Ecologic Briefs
A Sustainable Constitution for Europe

The Division of Competencies

Reform Suggestions and Implications for the Environment

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.

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A sustainable Constitution for Europe

The Division of Competencies

Reform Suggestions and Implications for the Environment

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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 Constitutions 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

Background

The frequently quoted Laeken Declaration on the Future of the European Union forms the basis for the Convention's work and identifies better division and definition of competence in the European Union as one of the renewed Union's central challenges.

The Laeken Declaration

The Laeken Declaration outlines tasks for the Convention in the area of competencies

To quote the declaration itself:

"Citizens often hold expectations of the European Union that are not always fulfilled. And vice versa – they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential. Thus the important thing is to clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union. This can lead both to restoring tasks to the Member States and to assigning new missions to the Union, or to the extension of existing powers, while constantly bearing in mind the equality of the Member States and their mutual solidarity."

The Mandate of the Convention

By thus outlining the task, the Laeken Declaration submitted the Convention a broad mandate, requesting it to reorganise the distribution of tasks between the EU and the Member States. More specifically, the Convention was asked to address:

- greater transparency in the delimitation of competencies by establishing competence categories
- the level at which a given competence can be most efficiently exercised
- whether the role of the Member States and/or particular regions should be strengthened in regard to day-to-day administration and implementation, and
- how to limit expansion of Union powers while gaining its dynamics.

Division of Competencies in the Draft Constitution

How the System Works

The Convention responded to the tasks outlined in the Laeken Declaration by discussing the proposed issues in its working groups and plenary sessions. Neither the discussion nor the respective outcomes reached the envisaged goal sufficiently because the Convention did not consider reallocation of competencies, but rather concentrated mainly on the first task of ensuring transparency for the delimitation of competencies.

This task has to be seen in conjunction with the current system and its development over time. At the time the treaties were initially established, the Union's character was primarily economic; it grew slowly into a political union, and ever more policies were transferred from the Member State to the Union level. However, a specific division of labour between the EU and its Member States was never clearly outlined in the treaties which serve as the basis for all Union policies. As categories of competence are not explicitly mentioned in the treaties, it is not clear as to how and according to which criteria competencies are currently allocated to the Union.

The competence allocation system is based on a catalogue of competencies and principles

The following text presents the system underlying the constitutional division of competencies, points out consequences of the system, and assesses them from an environmental point of view.

The general competence allocation system in the new Constitution is based on a catalogue detailing competencies and relevant principles.

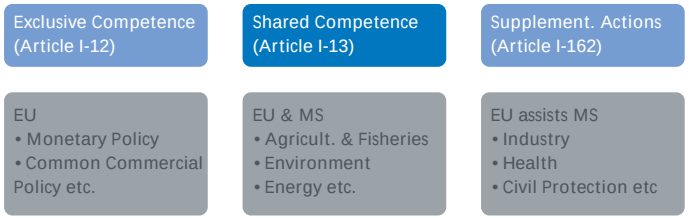
Categories

A lengthy discussion preceded the decision to include categories of competencies in the Constitution. Two diverging perspectives emerged. One side stipulated that the Constitution ought to solidify the competencies of the Union and Member States. The opposition held that the Union best be kept flexible to enable adequate response to unexpected and urgent problems. The final Articles establish categories of Union competencies under which specific policy areas fall (Articles I-11-16) and that vary regarding the EU's powers. These competencies include

- exclusive,
- shared, and
- supporting, co-ordinating

or supplementing actions.

Though the concept is not entirely new in itself, this is the first time this division is explicitly mentioned in the Constitution. In the area of exclusive competencies (Article I-12), the EU alone is allowed to act. Action by the Member States is limited to areas in which the EU explicitly empowers them to act. In the area of shared competence (Article I-13), both Member States and the EU hold legislative power. However, Member States may only make use of their powers to the extent that the Union has not exercised its competence. In the areas of supporting, co-ordinating or supplementing actions (Article I-16) the Union may act but those actions must not entail harmonisation of Member States' laws or regulations.
Despite conflicting demands to expand the EU's role in environmental policy and repatriate certain areas, environmental policy still falls under shared Union competence.



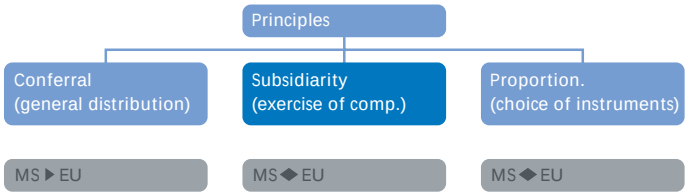
The Environmental Articles: III 129-131
The Chapter on Environment (III 129-131 formerly Articles 174-176 TEC) that forms the basis for EU action in the area of environment has not changed considerably. According to the environment chapter, the Union can rely on a very broad mandate. The Union is generally allowed to act in order to

- preserve, protect and improve the quality of the environment and to protect human health
- ensure a prudent and rational utilisation of natural resources
- promote measures at an international level.

Despite this broad mandate, the Union is not automatically allowed to act in these areas. Instead, the EU has the potential competence to act in these areas, but this competence is shared with its Member States. That means, if the Union decides to act in one of the areas, it has to take into account certain principles which outline both the limits of Union action as well as how it should be used.

Principles

Limits upon Union competencies are governed by the principle of conferral, i.e. the Union is only competent to act insofar as the constitutional treaty authorises it to act. In addition, the principles of subsidiarity and proportionality are to be applied in determining Union competencies.
For European environmental policy the principle of subsidiarity is the most important of all these principles. It will be outlined in the next chapter.



The Principle of Subsidiarity

The Principle of Subsidiarity establishes two prerequisites which determine whether the Union may take action. The Union shall act only if and insofar as the objectives of the intended action

1. cannot be adequately carried out by the Member States
either at their central, regional or local level and
2. can be better achieved at Union level.

The draft Constitution adds a reference to regional and local levels as part of the first prerequisite to the current text.

Applying the Principle of Subsidiarity

The Principle of Subsidiarity is applied in accordance with the two above-mentioned prerequisites. In order to explain these prerequisites, the current treaty refers to the "Protocol on the Application of the Principle of Subsidiarity and Proportionality" (from here on known as PAPSP). According to this protocol, EU action is justified if

- transnational aspects are concerned
- market distortion may be prevented
- clear benefits from the scale or effect of policies are to be expected.

Environmental problems often meet these criteria. Many environmental problems, i.e. air pollution, transverse national boundaries. Even for environmental problems that are not indisputably transboundary in character, EU action can be justified because such problems frequently distort the Common Market. This applies to product standards for example. In all such cases, subsidiarity clearly legitimates EU environmental action and deems it better than action at the national level. However, environmental problems meet these conditions less frequently than expected. Noise or waste, for example, rarely have transnational impact (although ensuring the functioning of the internal market may justify EU action). Yet even certain aspects of air or water pollution – normally the most frequently quoted examples for transboundary pollution – are sometimes restricted to national borders. Drinking water reservoirs, for example, are often polluted by local agriculture and industrial activity rather than from external sources.

In analysing prerequisites of the Principle of Subsidiarity, it becomes clear that there is no clear means of determining if and when the goal of a certain measure undertaken in the field of environmental policy cannot be better achieved by the Member States or by the Union. This is partly due to the fact that criteria for the application of the principle can be easily interpreted in two ways in regard to environmental policy. Since the Principle of Subsidiarity is ambiguous and difficult to apply, the decision about which level should act in response to a given problem is often a political one. This is also why the European Court of Justice has declined to give an opinion or pass judgement on the Principle of Subsidiarity thus far. Since many voices have called for a better application of the principle, the Constitution's revised PAPSP contains several provisions for monitoring the principle. The revised protocol is included in an annex to the Constitution Draft and has deleted any reference to these criteria.

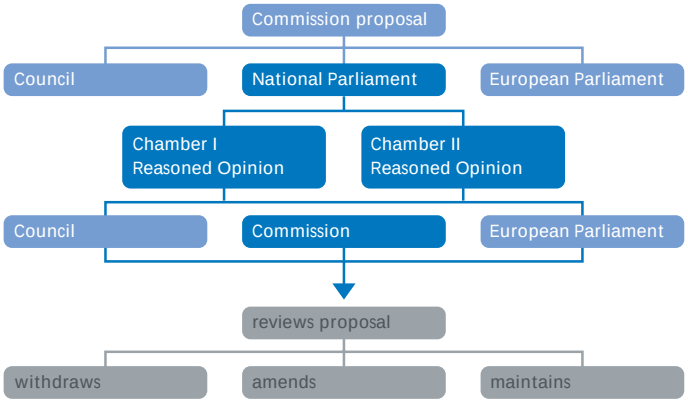
Monitoring the Principle of Subsidiarity

The PAPSP introduces different options for monitoring the principle of subsidiarity varying from Commission consultation before issuing legislation, to annual Commission reports on the application of the Principle of Subsidiarity. The most far-reaching mechanism, however, is the introduction of an ex-ante system controlled by the European Court of Justice.

Key mechanisms for monitoring the Principle of Subsidiarity are ex-ante and judicial control

Ex-ante Control

The so-called ex-ante system works as follows: After having agreed on a proposal, the Commission concurrently sends it to the National Parliaments, the Council, and the European Parliament in the course of normal legislative procedure. Both chambers of each National Parliament are then entitled to issue a reasoned opinion to the Commission, the Council or the European Parliament. The reasoned opinion explains why the proposal does not comply with the Principle of Subsidiarity. It is important to mention here that National Parliaments may only refer to the Principle of Subsidiarity and not to other parts of the proposal to which they may be opposed. If "one third of all votes allocated to the Member States' National Parliaments and their chambers" (PAPSP, Paragraph 6) vote against the Commission's proposal, the Commission is obliged to review it. The Commission's review can either result in maintaining, amending or withdrawing the proposal.



Judicial Control

Should Member State Parliaments hold that an adopted legal act they have rejected in the course of the ex-ante system does not comply with the Principle of Subsidiarity, they may bring their case before the European Court of Justice. This right is also granted to the Committee of Regions.

Implications

The newly introduced system for monitoring the Principle of Subsidiarity could result in the following:

First and foremost, National Parliaments will take on new competencies. Until now, National Parliaments influenced European decision-making primarily through their own respective national governments. The new constitutional provisions allow them to directly issue opinions pertaining to the application of the Principle of Subsidiarity to the European legislator.

These new powers, however, do not cease at the national level; they extend and enhance (albeit indirectly) the role of regional and local levels, which are explicitly mentioned in the provision on the Subsidiarity Principle. This is confirmed by two facts:

1. The Committee of Regions has the right to directly bring a case of non-compliance with the Principle of Subsidiarity before the European Court of Justice.
2. The second Chamber of National Parliaments often represents regional and local interests, such as in Belgium, France, Italy, Spain and Germany.

In the case of environmental policy, this might lead to the following consequence: Since the regional level, represented by the Committee of the Regions, is potentially opposed to regulating environmental issues at the European level, it might try to make use of its new powers. This option, however, is restricted by the voting procedures in the Committee of the Regions and the co-ordinating powers of the regions.

However, the introduction of the monitoring system also has the following consequences which are not specifically related to the environment: Firstly, the introduction of the ex-ante system might counteract the efforts to enhance decision-making efficiency because National Parliament consultation needs to be co-ordinated and administered. Moreover, it places excessive demands upon National Parliaments, which in turn would have to deal with the Commission proposals referred to it.

Secondly, the effect of these new provisions depends upon the European Court of Justice's ability to issue judgements on the Principle of Subsidiarity. As mentioned earlier, this has not come to pass thus far due to the ambiguity of the principle. Successful monitoring of the application of the principle by the European Court of Justice will therefore depend on more clearly formulated criteria. At least the reference to the above mentioned criteria of the PAPSP (reference to transnational aspects, preventing distortions of the internal market, and benefits from the scale or effect of the policies), should continue to provide guidance or and perhaps should be elaborated in greater detail.

Although the effective control of the principle seems rather dubious, the introduction of the monitoring mechanisms might also have positive consequences. Firstly, national Parliaments will be forced to consider European initiatives in order to decide whether to take action against the principle of subsidiarity. Secondly, the Commission might consider the principle of subsidiarity more closely in its proposals in response to the danger that the national Parliaments or the Committee of the Regions will make use of their new powers.

Other Provisions

Other provisions impacting the allocation of competencies include instruments and harmonisation of legislation

The combination of categories of competencies and principles described above characterises the basic system of competency distribution in the Constitution. Yet there are still several other provisions which impact competency distribution in regard to the environment. These include choice of instruments and provisions concerning harmonisation.

Instruments

Instruments chosen for use in a policy area have indirect impact on the allocation of competencies, as various types of instruments leave more or less room for the Member States to take their own action. For example, in the case of a Directive, it is up to the Member States as to how to reach the aims of a measure. In the case of a Regulation, however, the provisions apply directly without having to be implemented by the Member State. Thus, the choice of a certain type of instrument is always a decision for or against a stronger EU role. The Constitution introduces various changes to provisions on the instruments: They have been renamed and the Constitution introduces new executive instruments.

Renaming Instruments

Various types of instruments mentioned in the Treaties have been renamed as follows:

- "Regulations" became "EU laws"
- "Directives" became "EU framework laws"
- Decisions, opinions and recommendations remain as is

In addition to these familiar instruments, the Constitution introduces two types of measures with executive character: Delegated Regulations and Implementing Acts.

New Measures with executive character

Delegated regulations are intended to regulate certain aspects of an EU law or framework law in a more detailed fashion. They are to be adopted by the Commission and not in the course of the normal legislative procedure. Nevertheless, their use shall be subject to control by the European Parliament and Council. This is ensured by allowing them to either revoke the delegation or to reject the delegated regulation, thus preventing its adoption.

Implementing acts – the so-called implementing regulations or implementing decisions – are to be adopted by the Commission. Though no special procedure is foreseen for adopting these acts, it can be assumed that the comitology procedure[1] will be used.

With the help of these two instruments, the trend toward ever more detailed laws shall be halted[2]. However, use of these instruments may lead to two consequences.

The first concerns the way these measures are adopted. Since these instruments are set out in accordance with an EU-law or EU-framework law, and in environmental cases often deal with controversial aspects of a law such as emission values, their application might lead to a situation where core elements of a law are decided upon without the involvement of the European Parliament – at least in the case of implementing acts and without public participation.

The second consequence concerns the "principle of implementation by the Member States." The fact that the executive measures are now explicitly mentioned in the Constitution might contribute to the EU restricting the Member States' right of implementation. This might also have effect upon the sub-national level, as application of European measures often falls within its jurisdiction.

Harmonisation

The former Article 95 EC Treaty addresses the potential case in which one Member State plans to introduce a more stringent measure in an area which is already regulated at EU level under shared competence. Here, Member States would not normally be allowed to act, but the current Article 95 exempts them by reason of upholding environmental protection. It is important to mention that this provision which is vital to the "green" Member States for maintaining high national standards even if they are blocked on the EU level was kept in the Constitution.

[1] *The term "comitology procedure" describes a process in which the Commission, when implementing EU law, has to consult special advisory committees made up of experts from the EU countries.*

[2] *It should be considered however that the renaming of a Directive into a framework law may also contribute to preventing the formulation of detailed laws, as Member States shall be "entirely free" to choose the form and means of achieving the result to be achieved by the legislative act (Article I-32 paragraph 1).*

Policies

Other policy areas with implications for environmental policy include energy, transport and agriculture

The environment is a cross-cutting issue which is often affected by other policies, and the following section will survey some of these policy areas, namely energy, transportation and agriculture. It will focus upon how environmental aspects are taken into consideration in the legal basis of the specific policy areas.

Energy

Political decisions in the field of energy have major implications for our environment. Current energy sources lead to severe environmental degradation. Fossil energy use is a major cause of climate change and the use of nuclear energy inherently bears the risk of accident. Due to increasing energy consumption and limited primary energy sources, humanity will face an energy crisis in the long run. Since the Nice Treaty did not provide for a provision on European energy policy, regulations in this area have been based for the most part on the provisions regarding internal market, competition, and environment or on the EURATOM Treaty. That means energy policy is currently based on provisions that make no reference to the environment, and even follow unsustainable lines of reason[3]. The final draft of the Constitutional Treaty however provides a chapter with the basis of a European energy policy. In its objectives, the chapter refers to "the need to preserve and improve the environment" (Article III-157 paragraph 1) and states that "Union policy shall aim to promote energy efficiency and conservation, and the development of new and renewable forms of energy" (Article III-157 paragraph 1 c). What these changes might imply for the environment, however, remains unclear. The reference to renewable energies at the beginning of the Articles is counteracted by the statement that legal acts shall not affect a Member States' choice between different energy sources and the general structure of its energy supply (Article III-157 paragraph 2). The outdated EURATOM Treaty has been amended editorially, yet its continued existence is questionable from an environmental point of view.

[3] *For a more detailed exploration of this topic please refer to "Energy Policy in the Constitutional Treaty"*

Transport

Transport policies (as is the case with energy-related decisions) regularly have major impact on the environment in two main areas: 1) Problems connected to the use of fuels, and 2) problems caused by creating transportation infrastructure, i.e. roads. Both aspects entail increasing pressure on the environment. Fuels for motor vehicles, ships and aircraft produce environmentally damaging emissions, contribute to environmental and climate change, and are acknowledged as being a major cause of acid rain. As source of fuels remains limited, policy decisions on fuel efficiency, alternative fuels, and modes of transport have to be made to provide solutions for eventual fuel shortage. The same applies to the transport infrastructure necessary to cope with the growing numbers of vehicles of all kinds, which is closely linked to land-use planning. Roads not only possess the potential to destroy natural environs; their use also creates noise – an environmental disturbance of increasing importance. Articles III-133-143 of the Constitution Draft forms the basis for all these momentous policy decisions at EU level, but the Articles do not reflect the environmental pressures outlined above and therefore need to be reformed. This could be done by including reference to the environment in the Articles and to the importance of alternative fuels for European transport policy-making.

Agriculture

Agricultural activities go directly hand in hand with environmental issues. Farmers, on the one hand, depend on natural elements such as soil or weather. On the other hand, farming itself impacts the environment in different ways. Decisions about field size and crop sorts affect our natural environs and may also contribute to limiting biodiversity. Farming methods contribute to environmental degradation, i.e. water and groundwater pollution by fertilisers. Food quality and consumer safety are also directly linked to farming methods, as shown by the controversial use of genetically modified organisms. Since agricultural policy falls under shared competence and EU actions in the field of agriculture are of major importance, the legal basis for these actions should reflect environmental concerns. In contrast to this need and despite the close link between agriculture and our natural environment, the legal basis for agriculture in Articles III-121-128 does not reflect this relationship. A statement should thus be considered which integrates the environment into agricultural decisions and reflects the importance of the environment for agricultural policy.

Other Policy Areas

Two further policy areas are included in the provisions on the categories of competencies that were not previously mentioned in the Treaties. They are:

- Conservation of marine biological resources under the common fisheries policy (exclusive competence)
- Civil protection (supporting measures)

The first policy area does not have an Article of its own in the third part of the Constitution which would provide for a more detailed assessment of its nature. Fishery experts however fear that this provision might lead to a commercial definition of "biological resources" which might overrule environmental reasoning in this area. Civil protection (Article III-184) covers important environmental issues, e.g. flood prevention. Therefore, it is generally favourable that the EU is now empowered to take action in this area. Another important aspect of European environmental policy covers the EU's mandate to conclude international environmental agreements. The respective provisions remain the same (Articles III-129 paragraph 4 and Article III-227). Here it should be mentioned that sustainable development is now explicitly referred to in the objectives of the EU's external action (Article III-193).

Conclusions

Environmental policy belongs to those policy areas that receive widespread support for EU action from the citizens. This is not only reflected in various opinion polls where environmental policy is regularly listed as one of the areas where the EU should take more action[4], but also in the Laeken Declaration itself[5]. Nevertheless, the Convention has decided not to broaden the EU's scope of powers in this field. Environmental policy continues to fall under shared competence. From the environmental point of view this is a reasonable decision, as a strong but controlled EU role serves best for the environment.

The provisions on enhancing the monitoring of the Principle of Subsidiarity as outlined in the "Protocol on the Application of the Principle of Subsidiarity and Proportionality" are lacking. The ex-ante system is not viable for a number of reasons – not least of all from an environmental point of view. Moreover, judicial supervision and control of its application might be difficult since the Constitution does not refer to any criteria which would help the European Court of Justice decide whether the Principle of Subsidiarity has been violated.

Renaming the EU's legal instruments has no direct implications for European environmental policy, but will contribute to enhanced transparency. The explicit reference to two kinds of measures with an executive character however may contribute to an increased use of these instruments, and in turn might effect the Member States' role in implementation.

The survey on the policy areas of energy, transport and agriculture showed that all three areas still contain room for improvement. In the field of energy, the EURATOM-Treaty is in need of fundamental reform. Furthermore, the environment should be integrated into transportation and agricultural objectives, since both policy areas have considerable effects on the environment.

The European Heads of State and Government will be meeting at an Intergovernmental Conference to agree upon and adopt a final Constitution, the draft of which is the basis for this analysis. The conference is scheduled to decide in December – there is still time to address the shortcomings outlined in this document.

[4] *Eurobarometer Survey "The attitudes of Europeans towards the environment."*
[5] *Section II*

Annex

Selected Articles from the Draft Treaty establishing a Constitution for Europe (CONV 850/03)

Article I-9: Fundamental principles

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

Article I-11: Categories of competence

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts adopted by the Union.

2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.

3. The Union shall have competence to promote and coordinate the economic and employment policies of the Member States.

4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part III.

Protocol on the application of the principles of subsidiarity and proportionality (extracts)

(...)

5. Any national Parliament or any chamber of a national Parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

6. The European Parliament, the Council of Ministers and the Commission shall take account of the reasoned opinions issued by Member States' national Parliaments or by a chamber of a national Parliament.

The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article III-165 of the Constitution on the area of freedom, security and justice.

After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article III-270 of the Constitution by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

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and Sustainable Development
Briefs edited by:
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