from the Constitutional treaty, although linked by a new protocol attached to the new treaty. The two organisations (new-EU and Euratom) will however continue to share the same institutions and membership, and will also now have a combined single budget. Five states (Austria, Germany, Ireland, Hungary and Sweden) formally stated that they see Euratom as outdated and in need of review 'as soon as possible'. There is now a greater possibility for Member States to leave Euratom while remaining a member of the EU, as the scrapping of the so-called pillar system means Euratom will be no longer a constituent part of the EU but rather it will exist alongside it.

The separation of Euratom's legal personality and treaty from the rest of the EU in principle is viewed as a positive outcome, as the new Constitutional text has not been 'contaminated' by the outdated and inappropriate pro-nuclear text of Euratom. Such a structural weakening of Euratom leaves the way open for a dedicated review conference, which would either reform or repeal Euratom altogether.

However in practice, as the Euratom organisation and treaty will stay in force, it remains possible to see the EAEC and EU as effectively just one organisation, operating on the basis of a primary law that comprises the sum of the two treaties that remain in force. Moreover, the new and old treaties contradict each other, for example in relation to nuclear state aids and the internal market for energy.

Conclusion: The IGC outcomes regarding the European Atomic Energy Community (EAEC, Euratom) were mixed; the overall situation is unsatisfactory; a specific Euratom review conference is still necessary.

10. The role of the European Economic and Social Committee

We made the demand that Ecosoc be given no additional role as representative of civil society. The provisions on Ecosoc have indeed not been changed.

Conclusion: positive.

Overall conclusion:

The time and attention given to environmental issues in the Convention and IGC was negligible. The focus lay elsewhere. Nevertheless, we succeeded in our primary objective of preserving the strong provisions of the existing Treaty on environment and sustainable development. Beyond that little real progress in the environmental area has been made. Nevertheless, some steps forward have been taken in the area of legal rights, participatory democracy, transparency and the powers of Parliament, all of which can have benefits for environmental protection and sustainable development.