



## Improving the climate

### Will the new Constitution strengthen the EU's performance in international climate negotiations?

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#### Abstract

This policy brief elaborates on the impact of the EU's Constitutional Treaty on the preparation, formulation and adoption of the EU's position in international climate change negotiations. The analysis focuses on how changes envisaged will affect the policy-making process and particularly on whether shortcomings identified in the current situation will be addressed. These shortcomings include the inherent potential for discontinuity in the common position and external representation due to the rotating Presidency system, the intensity and length of EU internal coordination, the technical and environmental focus of the policy-making process and finally questions on democratic legitimacy.

The authors conclude that the long-term strategic perspective and coherence of the EU position in the climate change negotiations would benefit from a larger involvement of the Foreign Minister and European External Action Service envisaged in the Constitutional Treaty. If both were to obtain a role in preparing and negotiating the EU position in climate change, this could benefit the integration of climate change with other external policies of the EU. On the other hand, the new foreign policy machinery of the EU

presumably would not have the high level of environmental knowledge of climate change policy and its implementation that is available in the environment ministries. The degree of democratic legitimacy could benefit from the expected switch from consultation to consent required from the European Parliament for the conclusion (ratification) of international climate agreements by the European Union. Finally, the inclusion of the principle of 'participatory democracy' in the Constitutional Treaty, which could lead to more involvement of relevant stakeholders, might add to a higher legitimacy of the EU position in the international climate change negotiations.

#### 1. Introduction

The Kyoto Protocol, signed in 1997 and supplemented with the Marrakech Accords in 2001, has finally entered into force on 16 February 2005. Already from the beginning, but especially after the US rejected the Kyoto Protocol in 2001, the EU has dedicated itself to making the international climate change agreement a success. The EU member states, having forged a common position, politically committed themselves to "keeping Kyoto alive" and convinced others, most notably Japan, Canada and eventually Russia, to pursue ratification. The EU's performance as a climate negotiator was uneven over time, however. Criticism of its performance focused on the functioning of key EU players, such as the rotating EU Presidency, and on the process of EU coordination to arrive at common positions. Both the position of key players in the policy-making process and the conduct of the negotiations are intrinsically linked to the assignment of competences among the EU institutions and the prevailing decision-making procedures. Therefore, any discussions of the EU's performance in the climate negotiations<sup>1</sup> should be seen in the context of a more general debate on EU institutional reform.

<sup>1</sup> In this article, international climate negotiations are the negotiations that are conducted in the United Nations Framework Convention on Climate Change (UNFCCC). The most important climate agreement negotiated in the UNFCCC so far is the Kyoto Protocol.

The EU debate on institutional reform took place *inter alia* in the European Convention, held in 2002-2003, with the aim of making the EU more effective and legitimate and resulting in a draft Constitutional Treaty for the EU that would replace the current EU and EC<sup>2</sup> Treaties. On the basis of this draft, the EU member states in a so-called Intergovernmental Conference (IGC) eventually adopted in June 2004 a “Treaty establishing a Constitution for Europe” (hereafter referred to as the Constitutional Treaty). The EU’s role in the world was one of the key agenda items of the Convention. The debate, taking place during the political divide in Europe over the Iraq war, focused foremost on security and defence issues, but also had relevance for other areas of EU external action, such as the EU’s activities in the international climate negotiations. This policy brief analyses the institutional changes regarding EU external action and other proposed changes envisaged in the Constitutional Treaty, as they are relevant for the way the EU formulates its position for and conducts negotiations on international climate agreements.

Before its entry into force, the Constitutional Treaty must be ratified by all the EU member states and be approved in several national referenda. Nevertheless, we think it is worthwhile to assess its potential implications, since many of the changes might be implemented ahead of the official ratification. In particular we assess whether the changes could increase the i) long-term strategic perspective, ii) consistency, iii) environmental effectiveness and iv) democratic legitimacy of the EU’s position in international climate negotiations.

This policy brief is structured as follows. First we analyse the current institutional set-up of the EU in the climate negotiations and identify potential shortcomings. Secondly we present relevant changes as envisaged in the Constitutional Treaty, as well as a system of issue-leadership for external representation as developed and implemented by the participants of the Council Working Group on climate change. In the conclusion, we analyse the changes in light of above-mentioned criteria.

## 2. The Institutional Set-up of the EU in International Climate Negotiations

Climate change as part of the environment chapter of the current EC Treaty is a shared competence of both the EU member states and the European Community.<sup>3</sup> As a result, both the EC<sup>4</sup> and the member states are signatories to the Kyoto Protocol and both have legally binding reduction

targets in greenhouse gas emissions. To reach these objectives, there is a mixture of both national (e.g. taxation) and EC (e.g. the EU emissions trading scheme) policies, following the rules of the EU and mainly the EC treaties. The organisation of decision-making on the formulation of negotiating positions differs from decision-making on ‘domestic’ EU policy measures (i.e. so-called ‘common and coordinated measures’), such as the adoption of the EU emissions trading scheme.

The common and coordinated measures are governed by the standard Community method of decision-making: the European Commission has the right of initiative for legislation, while the European Parliament and the Council of Ministers (i.e. member states) decide through the co-decision procedure.<sup>5</sup> In multilateral climate negotiations the EU member states and the EC operate with a common negotiation position. The formulation of this position is, as in the case of other external policies, more intergovernmentally organised, reflecting the member states’ preference for being the prime actor in the negotiation of (most) international agreements.

In some multilateral environment negotiations, the Commission represents not only the EC, but also the EU member states, but according to Art. 174 of the environment chapter of the EC Treaty, the EU member states are also in a position to negotiate on their own behalf.<sup>6</sup> With regard to the international climate negotiations, the EU Council of Ministers has been strict in using this provision, i.e. the Council has not authorised the Commission to conduct the negotiations on behalf of the EU member states. Instead, the half-yearly rotating Presidency of the EU is the main representative of the EU (member states and the EC). Together with the next (incoming) Presidency and the European Commission, it forms the so-called ‘troika’,<sup>7</sup> which conducts the most important negotiations for the EU. The Presidency and the troika operate with a relatively strict mandate from the Environment Council of Ministers.

As a result of the shared competence, the policy-making process regarding the EU position for international climate negotiations has thus both an EC component and a member state component. According to the EC Treaty (Art. 10, TEC), the EU member states have to support the Community’s task and the objectives of the Treaty. One of

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<sup>5</sup> See glossary of abbreviations and terms.

<sup>6</sup> The legal basis for the division of competence in multilateral environmental agreements is Art. 174 para. 4 (TEC). It refers to Art. 300 (TEC), which states that with regard to Community policies it is the Commission that will be authorised by the Council to negotiate international agreements with third countries. The last sentence of Art. 174 §4 stipulates however that “the previous subparagraph shall be without prejudice to member states’ competence to negotiate in international bodies and to conclude international agreements”.

<sup>7</sup> The role of the troika is not legally defined. Legally speaking, the troika only exists in the Common Foreign and Security Policy of the EU.

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<sup>2</sup> For the difference between the EU and the EC, see glossary of abbreviations and terms.

<sup>3</sup> See Lavranos (2002) for a comprehensive overview of the decision-making competencies regarding multilateral environmental agreements.

<sup>4</sup> In policy areas where the EC has a competence to regulate, it is also designated to represent the EU externally. In the case of environmental policy, there is a shared competence (member states and EC) that is externalised (Leal-Arcas, 2001).

which is “promoting measures at international level to deal with regional or worldwide environmental problems” (Art. 174 §1, TEC). In practical terms the EU member states and the EC thus have to work together and they have to come up with common positions for the international climate negotiations.

As with most EU policies, the position for the international climate negotiations is agreed through the Council hierarchy, starting from the Council Working Group on climate change,<sup>8</sup> via COREPER-I<sup>9</sup> to the final round and official decision-making in the Environment Council of Ministers (see Figure 1). Usually the Presidency prepares the draft position and not the Commission, which in the standard Community method has the right of initiative. During climate change negotiations, the EU (i.e. delegations of the member states) decides in daily coordination meetings how to adjust its position to reach agreement with other negotiating parties. These ‘Council of Ministers meetings at location’ take place behind closed doors with no observers allowed either from interest groups or from the European Parliament delegation. National parliamentarians may attend the coordination meeting when they are part of the national delegation, which is the case in some member states, but not in others.

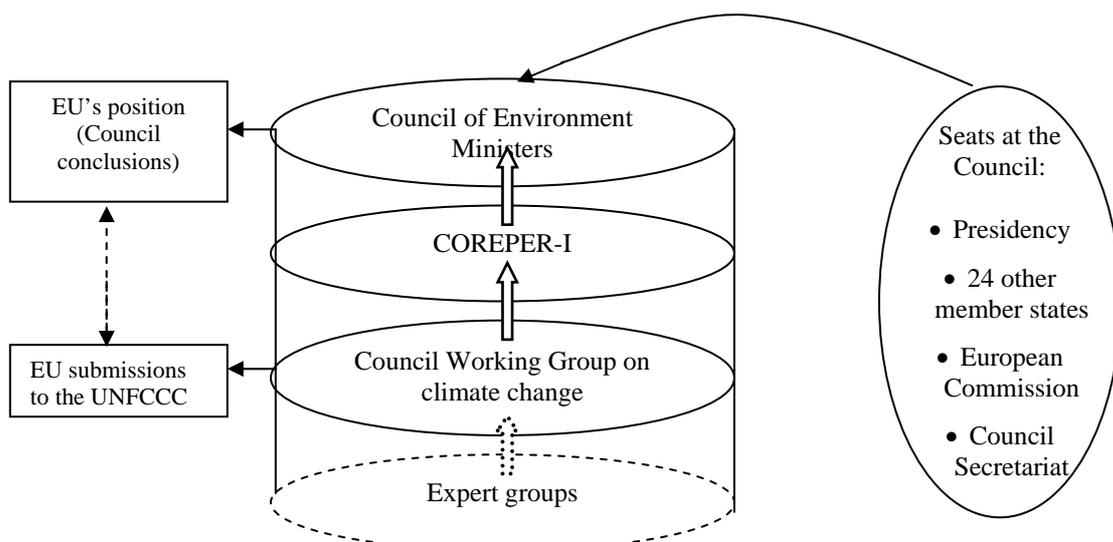
In addition to the official EU’s position formulated in the Council conclusions, there is a second track position, written down in so-called ‘submissions’, which are technical positions made by expert groups and approved directly by the Council Working Group on climate change

(see Figure 1). The technical submissions have sometimes pre-empted the official EU position and are otherwise specifications of the EU position. Therefore, they should be considered an integral part of the EU’s position.<sup>10</sup>

Although most issues concerning the EU position in international climate change negotiations are prepared and settled by the Council of Ministers, the European Council, i.e. the European heads of states and governments, becomes involved in some highly political and strategic issues. When the US withdrew from the Kyoto Protocol in 2001, the European Council came out with a strong statement that the EU would fulfil its Kyoto commitments unilaterally if needed (European Council, 2001a). Ever since, international climate change policy is periodically discussed. For the 2005 Spring European Council the issue of medium- and long-term strategies for reducing greenhouse gas emissions is on the agenda.

The link between achievements in domestic greenhouse gas reduction, where the Commission has a larger role, and the external position has become more visible over the years. For example to prepare its strategy for medium- and long-term emissions reduction, the European Council asked the European Commission to prepare a cost-benefit analysis (European Council, 2004). The report should of course be seen in conjunction with input from the EU Council of Ministers, i.e. its Council conclusions, but it is nevertheless interesting to see that the Commission has obtained a more substantial role in the preparation of the EU’s long-term climate change vision.

Figure 1. Decision-making on EU’s position in climate negotiations in the Council of (Environment) Ministers



<sup>8</sup> The official Working Party on International Environment Issues is divided into two working groups: a) global environmental aspects of sustainable developments and b) climate change.

<sup>9</sup> See glossary of abbreviations and terms.

<sup>10</sup> For example, a submission called ‘Estimates of Emissions of Carbon Dioxide from Forest Harvesting and Wood Products’ in FCCC/SBSTA/2001/LISC.1, Subsidiary Body for Scientific and Technological Advice, 14 May 2001, took a rather strict position towards a certain type of sink, while the Council conclusions had become more lenient. Submissions can be found on line (see <http://www.unfccc.int>).

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The European Parliament's role in the policy-making process is limited: it only has to be informed about the negotiations and consulted for the conclusion<sup>11</sup> of international environmental agreements, but this 'opinion' can be neglected by the Council of Ministers. The Council's prerogative to neglect the outcome of the EP's vote reduces the credibility of any threat by the EP to vote down an international climate change agreement.

### 2.1 Criticism of the current institutional set-up

It would be naive to assume that the negotiations themselves can be separated from the preparation of the negotiations (i.e. the formulation of EU positions). The 'Council of Ministers meetings at location' supply the best proof of this. Thus, when addressing potential shortcomings of how the EU conducts its negotiations, one needs to start with the way positions are formulated.

- The negotiations are mainly dealt with by climate change experts and not at the political level (i.e. ministers). Because many decisions are taken in specialised expert groups (on sinks, Clean Development Mechanism, etc.), it is easy to lose sight of the broader picture. This is one of the constraints operating against the development of a long-term strategy that encompasses all aspects and policy options.
- The formulation of the position is primarily intergovernmental, where member states dominate. Although decisions on the EC's position in climate negotiations might formally be taken by qualified majority voting,<sup>12</sup> any decision on the EU member states' part of the common EU position has to be taken by unanimous agreement. This often leads to very strict positions, which constrain the flexibility of the EU negotiators and the long-term strategic perspective of the overall position.
- In climate negotiations, the performance of the EU is closely related to the performance of the Presidency. Since the Presidency is changing every half year, there is a relatively high chance of inconsistencies in performance and actual positions. This semi-annual change in leadership can also be a constraining factor regarding the formulation of a long-term strategic perspective. Some observers of the climate negotiations have argued that it would benefit the EU's performance if the Commission were to lead the negotiations and not the Presidency (Grubb & Yamin, 2001; Lacasta et al.,

<sup>11</sup> 'Conclusion' of international agreements is EU jargon for ratification.

<sup>12</sup> See glossary for an explanation of QMV. It has been argued by EU member states that climate change policies would fall under unanimity, given that Art. 175 (2), which stipulates the exceptions for the use of QMV, refers to "measures significantly affecting a member state's choice between different energy sources and the general structure of its energy supply" (Lacasta et al., 2002).

2002; and McCormick, 2002). Owing to institutional and political reasons, this has proved impossible in the past (Lacasta et al., 2002).

- The current way the EU formulates its negotiation position is heavily geared towards the environmental decision-making machinery. While it appears normal that climate change policy is dealt with by the environment configuration of the Council of Ministers, one must question whether this allows for sufficient consistency and coherence with economic and trade concerns, and notably, foreign policy interests.
- EU member states have tended to spend far more time with each other in coordination meetings than actually negotiating with and listening to their negotiation partners. The EU seems to suffer from 'navel gazing' behaviour during the negotiations because consensus between the EU member states needs to be reached on all important issues coming up during the negotiations.
- The European Parliament (as the 'voice of the people') is almost entirely absent, which raises some questions regarding the democratic legitimacy base of the EU in climate negotiations. Both the European Parliament and the national parliaments often find themselves confronted with a *fait accompli* after international agreements are signed.

Some of the shortcomings have been addressed, including incremental institutional change such as a stronger role for COREPER, more involvement of economic, trade and foreign ministries and greater general flexibility in the common negotiation position. Many of these changes have been implemented in the aftermath of the failure of the talks in The Hague in 2000. They might have led to improvements in the EU's performance in Bonn and Marrakech in 2001, but did not fundamentally alter the way the EU position is formulated. For this to occur, a more fundamental revision of the EU's institutions and decision-making would be needed, such as the one agreed upon by the Intergovernmental Conference in June 2004, when it adopted the Constitutional Treaty.

## 3. Reforming the EU Institutions

This section discusses several relevant issues in the Constitutional Treaty to the extent that they address the identified shortcomings. We also briefly analyse a change that has recently been implemented by the members of the Council Working Group on climate change in the external representation of the EU in the climate negotiations, but that is unrelated to the changes in the Constitutional Treaty.

### 3.1 Merging the EU and EC Treaties

The article in the environment chapter on the EU in international organisations and platforms (Art. 174 §4, TEC) has not been altered with the exception of a change of the word "Community" into "Union" (see Art. III-233 §4, Constitution). This is because the Constitutional Treaty

merges the current EU and EC Treaties. In fact, everything has become EU, changing concepts like ‘Community competence’ into ‘Union competence’. The EU will thereby presumably replace the EC as a Party to international climate agreements. It can be argued that the current situation in which both the EC and the EU member states are Parties is slightly strange, since at the end of the day they are both members of the same ‘club’. The new situation seems to be even more schizophrenic with both the club (i.e. the EU) and the club members (i.e. the EU member states) acting as Parties. This could in the future possibly lead to a more fundamental debate on whether the EU can be regarded as a state in the context of several international organisations in which the EC currently participates as a Party.

### 3.2 Council configurations

The European Convention proposed the establishment of a Legislative Council configuration in the Council of Ministers, in which all legislation under co-decision would be decided upon in public.<sup>13</sup> The idea was ruled out by the EU member states at one of the first sessions of the IGC. Instead, it was decided that meetings of the Council of Ministers would be opened up when it decides upon legislative acts (Art. I-24 §6, Constitution). The EU position for the UNFCCC is not a legislative act and will therefore remain behind closed doors.

The idea behind the Legislative Council was not only to increase the transparency of the Council of Ministers, but also to reduce the number of Council configurations to counter the compartmentalisation of sectoral interests, such as environmental interests. By rejecting the idea for the Legislative Council, the IGC therefore implicitly also rejected the idea of reducing the number of Council configurations. Under the Constitutional Treaty, the European Council will decide upon the list of other Council configurations (in addition to the General Affairs Council and the Foreign Affairs Council, which are explicitly mentioned). Since the number of Council formations was recently changed by the Seville Council in 2002, the existence of the Environment configuration does not seem to be directly threatened. The debate on compartmentalisation may however continue ‘below the surface’ and return to the political reform agenda in the future.

### 3.3 Presidency of the Council of Ministers

A much-debated issue has been the rotating Presidency of the Council of Ministers. It was decided that the system will no longer apply for the European Council, the Foreign Affairs Council and the Euro-Group Council of Economic and Financial Affairs. For these configurations a more permanent President or chair will be appointed (Devuyt,

2004, CER, 2004). For the other Council configurations, the European Convention proposed to increase the period of time held by the chair to one year and to make it more flexible to decide which member state would chair which Council configuration.<sup>14</sup>

The IGC decided instead on a rather minimal formulation in the Constitutional Treaty which merely stipulates a system of equal rotation whose conditions will be established by the European Council (Art. I-24 §7, Constitution). At the same time it made a declaration in one of the annexes to the Constitutional Treaty laying down a “Draft European decision of the European Council on the exercise of the Presidency of the Council” (document CIG 87/04), proposing a system whereby three member states together hold overall responsibility for the Presidency for a period of 18 months. Each member of the group will in principle chair for a six-month period, but together the three member states will operate on the basis of a common programme and the three member states among each other “may decide alternative arrangements among themselves”.

The envisaged system for the Presidency would thus be very similar to the current system of the half-yearly rotating Presidency, except that it establishes a stronger group responsibility, for example via the presentation of common programmes. It also grants slightly more flexibility to member states to decide upon a share of the burden, which might be particularly relevant for the smaller EU member states. The draft decision obtained formal approval by the Council in December 2004, in conjunction with a decision on which combinations of countries will be formed to hold the Presidency until 2020 (Council, 2004).

An important question is whether the EU Presidency will maintain a role in the external representation of the EU. This is discussed below following the introduction of a new actor with potential relevance for EU diplomacy in the field of climate change, the EU Minister of Foreign Affairs.

### 3.4 The proposed Minister for Foreign Affairs and the European External Action Service

The Constitutional Treaty establishes an EU Minister of Foreign Affairs, a ‘double-hatted’ position bringing together *ad personam* the current functions of the High Representative for the CFSP<sup>15</sup> and those of the Commissioner for External Relations (Crum, 2003). This person would lead a European External Action Service (EEAS) that brings together the staff of the Commission’s

<sup>14</sup> See Van Schaik & Egenhofer (2003) for a more elaborate account.

<sup>15</sup> The High Representative of the Common Foreign and Security Policy (CFSP) assists the EU Presidency in matters relating to the common foreign and security policy. The position is held by the Secretary-General of the Council. The High Representative also helps in formulating, preparing and implementing policy decisions by the Council. He or she may conduct political dialogue with third parties, on the Council’s behalf and at the request of the Presidency.

<sup>13</sup> For a more detailed account of this proposal, see Van Schaik & Egenhofer (2003).

Directorate-General on External Relations,<sup>16</sup> the staff of the High Representative for the CFSP and staff seconded from national diplomatic services (Art. III-296 §3, Constitution). The new Minister for Foreign Affairs will be appointed by the European Council and will be one of the Vice-Presidents of the European Commission. He or she shall conduct the Union's CFSP and will "be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action" (Art. I-28, Constitution).

In the UNFCCC, other countries enter the stage with diplomats (e.g. US) or inter-ministerial negotiating teams (e.g. Japan). Involvement of the new EU Foreign Minister in the EU's activities in the UNFCCC could advance the integration of climate change with other policy areas, notably with other external policies. Yet it can be questioned if diplomats and foreign ministers have sufficient command of the content of the policy area, compared to officials of environment ministries and their ministers. It is important to realise that the implementation of international agreements would remain the responsibility of the policy 'environment track', whereby support from the 'energy track' is usually essential, as well as support from the 'development track' for yet other aspects. The EU's credibility in the international negotiations is to a large extent dependent on the success of this policy implementation. Therefore, it is important to secure a sufficient level of environmental policy knowledge in case the Foreign Minister and his/her External Action Service would become more involved.

It can actually be expected that the Foreign Minister and his/her External Action Service will claim a larger role vis-à-vis the climate change dossier, since the Minister will become responsible for coordinating the Union's external action. This would presumably include keeping a close eye on the external policy activities of other Commissioners, such as the Environment Commissioner. The Presidency of the Foreign Affairs Council furthermore could enable him or her to watch over the external activities of the other Council configurations, including those of the Environment Council.

### 3.5 The new article on international agreements: More or less ambiguity?

"The Union's External Action" is the new heading in the Constitutional Treaty in which several aspects of EU foreign policy are grouped together, including the CFSP and the Common Commercial Policy (international trade policy). The section is preceded by some general objectives, thereby underlining the need for coherence between the different parts of the EU external action (Art. III-292, Constitution; Cremona, 2003; De Witte, 2003). A chapter on International Agreements sets out the procedure for the negotiation and conclusion of agreements between

the Union and third countries or international organisations (Art. III-325, Constitution).<sup>17</sup> According to this article, either the European Commission or the EU's Minister of Foreign Affairs may ask the Council of Ministers to "open negotiations". It is up to the Council of Ministers to appoint out of these two the Union negotiator or head of the Union's negotiating team, whereby the Foreign Minister will be appointed regarding CFSP issues.

Regardless of who becomes the Union's negotiator, the EU member states retain their sole right to negotiate in international bodies as a result of the maintenance of the shared competence in the field of environmental policy.<sup>18</sup> This implies that the common position will remain an EC (this would become EU) and EU member state component and that therefore consensus by all EU member states would remain a necessity in order to arrive at this common position. Moreover it means that the EU member states might still decide to authorise the Presidency of the Council of Ministers to speak on their behalf.

The article does not clearly stipulate which actor makes the proposal for the EU's position in climate negotiations, although it speaks about negotiating directives, which would presumably apply for the "Union" part of the EU position for international climate negotiations. A transfer of the activities to draft the EU's position from the Presidency to the Commission as is currently the case for the EU position in the WTO, or to the European External Action Service (EEAS), would reduce the workload for the rotating Presidency. It could also offer an opportunity to increase the consistency of the EU's position in climate negotiations. If the EEAS were to prepare the negotiating positions, it could furthermore foster the coherence of the position with other external policies of the EU.

It might be appropriate to include the Minister of Foreign Affairs in the Union's negotiation team (a troika-like construction). This would probably increase the diplomatic character, the continuity of the position and the coherence with other policies. It would also give outsiders a clearer view of whom to address. The EU Foreign Minister, or one of his or her delegates might however not possess the knowledge and resources to obtain all the details of the environmental technicalities of the issues at stake. Reducing the Presidency's role regarding the preparation of the position might furthermore decrease the member states' sense of ownership over the climate change file.

We have seen that the rotating Presidency system for the Environment configuration of the Council of Ministers is likely to stay largely the same. Moreover, the Presidency is

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<sup>17</sup> The article can be regarded as a revised version of Art. 300 (TEC).

<sup>18</sup> In this respect, it is especially important to note the last sentence of Art. III-233 §4, Constitution (environment chapter), which reads: "The previous subparagraph shall be without prejudice to member states' competence to negotiate in international bodies and to conclude international agreements".

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<sup>16</sup> DG External Relations (RELEX) deals with the EU-UN relationship, among other things.

likely to maintain its role regarding the external representation of the EU member states, since their right to negotiate on their own behalf has prevailed. This implies that the identified shortcomings originating from the “rotating leadership” on the issue of external climate change policy have not been fundamentally addressed in the Constitutional Treaty.

### 3.6 The role of the EP

The new article on international agreements touches upon the role of the European Parliament. Legal experts De Witte (2003) and Cremona (2003) argue that the Constitutional Treaty will strengthen the role of the EP in the areas of external relations that do not fall within the CFSP. The new element is the extension of the use of the consent procedure (currently known as the assent procedure, i.e. an approval vote by the EP on the basis of a simple majority). Consent will become required for “agreements covering fields to which the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required” (Art. III-325 §6a(v), Constitution). This will lead to a quite remarkable change for trade agreements as they would become subject to the European Parliament’s approval (Art. 300(3), TEC).

The situation is nevertheless ambiguous for climate change. It is unclear whether the “ordinary legislative procedure” applies, meaning co-decision used in combination with QMV.<sup>19</sup> At first the answer would be positive since so far the co-decision procedure has applied for EC legislation in the field of climate change, whereby the voting procedure in the Council of Ministers is QMV. But at times it has been disputed whether unanimity or QMV should apply for climate change policy. It is argued by some member states that climate change affects “the Member State’s choice between different energy sources and the general structure of its energy supply”, one of the derogations for the use of QMV mentioned in the Environment chapter (Art. 175 §2c, TEC, Art. III-234 §2c, Constitution). Unanimity would imply that the “ordinary legislative procedure” does not apply. In this respect it is interesting to look at the ratification of the Kyoto Protocol in 2002 (Council, 2002). Here a choice was made for Art. 175 §1 (QMV), i.e. the ordinary legislative procedure under the Constitutional Treaty. With QMV, the consent procedure under the new rules of the Constitutional Treaty would apply.

At the present time, consultation is the applied procedure (Art. 300 §3). For example, if the EP had declined to ratify the Kyoto Protocol, following the consultation procedure, the Council of Ministers could have set aside this judgement if acting unanimously. With the consent procedure it can no longer disregard the EP’s vote. The EP will actually be able to threaten to reject an international agreement unless its viewpoints or certain procedural

conditions are taken into account. Nonetheless, it might still remain difficult for the EP to become more demanding, since the Council knows that it is almost unthinkable for the EP to vote down an international environmental agreement, since the EP is generally known for being more “green” than the Council. Therefore it remains to be seen whether the introduction of the consent procedure will really change the situation as it stands today.

### 3.7 Participatory democracy

A new provision on participatory democracy (Art. I-46) assigns an important role to the participation of citizens and civil society organisations in the policy-making process. It also introduces the possibility of a citizens’ initiative, whereby “one million citizens can invite the Commission to draft a proposal on an issue of their concern”. The increased attention given to the involvement of citizens and the groups representing them is part of a broader debate on legitimacy, which is also addressed in the European Commission’s White Paper on Governance (Commission, 2001). This document aims to set out a framework for interest group participation and representation to increase the support for new policy proposals in civil society and thereby to increase their legitimacy. Certainly in the area of environmental policy, (technical) input from potentially affected companies as well as from NGOs is generally regarded to be of high value and appreciated for increasing the quality of EC legislation.

The provision for participatory democracy in the Constitutional Treaty appears to be designed for situations where the Commission has the right of initiative. For negotiating positions, this is not automatically the case and therefore the new provision might not be particularly relevant. If the Council remains the centre of gravity for the EU position in international climate change negotiations, interest groups can be expected to stay focused on the national level. In this case it might be easier for some interest groups than for others to reach out to all member states. The accessibility of the national delegates is furthermore constrained by the large amount of time they spend in internal EU coordination meetings.

If the Commission or the European External Action Service obtains a larger role in the preparation of the EU’s position, however, the provisions might become more interesting. The stakeholder consultations the European Commission is already organising on a regular basis offer an example of how this might work out in practice.

### 3.8 Reform outside the Constitutional Treaty: The system of issue leaders

National delegates in the Council Working Group on climate change have implemented some changes regarding the representation of the EU in the climate negotiations largely unrelated to the Constitutional Treaty. Although climate change might seem a relatively homogenous subject to outsiders, insiders know that there are several

<sup>19</sup> See glossary of abbreviations and terms for QMV and co-decision procedure.

issues within the UNFCCC that are treated more or less separately from each other in the negotiations, e.g. sinks, technology transfer, methods to monitor greenhouse gas emissions, national communications, etc. These issues roughly correlate with the expert groups established in the Council working group on climate change. In the past it accidentally occurred that the expert groups were not led by the Presidency's participant, but by for instance a representative of the former Presidency or even by the European Commission. Reasons included a lack of resources by the Presidency, temporary illness or for instance the finalisation of a specific file on which the past Presidency had key knowledge (e.g. the Swedes remained delegation leader during the Belgian Presidency on the issue of sinks).

Taking into account the burden for the country holding the Presidency and the potential inefficiency of the half-yearly changing leadership, the working group decided to assign so-called 'issue leaders' on a more permanent basis for specific fields, which work in conjunction with the lead negotiator from the Presidency. The issue leaders are experienced experts that carry out their task under the overall responsibility of the Presidency. In their field they remain EU negotiator over a longer time-frame and can thereby establish more stable contacts with negotiating partners, more solid knowledge and consistency in the position. Different EU member states thereby will obtain the possibility to specialise in specific issues, leaving the Presidency more space to focus on the overall strategy. A disadvantage of the increased role of specialised experts may be that they are typically difficult to control, because their knowledge is so specific. Although the Presidency keeps its responsibility, it remains to be seen if it can actually ensure the compatibility of specific positions in for instance the technical submissions with the EU's overall climate change strategy, particularly if such issues cover a time period spanning several Presidencies.

#### 4. Conclusions

At the beginning of this paper, we introduced four criteria for assessing the proposed changes: long-term strategic perspective, consistency, environmental effectiveness and democratic legitimacy of the EU's position in the international climate negotiations. We use them to analyse the changes envisaged in the Constitutional Treaty (sections 3.1-3.7) as well as the new system of issue leadership (section 3.8).

The strategic perspective of the EU in the climate change negotiations at times has been constrained by the way the EU's position is formulated and negotiated. One of the main causes – the system of the rotating Presidency of the Council of Ministers and its large role in representing the EU member states externally – has not been addressed by changes in the Constitutional Treaty. Involvement of the Foreign Minister and External Action Service could offer an opportunity for increased strategic perspective of the EU's position in climate negotiations, because they will

presumably focus on the EU's long-term diplomatic relations. Also the system of issue leaders could improve the long-term strategic perspective, particularly concerning specific issues. The larger degree of specialisation could however conflict with maintaining some flexibility in how to reach the EU's overall objectives in the field of climate change.

The consistency over time of the EU's position in the UNFCCC has at times been disturbed by the half-yearly change of leadership due to the system of the rotating Presidency. As for the Environment Council, this system will presumably remain similar to the current system. The issue-leadership system, as designed by the climate negotiators themselves, addresses the consistency issue to some extent. Another solution would be more involvement of the Commission or External Action Service, for example regarding the preparation of the EU's position.

It is perhaps more difficult to ensure consistency with other EU policies. The current process of arriving at the EU position and conducting the actual negotiations are largely dominated by the Environment Ministers and their administrations. More involvement of non-environmental interests could be pursued by giving a larger role to the EU Foreign Minister and the European External Action Service. The preparation of a formal policy proposal for the EU position by the European Commission could also increase the integration with other interests, since approval of the College of Commissioners by simple majority voting would in this case presumably be required, leaving space to incorporate other interests. The most important question remaining in such a scenario is how to ensure sufficient environmental knowledge regarding climate change policy and its implementation.

It can be expected that Environment Ministers and their officials have the best knowledge of the content of the EU's position. This would presumably benefit the environmental effectiveness of the EU position. From a purely environmental perspective, therefore, the best option would be to leave external climate change policy with the Environment Ministers, as it is today.

The environmental effectiveness might also be improved by more involvement of relevant stakeholders as long as this occurs in a balanced and transparent way. Solutions offered by the private sector could for instance be more in line with business conduct and thereby easier to implement. The EU's strength in international negotiations might also increase if it can prove that its position is backed by large segments of civil society. Actively using the new provisions for participatory democracy could be useful in this respect.

Democratic legitimacy will increase when the procedure for the EP's involvement will switch from consultation to the consent procedure as is most likely the case. It remains to be seen whether this formal right can actually be transposed in political reality, i.e. the balance of power between the Council, Commission and EP and what this means for the conduct of the negotiations.

The Constitutional Treaty – assuming it enters into force – will probably lead to substantial changes in the way the EU operates. For the EU as a negotiator in the UNFCCC, we identified small modifications that promise some interesting opportunities. The potential involvement of the EU Foreign Minister and the External Action Service offers the largest scope of increasing both the strategic perspective and the consistency of the EU's position in climate negotiations. Environmental effectiveness would need to be safeguarded, however, by ensuring a sufficient level of knowledge on climate change, the history of the negotiations, the technical details of certain dossiers, existing links with other policy fields, etc.

Finally, democratic legitimacy could be increased by more involvement of the European Parliament during the negotiating process. This legitimacy might furthermore be strengthened by seeking more input and support from groups in civil society, for instance by using the new provision on participatory democracy.

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## Glossary of abbreviations and terms

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CFSP	Common Foreign and Security Policy, second pillar of the European Union that deals with security and defence issues. The EU position for climate negotiations is not considered to be a CFSP issue, but an external issue of the EC pillar.
Co-decision	Under the co-decision procedure (Art. 251 of the EC Treaty) the European Parliament and the Council jointly adopt instruments. The procedure comprises two readings.
COREPER	Comité des Représentants Permanents (Committee of Permanent Representatives), consisting of the member states' EU ambassadors, called 'Permanent Representatives'. COREPER consists of COREPER I, dealing with EC business such as the internal market including the environment and COREPER II, dealing with 'high politics' such as foreign policy. The body prepares Council of Ministers meetings and may decide on issues of a secondary or technical order to decrease the workload during Council meetings.
Council of Ministers	Officially the Council of the EU, usually referred to as Council or Council of Ministers, consists of the portfolio ministers of the EU member states. The Council adopts laws, often in co-decision with the European Parliament.
EEAS	European External Action Service, a newly to be established diplomatic service for the EU.
European Commission	The EU's executive body, it proposes legislation, looks after implementation of legislation and is the guardian of the treaties. It is composed of 25 independent members, i.e. the European Commissioners, one from each EU member state.
EC	European Community, the pillar of the European Union in which the Community policies are placed. The EC has legal personality and falls under the jurisdiction of the European Court of Justice, i.e. EU "supreme court".
European Council	Consists of the heads of government and state and the European Commission President. It meets four times a year to provide guidance on the day-to-day management of the EU and to take strategic decisions.
EU	European Union, a <i>sui generis</i> polity, with intergovernmental and supranational characteristics. The EU is currently composed of 25 member states. Its activities are grouped in three pillars: the EC pillar, the CFSP pillar and the Justice and Home Affairs pillar.
IGC	Intergovernmental Conference. Negotiations between the member state governments with a view to amending the treaties.
Presidency	The Presidency of the EU is held in turn on a six-monthly basis by each member state. The Presidency chairs the meetings of the European Council and Council of Ministers and represents the European Union externally in many international organisations.
QMV	Qualified majority voting, indicates the number of votes required in the Council for a decision to be adopted. Member states' votes are weighted on the basis of their population and corrected in favour of less-populated countries. A proposal is accepted if it is supported by 71% of the votes and represents at least 62% of the population.
UNFCCC	United Nations Framework Convention on Climate Change, agreed at the UN Conference on Environment and Development in Rio de Janeiro in 1992. Its ultimate objective is to stabilise greenhouse gas emissions at a level that would prevent dangerous anthropogenic interference with the climate system. The most important climate agreement negotiated in the UNFCCC so far is the Kyoto Protocol.

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