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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Ms Evelin Lichtenberger, Mr John Gormley, Mr Neil MacCormick, Ms Marie Nagy, Mr Danny Pieters and Ms Renée Wagener, alternate members of the Convention, and Mr Johannes Voggenhuber, member of the Convention: "Establishing Sustainability and Protection of the Environment in the future Treaty"

The Secretary-General of the Convention has received the contribution annexed hereto from Ms Evelin Lichtenberger, Mr John Gormley, Mr Neil MacCormick, Ms Marie Nagy, Mr Danny Pieters and Ms Renée Wagener, alternate members of the Convention, and Mr Johannes Voggenhuber, member of the Convention.

CONTRIBUTION

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ESTABLISHING SUSTAINABILITY AND PROTECTION OF THE ENVIRONMENT IN THE FUTURE TREATY

Introduction

First of all we would like to thank the presidium for the draft constitutional treaty. It is in our opinion a very good basis for the further discussion. But the proposed framework is falling behind the existing treaties with regard to the environment. In the following it will first be shown, that the draft treaty is failing to keep up with the existing treaties and second why it is important to maintain the *acquis communautaire*.

1. SUSTAINABLE DEVELOPMENT AS OBJECTIVE OF THE UNION

Article 3 of the draft treaty builds on Article 2 of the TEU and Article 2 of the TEC.

Article 2 of the TEC speaks of the objective „to achieve balanced and sustainable development“. This goes further than the formulation in the draft treaty, which speaks only of “a high level of environmental protection”¹.

The following objectives can be found in Article 2 of the TEC: balanced and sustainable development of economic activities, a high level of protection and improvement of the quality of the environment and raising the standard of living and the quality of life.

¹ Part B of CONV 369/02 Art. 2

In our opinion the future treaty should not fall behind this *acquis communautaire*, but the objective of sustainability has to be kept supplemented by the objectives of

- high protection and improvement of the quality of the environment
- the raising of the standard of living and quality of life
- balanced and sustainable development of economic activities

Many contributions, especially the draft treaties proposed by the members of the convention include the objective of sustainability¹.

2. KEEP ENVIRONMENTAL INTEGRATION PRINCIPLE (ARTICLE 6 TEC)

The Brundtland Report also known as „Our Common Future“ alerted the world of the need of “sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs”². The Agenda 21 and the recently adopted resolution by the Johannesburg summit, which are based on this report, both commit the world to this sustainability. Sustainability covers not only ecological aspects, but also social, like equal rights for men and women, and also economical aspects, for example the saving of resources. It is more than obvious that sustainable development goes therefore beyond protection of the environment. This is reflected in the Agenda 21 and the resolution of Johannesburg, but not in the draft treaty.

Sustainability and the improvement of the quality of the environment are related to all policy areas of the Union. It is therefore necessary, that these objectives are included into the first part of the treaty on equal footing with the other objectives. Because „a clean and healthy environment is essential for the well-being and prosperity of society, yet continued growth at global level will lead to continuing pressures on the environment”³.

¹ such as: Hain CONTRIB 122: Art. 4 (a) and (c); Duhamel and Beres CONTRIB 140: A.2.; Paciotti CONTRIB 117: Preamble, Art. 37 and 57, PES CONTRIB 137: p.4; Einem and Berger CONTRIB 126: Art. 2; López Garrido, Borrell and Carnero CONTRIB 115: p. 27; Brok CONTRIB 111 REV 1:Art. 58

² 42/187 Report of the World Commission on Environment and Development, General Assembly of the United Nations 11 December 1987

³ 6. Community Environment Action Programme Preamble (1). Dec. 1600/2002/EC of 22 July 2002

„Environmental concerns“ have to be integrated“ into all community policies and activities¹”, i.e. not only into the internal aspects but also into the external relations². This principle, which is already part of the TEC (Art. 6), has been repeatedly confirmed by the Council and the EP (6. Community Environment Action Programme) and is shared by the ESC³. The CoR notes correctly “that an advanced environmental protection policy can generate many benefits, over and above environmental ones”⁴.

Sustainability and therefore the principle of the integration of environmental aspects into all EU policies should be incorporated in Article 3 of the future treaty.

3. ACCESS TO INFORMATION AND JUSTICE, PUBLIC PARTIZIPATION

For the full integration of sustainability and protection of the environment into the daily life of the Union are certain principles necessary, which should also be mentioned in the first part of the future treaty. According to the Aarhus convention:

Every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations. (...) To be able to asserts this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters”⁵.

¹ Art. 6. TEC and 6. Community Environment Action Programme Art. 2 § 4

² 6. Community Environment Action Programme Art. 2 § 6

³ OJ C 221, 7.8.2001, p. 80

⁴ OJ C 357, 14.12.2001 p. 44, No. 1.6.

⁵ Aarhus Convention signed by the EC and the Member States in June 1998 and entered into force in October 2001

These interconnected principles are already accepted by the Council, the EP and the Commission¹ and it is important, that the convention and the future treaty integrates them. But how can these principles be enacted in the reality? The principles of the above quoted Aarhus Convention, which is currently put into Community legislation², can be used as a reference:

1. *Access to information*: All EU institutions and bodies shall in response to a request for environmental information, make such information available to the public, including copies of the actual documentation containing or compromising such information.³ Whereas “environmental information” means any information on e.g. the state of elements of the environment, factors affecting or likely to affect elements of the environment, or the state of human health and safety.⁴
2. *Public participation in the legislative process*: All EU bodies shall inform the public, in an early, appropriated and adequate manner, of proposals on policy, legislation or other decisions and give citizens and their organisations the opportunity to comment on such initiatives. And they shall make accessible to the public the text of the decision along with reasons and considerations on which the decision is based.⁵
3. *Access to justice*: Any person who considers that his or her request for information has been inadequately answered should have access to a review procedure before a court of law, which would be in the case of EU bodies and institutions the ECJ, and the public shall have access to a review procedure before a court of law, the ECJ, to challenge the decisions of the Union’s institutions and bodies.⁶

4. Conclusions

- I. **Sustainable development has to remain one the objectives of the Union** (Article 3 of the draft treaty). It has to be **supplemented by the objectives of**
 - high protection and improvement of the quality of the environment
 - the raising of the standard of living and quality of life
 - balanced and sustainable development of economic activities

¹ 6. Community Environment Action Programme

² e.g.: the Directive concerning Environment: public participation in plans and programmes (see Common Position (EC) No 41/2002 adopted by the Council on 25 April 2002)

³ Aarhus Convention Article 4

⁴ Aarhus Convention Article 2

⁵ Aarhus Convention Article 6

⁶ Aarhus Convention Article 9

II. Integration of environmental aspects into all EU policies (Article 6 TEC) has to be kept as one of the main objectives of the Union.

III. The following principles have to be incorporated into the future treaty:

- Access to information
 - Public participation in the legislative process
 - Access to justice by the public
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