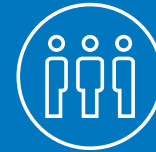


In December 2003, Heads of States and Governments will most likely come to a decision on a Constitution for Europe. A modern Constitution able to stand the test of time must provide a reliable basis for the protection as well as the rational use of the natural foundations of human life. By analysing the draft Constitution and by assessing its impacts on the environment, this Ecologic Brief aims to assist in raising the profile of the environment within the constitutional discussion. It clarifies the issues at stake, assesses environmental impacts and sketches options and solutions for change. Thus, Ecologic continues the tradition of "Greening the Treaties" and hopes to contribute to guiding the constitutional development in the right direction.



Ecologic Briefs A sustainable Constitution for Europe

Democracy, Efficiency, Transparency

The European Convention's Proposals
for Institutional Reform from
an Environmental Perspective

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Preface: The Convention, the IGC 2004 and the new, sustainable and equitable Europe

A European Constitution – only a few years ago, this subject was taboo to many. But now, the Convention for the Future of Europe has drafted a Constitutional Treaty that is to be agreed and concluded by an Intergovernmental Conference (IGC). The parliaments and the citizens of the Member States will then decide on the Constitution's entry into force. In order to formulate the Constitution, the Convention consolidated and restructured the different European Treaties.

It is an unusual and at the same time historic step in the great civilisatory project of securing, for the long term, peace, rights and freedoms, and the integration of Europe. Will the IGC based on the work of the Convention succeed in creating a constitution which can stand for a long time with only minor changes and additions? Or is Europe to continue, as it has hitherto done, changing its primary law every few years? The dice have not yet been thrown. The IGC now has the possibilities to remedy the deficiencies in the Constitutional Treaty drafted by the Convention for the Future of Europe.

A Constitution able to stand the test of time must also provide a reliable basis for the protection as well as the rational and considerate use of the natural foundations of human life. Because of the EU's importance for global environmental policies, the respective articles on environmental protection, nature conservation, and the rational use of natural resources must be drafted with a broad view. In this respect, the draft Constitutional Treaty is now not as bad as had to be feared when first drafted. Progress, in the sense of achieving equal standing for environmental policy above all with economic policy but also with social policies and redistribution, has not been achieved. The three dimensions of sustainable development are thus still far from an equilibrium.

This Ecologic Brief addresses a subject of particular importance in the current process of constitution development. It clarifies the issues and sketches solutions to be discussed and evaluated. The Brief is part of a series of contributions to the European constitutional debates, and Ecologic thus continues its tradition of work on "Greening the Treaties". With the EcoFuturum project and in dialogue with citizens, Ecologic assists in the creation of the new Constitution of Europe. We have the support of the General Secretariat of the European Commission and we act in partnership with other institutes in five Member States and three Accession States. I hope that the discussions thus initiated have an impact in that they help to guide the constitutional development in the right direction.

R. Andreas Kraemer, Director of Ecologic Institute, Berlin, September 2003




Introduction

Discussions about the potential implications of the European Convention's draft Constitutional Treaty for EU environmental policy usually focus on the policy specific provisions of the proposals. The policy specific provisions either explicitly address the environment or they deal with other policies, for example agricultural policy, which have important environmental repercussions. This focus of discussions is hardly surprising because it was primarily with respect to the policy specific provisions that environmental arguments stood the best chance of being accommodated by the drafters of the Constitution. Non-environmental considerations, for example the balance of power between smaller and larger Member States, inevitably dominated the debate on the more general institutional provisions of the Constitution. However, EU environmental policy will be shaped by both the Constitution's policy specific and general institutional provisions. For example, in the past the European Parliament has often been in favour of tougher environmental standards than either the European Commission or the Council. The degree to which the European Parliament was involved in policy-making therefore affected the quality of EU environmental legislation. The following discussion identifies several important implications for EU environmental policy of the general institutional changes which would follow from the adoption of the European Convention's draft Constitutional Treaty.

The Mandate for Institutional Reform

The Laeken Declaration, which constitutes the mandate for the European Convention, calls for institutional reforms to improve the EU's efficiency, democratic accountability and transparency. These aims are closely linked to the dual challenge of, on the one hand, EU-enlargement and, on the other, the deepening of European integration. The 1992 Maastricht Treaty and the plans for monetary union made the broader public aware of the deepening of the integration process. This has significantly intensified calls for improved democratic accountability and transparency at EU level. By contrast, the issue of decision-making efficiency has been most intensively debated in the context of EU enlargement. There is a wide-spread fear that the accession of ten or more countries will paralyse decision-making at the European level. The 2000 Intergovernmental Conference (IGC) which resulted in the Nice Treaty was supposed to prepare the EU's institutional architecture for enlargement. However, the reforms provided for in the Nice Treaty are deemed insufficient to preserve the capacity of an enlarged EU to act effectively. While Member State governments eventually agreed on the distribution of seats and votes in the enlarged EU, the decision-making procedures themselves were not adjusted to a future Union of at least 25 Member States.

Against this background, it was up to the European Convention to present proposals for institutional reform which would improve decision-making efficiency and increase the EU's transparency and democratic accountability. Although the Convention adopted the draft Constitutional Treaty in June/July 2003, its environmental implications remain highly uncertain for several reasons. First, the proposed Constitution is unlikely to be accepted without modification by the 2003/2004 Intergovernmental Conference. This seems to apply particularly to some of the most important general institutional proposals. Second, the potential effects of the proposals for general institutional reforms on EU environmental policy are often difficult to assess in advance because they frequently result from complex interactions between many different factors. This means that the analysis of the potential implications for EU environmental policy is necessarily somewhat speculative. Given that debates will continue in the framework of the IGC and given the difficulties in predicting effects on EU environmental policy, the following analysis is not strictly limited to the draft Constitutional Treaty, but instead also considers the potential environmental merits and shortcomings of the broader reform options which have provided the backdrop for the Convention's discussions: What are the basic options for improving the EU's efficiency, democratic accountability and transparency? And how do they fare from the point of view of the environment?



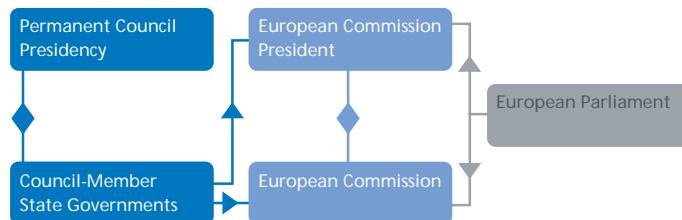
Democratic Accountability

There are different views on the sources of the EU's democratic accountability. Consequently, proposals how to improve democratic accountability vary. The views broadly correspond to three highly general models of the EU: the "intergovernmental", "parliamentary" and "presidential" models, which are similar, but not identical to corresponding models at the national level. The following analysis provides a rough outline of these models, discusses their potential implications from an environmental perspective, and asks whether the reforms proposed by the Convention will shift the institutional architecture of the EU towards one of the models.

Three models of the EU and the draft Constitutional Treaty

Figure 1 illustrates the intergovernmental model. The squares and circles symbolise the main actors, e.g. the three main EU institutions (The European Parliament, the European Commission and the Council) and the Commission and Council presidencies. The arrows indicate the most important ways in which actors influence each other. The colour of the various objects stand for the degree of influence: Dark blue objects indicate the actors which are most influential, whereas light grey objects lack major influence.

Intergovernmental Model



As Figure 1 illustrates, the Council Presidency and the democratically elected Member State governments are at the heart of the intergovernmental model. The Commission would primarily be accountable to the Council which would provide strong political leadership. The most important inter-governmental reform proposals discussed by the European Convention concerned the introduction of a longer serving and significantly stronger President of the European Council who would be elected by Member State governments. The proposal in the draft Constitutional Treaty to replace the rotating European Council Presidency with a President who would serve a renewable 2,5-year term emerged from these debates. However, reflecting the compromise character of the Convention's proposal, the formal powers of the President would remain limited. In addition, the Presidency of the various formations of the Council of Ministers, for example the Environment Council, would continue to rotate, albeit on an annual rather than a six-monthly basis.

The second institutional constellation has a stronger parliamentary component. Figure 2 illustrates the parliamentary model in which the Commission President would be directly accountable to the European Parliament. Having the political backing of the directly elected Parliament, the President would be in a position to exert strong political leadership. Obviously, a key element of the parliamentary model is the selection of the Commission President by the European Parliament. However, the Convention did not substantially strengthen the role of the European Parliament in this respect. According to the draft Constitutional Treaty, the European Council will continue to propose a candidate for the Commission Presidency who must then be elected by the European Parliament.

Parliamentary Model



Although the Convention refrained from substantially reinforcing the role of the European Parliament in the selection of the Commission President, the parliamentary model finds some expression in certain other elements of the draft Constitutional Treaty. First, the Convention decided to further increase the legislative influence of the European Parliament by extending the Co-decision Procedure to additional areas. The Co-decision Procedure, which was first introduced by the 1992 Maastricht Treaty, gives the European Parliament the formal status of co-legislator alongside the Council. However, none of the additional areas which would fall under the Co-decision Procedure is directly related to environmental protection. The Convention also stopped short of extending the Co-decision Procedure to all areas in which the Council adopts legislation by a qualified majority. Second, the Convention reinforced the legislative role of national parliaments at EU level. In particular, the draft Constitutional Treaty involves national parliaments more closely in enforcing the Subsidiary Principle (see “The Division of Competencies”). Third, the fact that, for the first time in the history of the EU, a “European Convention” prepared a reform of the Treaties – a task which had previously been firmly in the hands of Member State governments – to some extent increased parliamentary influence at the EU level because a clear majority of the members of the European Convention were national or European parliamentarians. According to the draft Constitutional Treaty, important future amendments to the Constitution will have to be discussed by a similar convention. In spite of these reforms, the involvement of national parliaments in EU decision-making is likely not to change dramatically. A significantly stronger involvement of national parliaments would require much more radical reforms, for example replacing the Council of Ministers with a second parliamentary chamber that could consist of delegations from national parliaments.

The presidential model was least relevant to the discussions in the European Convention. Figure 3 illustrates that the direct election of the European Commission President by EU citizens is a key element of this model. With a direct democratic mandate, the Commission President would be able to exert strong political leadership, including nomination of the College of Commissioners. The Commission President and the College would focus on executive functions. The legislative function would be exercised by the European Parliament and the Council of Ministers which would be turned into a second legislative chamber (in the process of turning the Council into a second chamber, ministers might be replaced by directly elected national representatives (“senators”) or by delegations of national parliaments).

Presidential Model



The draft Constitutional Treaty hardly provides for any institutional changes reflecting the presidential model. Perhaps the most important relevant change is the somewhat increased influence of the Commission President on the selection of the Commissioners. According to the draft Constitutional Treaty, the President can choose each of the thirteen European Commissioners from among three candidates proposed by different Member State governments; additional Commissioners not entitled to vote are appointed by the President. While the increased influence of the Commission President on the selection of Commissioners can be interpreted as a small shift towards the presidential model it could just as well be seen as a step towards the parliamentary model. In both models the President would have a strong role in the selection of members of the executive.

On the whole, the draft Constitutional Treaty tends to preserve the status quo in that it does not dramatically shift the basic institutional architecture of the EU towards the intergovernmental, parliamentary or presidential model. However, the introduction of an elected, more permanent European Council President is a step towards the intergovernmental model. Perhaps the largest significance of this change lies in its future potential: an elected, more permanent President of the European Council is a precondition for giving the European Council Presidency more power in substantive terms – something the draft Constitutional Treaty does not provide for. However, if the European Council Presidency were to be given significantly more substantive powers within the next decade or so, it might with hindsight be possible to attribute to the draft Constitutional Treaty the setting in motion of a significantly stronger shift towards the intergovernmental model. This is because the introduction of an elected, more permanent European Council President would probably have been an important precondition for such a shift.

Although the draft Constitutional Treaty demonstrates a slight intergovernmental bias, certain elements also draw on the parliamentary model. In particular, Convention proposes to extend the legislative Co-decision Procedure to additional fields of EU activity, reinforce the involvement of national parliaments in the application of the subsidiarity principle, and increase parliamentary influence on amendments to the Constitution. In particular the last two changes could be interpreted as indications of a potential future development of the EU towards a more parliamentary model. However, the likelihood that these changes will trigger further reforms in the parliamentary direction appears to be lower than the likelihood that the introduction of an elected, more permanent President of the European Council will shift the EU towards a more intergovernmental model. In addition, the draft Constitutional Treaty does not contain any significant elements which unambiguously point in the direction of the presidential model, hence the (moderate) intergovernmental bias of the Convention's proposals.

Environmental implications

Due to complex causal relationships, it is somewhat difficult to make predictions as to the environmental significance of some of the major institutional changes discussed in the context of the Convention. Nonetheless, there are several factors suggesting that the presidential model – which is the model that seems to have had the smallest impact on the draft Constitutional Treaty – would have been the most beneficial from an environmental point of view. As argued in more detail below, this can be explained more by the shortcomings of the intergovernmental and the parliamentary models rather than by any particular advantages of the presidential model.

Were the EU to move towards a parliamentary model, this could have a negative impact on EU environmental policy if, as seems likely, such a shift strengthened the influence of political parties on policy-making. At present, the role of the parties is much weaker at the European level than in the Member States. However, in an EU based on the parliamentary model, the President of the Commission would exercise political leadership. In doing so, he or she would be dependent on the political support of the European Parliament which elected him/her and which could, if politically opportune, also force him/her to resign. In contrast to the present situation, in which the Parliament's powers are much more limited, this constellation would considerably reinforce the influence of political parties on the Members of the European Parliament (MEPs). Perhaps most importantly, the parties would have to enforce strict party discipline to prevent the Commission President from losing political authority as a result of

being frequently outvoted in the Parliament. There are two reasons why a stronger influence of the parties at the European level may be detrimental to the promotion of environmental concerns:

- In general, green political agendas, and in particular Green parties, tend to be weaker in the new Accession Countries than in the existing Member States. After EU-enlargement, the influence of green political agendas at the European level is therefore likely to decrease significantly. It seems possible that the Greens in the European Parliament may even lose their status as a political group. While such a development would be problematic from an environmental perspective if the EU evolved into the direction of the intergovernmental or presidential models, it would be particularly negative if the Union increasingly reflected a parliamentary model, because the distribution of power in the European Parliament would have a strong political impact on the political priorities of the Commission President. Perhaps more importantly, environmental concerns are currently frequently supported by non-Green MEPs. Often, such support comes from MEPs deviating from the official position of their respective party groups. But this phenomenon is likely to vanish if party discipline increases significantly as a result of a shift towards the parliamentary model. Of course, in the medium to long term there is a possibility that differences between the political significance of environmental agendas and parties in the Accession Countries and the existing Member States will diminish. This would render the parliamentary model more attractive from an environmental point of view.

- The closer the EU moves towards a parliamentary model, the more European elections are likely to resemble national parliamentary elections. In national election campaigns economic and social policy concerns as well as the personal characteristics of candidates usually trump environmental issues. So far, Green parties have benefited from the fact that European elections tend to be somewhat different because voters often see European elections as an opportunity to vote for “alternative” or “protest” parties and to support agendas that are not dominant in national politics. This appears to be due to the fact that citizens regard European elections as less important than national ones. Therefore in European elections they tend to vote more frequently for parties representing concerns that are felt to be significant, but not sufficiently so to determine the national vote. Apparently as a way of applying pressure to, and “punishing” the political establishment, citizens also vote more often for “protest parties”. However, if the political significance of European elections increases to the extent that the political orientation of the Commission President and the composition of the College of Commissioners are

shaped by the election results, citizens are likely to regard European elections as being as important as national elections. Consequently, their voting behaviour will correspond more closely to the patterns observed in national elections. "Alternative" and "protest" parties, such as Green parties, might lose votes as a result.

From an environmental point of view, the intergovernmental option is also associated with considerable disadvantages:

- First, there is a general danger that a significantly more powerful European Council Presidency would have a negative impact on the efficiency of decision-making at the European level. More specifically, a stronger Council Presidency would incite political competition between the Council and Commission Presidencies. This could lead to a situation similar to the phenomenon of "cohabitation" in France. Cohabitation arises where the Prime Minister and the President belong to competing political parties and frequently leads to political paralysis. This would negatively affect EU environmental policy in the same way as other EU policies.
- Second, a powerful Council Presidency would probably try to centralise decision-making in the Council. At present the Environment Council, which adopts most EU environmental legislation, can make decision relatively autonomously. This contrasts with the situation at the national level, where environment ministers are often outvoted by rival ministers in the Cabinet. As a result, environment ministers appear to be able to push through more stringent environmental legislation at the EU than at the national level. However, political opportunities to do so will decrease if the Environment Council is supervised more closely by a European Council President with substantially more powers.
- Third, the intergovernmental option would strengthen the position of the Council vis-à-vis the Commission and the Parliament. In particular, a stronger Council position vis-à-vis the Commission could reduce the effectiveness of EU environmental policy. As in the case of the parliamentary model, an important reason for this effect is EU-enlargement. So far the Council has played a moderately progressive role in environmental policy-making as a result of, among other things, the relative autonomy of the Environment Council. However, along with some governments in the existing Member States, many governments in the new Member States do not prioritise environmental policy. After enlargement, the Council is therefore likely to be less sympathetic to environmental concerns.

Given the shortcomings of the parliamentary and the intergovernmental models, the presidential option may be the most favourable from an environmental perspective. Of course, environmental concerns would probably be marginalised in European presidential elections just as they would in "parliamentary model" European parliamentary elections. But if the EU evolved towards the presidential model, the European Parliament and the Council could retain their current decentralised organisational structures with weak party discipline in the Parliament and a relatively autonomous Environment Council. In addition, decision-making would become more efficient as a result of reduced political competition between the Council and Commission presidencies, because the political mandate of the Commission President would be significantly strengthened by the direct presidential elections. However, of the three models, the presidential model appears to have had the least impact on the draft Constitutional Treaty.

Decision-making efficiency

As pointed out in the beginning, there are widespread fears that enlargement may paralyse EU decision-making. In response to those fears, the Laeken Declaration called on the European Convention to improve the decision-making efficiency at the European level. There are two main ways of doing this, which are not mutually exclusive. First, more frequent application could be made of majoritarian decision-making rules. Second, more hierarchical organisational structures could be introduced into the European Commission and the Council.

Majoritarian decision-making could be extended with the help of the following measures:

- Although the Council usually adopts EU environmental legislation by a qualified majority, qualified majority voting (QMV) could be extended to additional areas of environmental policy-making, such as environmental measures of a primarily fiscal nature, like environmental taxes, as well as measures affecting town and country planning, land use, the management of water resources and the Member States' choice between different energy sources. Currently, the adoption of legislation in those areas requires unanimity in the Council. This requirement has significantly impeded the efficiency of decision-making at the European level. For instance, the adoption of EU legislation on an energy tax has been delayed for several years as a result of the unanimity requirement. Despite this negative impact on decision-making efficiency, the draft Constitutional Treaty proposes to retain consensual decision-making in all of these areas. However, if adopted, the Constitution would give the European Council the opportunity to decide unanimously to replace the unanimity with a qualified majority requirement in those areas for which the unanimity requirement still applies. From an environmental perspective it would be helpful if the unanimity requirement was removed. This would render the adoption of EU legislation in the areas of environmental taxes, land use planning, water resource management, and affecting the choice of energy sources – all of which may have considerable cross-border effects – significantly less difficult.

- A similar argument applies to decision-making in the European Council. According to the draft Constitutional Treaty, the European Council provides the EU with “the necessary impetus for its development” and defines “its general political directions and priorities”. Given the strategic nature of its remit, the European Council decides unanimously. However, alongside its official remit, in practice the European Council frequently deals with issues of lesser political significance, including decisions on environmental policy. In such cases, decision-making efficiency suffers unnecessarily from the unanimity requirement. To reduce the risk of political paralysis after enlargement, it would therefore be helpful if the national veto was abolished for decisions of the European Council which fall outside its strategic remit. Unfortunately, the European Convention has not proposed any measures along these lines (it remains to be seen whether the decision by the 2002 Sevilla European Council to end the practice of dealing with issues falling within the remit of the Council of Ministers will be sufficient).

- Finally, it would also be possible to increase decision-making efficiency by changing the rules which define a qualified majority. Obviously, to improve efficiency the new rules would have to lower the hurdles for the adoption of EU legislation. The European Convention in fact proposes such a redefinition of the qualified majority. More specifically, the draft Constitutional Treaty replaces the present definition of a qualified majority with the so-called “double majority”: in order to be adopted, a decision would have to be approved by a simple majority of Member States, representing at least three fifths of the population of the Union. This would lower the hurdle for the adoption of legislation from the current threshold of 72% to 60% (not taking into account the relatively “easy” additional requirement that the majority must encompass at least three fifths of the European population). The improved decision-making efficiency would have a positive effect on European environmental policy.

In addition to majoritarian decision-making procedures, more hierarchical organisational structures of the European Commission and the Council could contribute to improve decision-making efficiency at the European level. There are at least two major reform options:

- First, there are the options of reducing the number of Commissioners and of introducing a hierarchy among Commissioners. To some extent the European Convention proposes to do both. The draft Constitutional Treaty limits the number of members of the College of European Commissioners to thirteen Commissioners plus the Minister for Foreign Affairs/Vice President and the President. It also introduces posts for “second-class”,

non-voting Commissioners, to be filled by nationals of countries whose nominees have not become members of the College. Although the appointment of non-voting Commissioners would significantly increase the total number of Commissioners, any negative effects on decision-making efficiency would be limited by their exclusion from voting. However, from an environmental point of view it is essential that the Environment Commissioner continues to be a full, voting member of the College of Commissioners.

- The second option concerns the organisation of the Council of Ministers. Increasing the influence of the European Council Presidency on the Council of Ministers would be one way of introducing more efficient, hierarchical organisational structures. However, as argued with respect to the intergovernmental model of the EU, the impact of a stronger European Council Presidency on EU environmental policy would probably be negative. Alternatively, it would be possible to reinforce the role of the presidency of the various sectoral Council formations, such as the Environment Council. Such measures could have beneficial effects on EU environmental policy, in particular if each Council formation elected its own president. This would allow the Environment Council to select a president who is particularly committed to the environmental agenda. However, the draft constitutional Treaty continues to base the selection of the presidents of the Council of Ministers formations on a rotation system. It merely seems to allow different Council formations to be headed by representatives of different Member State governments; the European Council would have to decide on the details of such an arrangement. In addition, the draft extends the president's term to one year, thus strengthening the president's influence to some extent. It merely extends the president's term to one year, thus strengthening the presidency to some extent. Finally, some Council formations could be given a special co-ordinating role in addition to their original remit. The General Affairs Council and the Ecofin Council have to some extent already taken on such roles. The European Convention does not envisage major changes in this respect. However, the draft Constitutional Treaty states that "the Legislative and General Affairs Council shall ensure consistency in the work of the Council of Ministers".

The reference to "the Legislative and General Affairs Council", rather than simply to the "General Affairs Council", hints at an earlier proposal by the Convention Presidium to create a special Legislative Council which would be responsible for the adoption of all Community legislation. Although such an arrangement could improve co-ordination of the legislative processes and increase decision-making efficiency, many Member State representatives rejected the proposal. While the draft Constitutional Treaty mentions the Legislative Council, it leaves open its role with respect to the adoption of legislation.

EU environmental policy could benefit from a more hierarchical organisation of the Council. However, the co-ordinating functions would have to be in the hands of a strictly "neutral" body, giving equal weight to the economic, social and environmental dimensions of sustainable development. Given the predominance of economic considerations in many aspects of EU policy-making, securing strict neutrality would most likely pose a serious political and institutional challenge.

In sum, like other EU policies, environmental policy would be negatively affected by decreasing decision-making efficiency as a consequence of EU enlargement. Therefore, any efficiency-enhancing measures counteracting that trend would necessarily benefit EU environmental policy. However, in some cases, the benefits in terms of efficiency would probably be outweighed by other, negative impacts on EU environmental policy. Such measures include the introduction of more hierarchical Council structures by increasing the influence of the European Council Presidency on policy-making by the Council of Ministers or by creating a Legislative Council as originally envisaged by the Convention's Presidium. In the absence of suitable additional reforms, such measures would reduce the relative autonomy of the Environment Council without providing sufficient guarantees that the President of the European Council or the Legislative Council would give equal weight to the three dimensions of sustainability. In addition, even those reform options which appear to be associated with fewer negative side-effects on EU environmental policy carry certain risks. In particular, there is a risk that environmentally progressive Member States may be outvoted more frequently, if majoritarian decision-making procedures were to be extended. Similarly, more hierarchical organisational structures in the Commission and the Council could lead to a political marginalisation of the Environment Commissioner and the Environment Council.

Transparency

Against the background of EU citizens' increasing scepticism towards the European institutions and complaints about a lack of democracy at the European level, the Laeken Declaration called on the European Convention to improve the transparency of EU decision-making. Improving transparency by making information on EU policy-making more easily accessible could increase citizens' trust in EU institutions. It could also contribute to a better understanding of the EU by the broader public. However, improving the flow of information to the citizen cannot be a goal in itself. Rather, the positive effects which transparency can have on trust and the perception of the EU as an essentially democratic institution also depend on citizens' opportunities to feed information back into the EU decision-making process. Put differently, why should citizens care about better information on EU decision-making if they believe that should they feel the need to act on that information, they could not effectively do so? The concept of "openness of decision-making" points to this link between transparency and opportunities for political participation.

There are at least three factors which have a negative effect on the openness of EU decision-making:

- EU decision-making procedures are often very complex. The Co-decision Procedure in combination with the complicated definition of a qualified majority in the Council provide a good example of this complexity. A simplification of procedures such as these would make it easier for interested citizens to understand and follow EU policy-making. The proposal by the European Convention to replace the present, complex definition of a qualified majority in the Council with a "double majority" requirement could be a first step towards simplification.
- Several EU practices are designed to restrict access to information. The most prominent example of this is the rules which prevent public access to most debates in the Council. The draft Constitutional Treaty in fact proposes to open the Council legislative debates to the public. In this context, it is instructive to recall the proposal by the Presidium of the European Convention to establish a Legislative Council. The creation of such a body would make it significantly easier to give the public access to the legislative debates in the Council because it would allow for a clear separation between the Council's legislative and executive functions.

- Opportunities for civil society groups to participate in EU decision-making could be further improved. Generally, environmental NGOs run a higher risk than certain other actors, such as producers and professional associations, of not being adequately consulted by decision-makers. Environmentalists do not command the same essential resources – economic clout and expertise – as other societal actors have at their disposal. As discussed in more detail below, the draft Constitutional Treaty contains provisions on consultation. If further improved, these rules could offer a basis for establishing a system of transparent, balanced consultation.

It could be argued that the European institutions are more transparent and open to participation by civil society groups than some Member State governments. However, even if one believes that this is the case, there are two reasons why there still is a particularly pressing need for further improvements of transparency and participatory procedures and practices at the European level: First, the EU is still a relatively young political system which cannot draw on traditional sources of legitimacy, in particular nationalism. Consequently, there is a special need for democratic legitimisation. Second, the EU is a "regulatory state" in the sense that a relatively large share of its political decisions deal with issues of market regulation, including environmental policies, rather than income redistribution. Although both regulatory and redistributive policies have distributive effects, unlike income redistribution regulatory policies are not zero-sum. On the contrary, there is often a potential for increasing benefits for all parties. However, in contrast to good redistributive policies, which result from the right balance of power between the social partners, to generate additional benefits through regulatory policies a more information-based, deliberative approach is required. Opportunities for participation by a broad range of potentially relevant or interested actors are essential for generating the necessary information on both technical issues (for example, the existence of health or environmental risks) and social issues (for example, societal acceptance of certain risks). Given the regulatory bias of the EU, European policies are therefore particularly dependent on adequate procedures for balanced participation by a broad range of societal actors.

By including an article on “The Principle of Participatory Democracy” in the draft Constitutional Treaty, the European Convention appears to have recognised the special significance of participatory procedures for the EU. However, its provisions are very general and lack clarity. Therefore it seems doubtful whether they will have any practical implications if the draft Constitutional Treaty is adopted. The following aspects seem to be particularly problematic:

- The wording of the provisions on consultations is somewhat vague. In particular, the draft Constitutional Treaty states that the EU institutions are to maintain “an open, transparent and regular dialogue with representative associations and civil society”. At the same time, the Commission is specifically obliged to “carry out consultations with parties concerned”. The varying formulations suggest that there is a difference between “dialogue” and “consultations” and between “representative associations and civil society” and “parties concerned”. However, the nature and possible practical implications of these differences remain unclear.
- In addition to the lack of clarity, the draft Constitutional Treaty does not establish procedures for implementing the provisions on consultation. This is particularly striking when compared to the provisions on access to documents and European referenda. In both cases the draft Constitutional Treaty obliges the European Parliament and the Council to adopt laws laying down more detailed rules. However, a similar requirement is missing for the third element of participatory democracy, e.g. consultation.

Open decision-making is particularly important from an environmental perspective. Environmental NGOs play a vital role in environmental policy-making. If decision-making is closed, environmental groups are likely to either remain insignificant, or be forced to rely on an adversarial role alone. Both possibilities have a negative impact on the effectiveness and efficiency of environmental policies. Against this background, the inclusion of the provisions on transparency, access to documents, referenda, and consultations in the draft Constitutional Treaty is a positive development. If the Intergovernmental Conference adopts the respective articles, much will depend on how they are implemented by secondary legislation. However, the Convention's proposals do not go far enough as regards public access to the legislative debates of the Council and on consultations. According to the draft Constitutional Treaty, the Council will continue to exercise executive functions in addition to its legislative role. Therefore, the implementation of the provisions in the draft Constitutional Treaty on public access to the Council legislative debates may be difficult to implement, if the proposal for the establishment of a legislative Council continues to be rejected by Member State governments. In addition, the provisions on consultation in the draft Constitutional Treaty need to be clarified. Current consultation practices among EU institutions differ widely. In fact, different units of the same institution, for example the Commission's Directorates General, often follow different approaches. To build a more coherent approach it therefore seems necessary to include a requirement in the Constitution which obliges the Council and the Parliament to adopt a framework law on consultations. Such a law would specify the general rules on consultations applicable to all institutions. In addition to improving coherence, this would put the provisions on consultations on an equal footing with the ones on access to documents and referenda.



Conclusion

Taken together, as far as environmental policy is concerned the draft Constitutional Treaty's provisions on democratic accountability, efficiency, and transparency offer some progress over what has been achieved in the Nice Treaty. However, this applies primarily to the issues of efficiency and transparency of EU decision-making. In contrast, the proposed changes in the basic institutional architecture of the EU may have certain negative implications from an environmental point of view.

As regards decision-making efficiency, the proposed reduction in the number of voting members of the College of European Commissioners to fifteen and the replacement of the current system of qualified majority voting in the Council of Ministers mark important progress. Like other European policies, EU environmental policy would benefit from these reforms. However, it would be essential that the Environment Commissioner retained full voting rights in the Commission. Similarly, any reform of decision-making in the Council of Ministers must either preserve the autonomy of the Environment Council or provide for a strictly neutral co-ordinating body that would give equal weight to the environmental, economic, and social dimensions of sustainable development.

The provisions on transparency and participatory democracy are a clear improvement over the Nice Treaty. Given that environmental protection is less firmly rooted in party systems than economic and social issues, European referenda may, in some cases, offer an alternative route of feeding societal preferences on environmental protection into the decision-making process. The draft Constitutional Treaty also obliges the Council and the European Parliament to adopt a law specifying the general rules and principles for public access to documents held by EU institutions. In addition, the provisions on public access to the legislative debates of the Council and consultations of societal groups mark some progress.

However, implementation of the proposal on public access to the Council legislative debates may be difficult in practice because the draft Constitutional Treaty does not strip the Council of its executive functions. The draft Constitutional Treaty's provisions on consultation are valuable primarily because of their symbolic significance. They amount to a recognition by the EU of the special importance of consultation for EU policy-making. Unfortunately, the provisions may be difficult to implement because they are very general and lack clarity. Unfortunately, there is no obligation to adopt secondary legislation specifying the general rules and principles underlying consultation by EU institutions.

Finally, from an environmental perspective, the European Convention's proposals on democratic accountability are somewhat disappointing. The basic institutional architecture of the EU would not change dramatically as a result of the adoption of the draft Constitutional Treaty. However, the proposal to introduce a more permanent European Council Presidency is likely to lead to a certain shift towards the intergovernmental model. Although the Co-decision Procedure would be extended and the position of the President of the Commission would be somewhat reinforced if the European Convention's proposals were adopted, these changes appear to be less significant in terms of the overall institutional architecture of the EU than the proposed reform of the European Council Presidency. In any case, the draft Constitutional Treaty does not contain any major reform proposals that could unambiguously be described as steps towards the presidential model, which may be the most beneficial from the point of view of the environment.

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