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REFORM OF THE EU INSTITUTIONS: IMPLICATIONS FOR THE EU'S PERFORMANCE IN CLIMATE NEGOTIATIONS

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ABSTRACT

This CEPS Policy Brief assesses the potential impact of the draft Constitutional Treaty of the Convention on the Future of Europe on the way the EU operates in international climate negotiations. Although Treaty revisions in the EU are ultimately decided by the EU member states, the Convention's draft can be seen as an important blueprint that forms the starting point of the negotiations between the member states due to start in October 2003. Among the relevant issues that the authors identify are:

- *A change in the number and form of the Council of Ministers formations.* There is a chance that the Environment Council as it exists today will be changed, since most of its agenda – the adoption of legislation – will be transferred to the proposed Legislative Council. The transfer of remaining issues such as decision-making on multilateral environmental agreements to the Foreign Affairs Council or to an 'Internal Market Council' might offer some new perspectives, but it might also lead to a loss of environmental knowledge.
- *The establishment of a Union Minister of Foreign Affairs (with a European External Action Service).* Involvement of the Foreign Minister could offer an opportunity for more integration of foreign policy aspects in the EU's position for climate change negotiations.
- *Changes regarding the rotating Presidency.* Currently the rotating Presidency has an important role in both preparing and negotiating the EU's position in the climate negotiations. The proposal of a longer-term chair of the Council of Ministers (at least one year) is likely to increase the consistency of EU negotiation positions.
- *More transparent procedures* on how the Council of Ministers nominates the negotiator or leader of the Union's negotiating team (Art III-227).

The paper concludes that the Convention's draft Constitution offers some interesting proposals that could lead to more integration of the broader range of external policies into the EU's position for climate negotiations. Furthermore, there might be improvements related to the consistency of the EU's position.

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1. The EU: A 'failed' climate negotiator?

The European Union's record in climate change negotiations has been mixed.¹ While one can argue that it was largely the EU's flexible position during the Bonn and Marrakech negotiations that saved the Kyoto Protocol (cf. Legge, 2001), the EU was less impressive during the CoP6² in The Hague or more recently, at the CoP8 in New Delhi (cf. Pew Center, 2002 and Ott, 2003).

Criticism of the EU as a negotiator is tightly linked to the debate on reforming the EU institutions (Egenhofer and Cornillie, 2001). First of all, the EU seems to suffer from 'navel gazing' behaviour during the negotiations due to its own procedural workings. EU member states were said to spend far more time with each other in coordination meetings than actually negotiating with and listening to their negotiation partners (cf. McCormick, 2001). A second point concerns the predominance of environment ministries (and the lack of involvement of interrelated ministries), which is related to the organisation of the Council formation (cf. Egenhofer and Cornillie, 2001). Given that climate change is closely related to other policy areas, such as energy, transport, development and trade, it could be argued that climate negotiations have outgrown environment ministers. Climate change also has an obvious external relations dimension. It is seen as a key theme of EU external relations, therefore being highly politicised with a tense transatlantic dimension (Ott, 2001). Some other countries in the negotiations, such as the US, enter the stage not with environment ministers and their civil servants, but with negotiation specialists from foreign services taking the lead. In the EU however, environment ministers are in charge. A third source of criticism mentioned is the system of the half-yearly rotating presidency. The change of leadership that takes place every six months can at times disturb the continuity of the EU's negotiations strategy (Lacasta et al., 2002). 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 and Yamin, 2001; Lacasta et al., 2002; and McCormick, 2002). Owing to institutional and political reasons, this has proved impossible in the past (Lacasta et al., 2002).

Some of the shortcomings have been addressed, including incremental institutional change such as a stronger role for COREPER,³ more involvement of economic, trade and foreign

¹ 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.

² CoP is an abbreviation for 'Conference of the Parties'. Parties are countries that are signatories to UN agreements.

³ COREPER is an acronym for Comité des Représentants Permanents (committee of permanent representatives), consisting of the member states EU ambassadors, called 'Permanent Representatives'. COREPER consists of

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 may have worked to make a deal possible in Marrakech (CoP7) but fail to explain why the EU currently seems to be losing ground in the negotiations with Russia and developing countries. Something bigger may be at work that could explain the EU's mixed record.

Recently the Convention on the Future of Europe has addressed institutional issues closely related to the points of criticism mentioned above and other important questions such as the legitimacy base of EU policies. Far-reaching changes have been proposed and could – at least partly – be accepted by the upcoming intergovernmental conference (IGC)⁴ that is due to start in October 2003. These go a long way towards addressing the shortcomings we have identified.

2. The institutional set-up of the EU in international climate negotiations

Climate change (as part of the environment chapter of the current Treaty) is a shared competence of both the EU member states and the European Community.⁵ As a result, under the Treaty both the EC⁶ and the member states are signatories to international climate agreements such as the Kyoto Protocol and both have their own greenhouse gas reduction targets. To reach 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.

In multilateral climate negotiations the EU member states operate with a common negotiation position. Decision-making on the formulation of negotiation positions is differently organised than 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. Although complicated, the co-decision procedure is by now well established and functions efficiently. By contrast, the formulation of the position for the climate negotiations is, as in the case of other external policies, more intergovernmentally organised, reflecting the member states' preference for being the prime actor in the conclusion of (most) international agreements.⁷

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 secondary or technical order to decrease the workload during Council meetings.

⁴ Intergovernmental conferences (IGCs) are negotiations between the member states to amend the EU treaties. Specific to IGCs is the fact that changes can only be agreed by consensus, meaning that agreements are based on large package deals.

⁵ See Lavranos (2002) for a comprehensive overview of the decision-making competencies regarding multilateral environmental agreements.

⁶ In policy areas where the EC has a competence to regulate, it is also designated to represent the EU externally. In the case of the environmental policy, there is a shared competence (member states and EC) that is externalised (Leal-Arcas, 2001).

⁷ This decision-making process foresees two readings during which decisions are taken by simple majority in the European Parliament while these are taken by a qualified majority on the basis of weighted votes in the Council of Ministers. If the European Parliament and the Council of Ministers cannot agree in this process, they have another chance in the conciliation committee – a fast-track process to find a restricted consensus. In almost all

In the negotiations on multilateral climate agreements, it has become common practice that the (half-yearly rotating) presidency of the EU speaks on behalf of the EU (member states and the EC). Together with the next (incoming) presidency and the European Commission, which represents the European Community, it forms the so-called ‘troika’, which conducts high level negotiations on behalf of the EU. The role of the troika is not legally defined.⁸ The presidency and the troika operate with a relatively strict mandate from the Environment Council of Ministers. In some multilateral negotiations, it is the Commission that represents the EU, but according to Article 174 of the EC Treaty, in the area of environment policies the EU member states have the competence to negotiate themselves.⁹ In the field of climate change, the EU Council of Ministers has been strict in using this competence, i.e. not authorising the Commission to conduct negotiations.

The formulation of the EU’s common position for climate negotiations has a number of interesting features. As with most EU policies, the position is agreed by majority voting (i.e. qualified majority)¹⁰ through the Council hierarchy, starting from the Council Working Group on climate change,¹¹ via COREPER-I to the final round and official decision-making in the Environment Council of Ministers. Contrary to the ‘Community method’, it is the presidency that prepares the draft position and not the Commission. Nevertheless, as in the Community method, the Commission takes part in all meetings, although it does not have a voting right. The European Parliaments’ role in the policy-making process is limited, because it only has to be consulted, after which the Council of Ministers is not obliged to follow its recommendations.

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).

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.

cases, agreement is found in the Conciliation Committee. If not, as has happened in rare cases, there is no legislation.

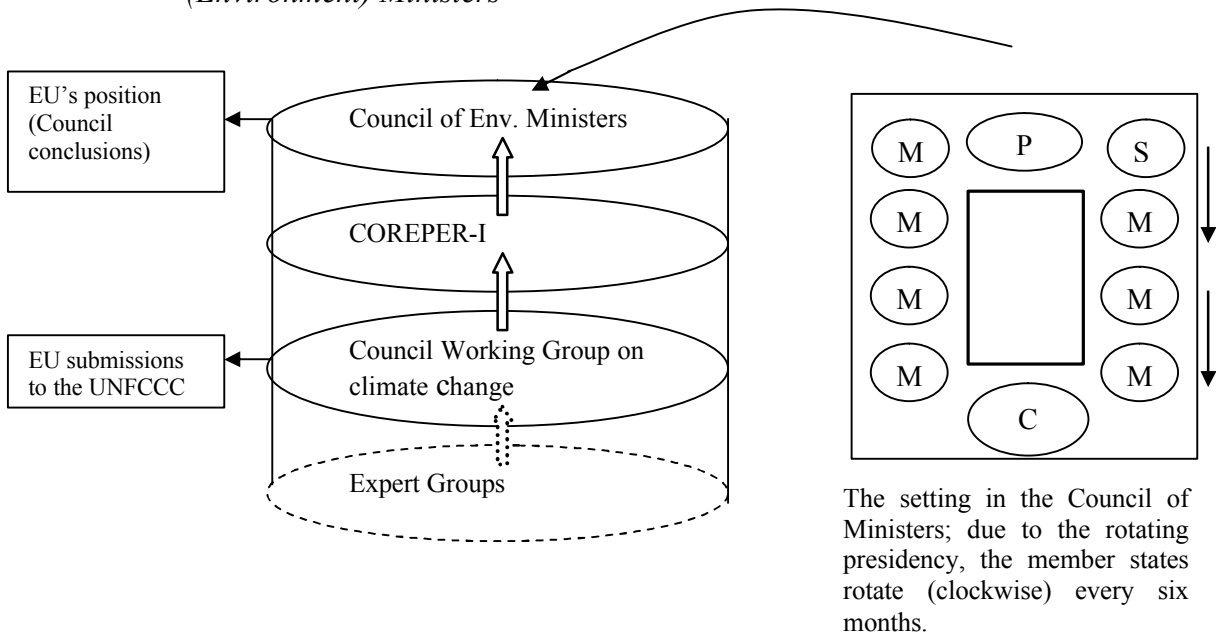
⁸ Legally speaking, the troika only exists in the Common Foreign and Security Policy of the EU.

⁹ The legal basis for the division of competence in multilateral environmental agreements is Article 174 paragraph 4 (TEC). It refers to Article 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. Article 174, para. 4 reads as follows: “Within their specific spheres of competence, the Community and the member states shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be subject to agreements between the Community and third parties concerned, which shall be negotiated and concluded in accordance with Article 300. The previous subparagraph shall be without prejudice to member states’ competence to negotiate in international bodies and to conclude international agreements.”

¹⁰ QMV is an abbreviation for ‘qualified majority vote’, a system of weighted-voting where all member states have a certain percentage of the votes at their disposal. Under the procedure, a proposal is accepted if it is supported by 71% of the votes.

¹¹ 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.

Figure 1. The EU's position in climate negotiations: Policy-making in the Council of (Environment) Ministers



- C = Commission
- P = Presidency, the member state that chairs the meeting
- S = Council Secretariat
- M = Member state (the EU's current 15 member states participate in all Council bodies and exercise full voting rights)

It would be naive to assume that the preparation of negotiations (i.e. formulation of EU positions) can be separated from the negotiations themselves. The ‘Council of Ministers meetings at location’ are the best proof of this conclusion. Thus, when addressing potential shortcomings on how the EU conducts its negotiations, one needs to start with the way positions are formulated. A number of issues are particularly relevant. First, 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. A second point is that the negotiations are mainly dealt with in the technical domain (i.e. officials). This may explain to some extent why a strategic perspective is often missing, because many decisions are taken in specialised expert-groups (on sinks, Clean Development Mechanism, etc.) where it is easy to lose sight of the broader picture. This is reinforced by the fact that the technical submissions often pre-empt the official EU position.¹² The third argument is that the formulation of the position is rather intergovernmental, where member states dominate. Although it is true that decisions on the EU's position in climate negotiations are formally taken by qualified majority voting, the close relationship with national energy policies, leads to a tendency to work at the level of the lowest common denominator.¹³ Fourth,

¹² 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 moderate. Submissions can be found on line (see <http://www.unfccc.int>).

¹³ According to Article 175, unanimity voting in the Council of Ministers applies when it decides upon “measures significantly affecting a member state’s choice between different energy sources and the general structure of its energy supply”. At times, it is argued that this is the case with the EU’s position in climate negotiations, which makes it more difficult to negotiate the position on the basis of qualified majority voting (cf. Lacasta, et al., 2002).

the presidency plays a dominant role. 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. The half-yearly change of leadership is also a constraining factor regarding the formulation of a long-term strategic perspective. Fifth, it should be mentioned that 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 ‘machinery’, there are questions on whether this allows for sufficient input of economic and trade concerns, and notably, foreign policy interests.

3. The proposals of the Convention on the Future of Europe

The debate on the future of Europe has been launched as a result of imminent enlargement. The candidacy of over 12 new members to the current EU-15 has brought the issue of institutional reform (i.e. efficiency, effectiveness, legitimacy) pressing high on the political agenda (cf. Dehaene et al., 1999 and Fischer, 2001). In December 2001, the European Council¹⁴ of Laeken (European Council, 2001b) decided to launch the Convention on the Future of Europe to pave the way for a new draft Constitutional Treaty. After almost one and half years of work, the Convention finalised the draft Constitutional Treaty in July 2003 (Convention, 2003). From October 2003 onwards it will be up to the Intergovernmental Governmental Conference (IGC) to decide on the final amendments to the current treaties. Legally, member states do not need to follow the work of the Convention when deciding on revisions of the current treaties. Politically though, it will be difficult for member states to disregard the Convention’s draft Constitutional Treaty, given that it has very broad support by Convention members, i.e. representatives of the member states, accession countries, members of national parliaments and the European parliament (cf. Louis, 2003).

Our analysis of the draft Constitutional Treaty (Convention, 2003) indicates at least four issues that could affect the way the EU negotiates in international climate agreements (and other multilateral environmental agreements):

- a change in the number and form of the Council formations;
- the establishment of an EU minister of foreign affairs (with a European External Action Service);
- changes regarding the system of the rotating presidency; and
- the Articles on the Union’s External Action and in particular regarding international agreements (Convention, 2003: Part III, Title V, Chapters I and VI).

3.1 Council formations

The idea of changing the Council formations goes back at least to the Seville European Council of June 2002, which decided to reduce the number of Council formations to nine, to “enhance the efficiency of the institution”. The reason for this move was that in various Council formations, sectoral interest (e.g. agriculture, energy, transport) had gained in influence to the extent of damaging the EU’s overall interests. A reduction of Council formations was also said to be beneficial for the coherence and transparency of the Council of Ministers. Consequently, the Convention has taken the idea of changing and reducing Council

¹⁴ The European Council, consisting of the heads of state and government of the EU member states, has effectively become the EU’s highest decision-making body. Although legally speaking the European Council cannot enact legislation, in practice the European Council does make many strategic policy decisions that are followed up afterwards by proposals for legislation and decision-making in the Council of Ministers.

formations further (Crum, 2003). As for climate change, this raises the question as to what would happen to the Environment Council.

The draft Constitution (Convention, 2003) explicitly mentions the following Council formations: a Legislative and General Affairs Council and a Foreign Affairs Council (Article I-23). The first Council will fulfil two roles (cf. Crum, forthcoming): In its general affairs function, this Council will look after internal coordination of decision-making in different Council formations and it will prepare the meetings of the European Council (which is composed of the heads of states and governments of the EU member states). In its legislative function, this Council will meet in public, to increase the transparency of decision-making and it will deal with all legislative acts under co-decision. Member states will be represented by “one or two representatives at Ministerial level with relevant expertise, reflecting the business on the Council agenda”. Given that the EU's position in climate negotiations is most likely *not* going to be decided through the co-decision procedure, we should *not* expect it to be dealt with by the Legislative Council. Nevertheless, any legislative environmental proposals, including those meant to meet obligations from international climate agreements, would fall under this formation.

The draft Constitutional Treaty leaves unclear what would happen with the Environment Council. Paragraph 3 of Article I-23 states that the European Council shall decide on further formations, i.e. it might decide to keep all the Council formations that currently exist and that have been already debated in Seville (Convention, 2003). But it is questionable if there will be enough left for the Environment Council to decide upon after the transfer of legislative acts under co-decision to the General Affairs and Legislative Council has taken place. It could be that in practice sectoral ministers, such as the environment ministers, will have closed discussions until they are close to decision, but it could also be that the full legislative process will be conducted in public (Hughes, 2003). In this last scenario, the Legislative Council will *de facto* function as an ‘Environment Council’ when Environmental issues are on the agenda and thus all environment ministers will be present. The agenda of the current Environment Council will in this case be emptied substantially, which will raise questions as to the need for the Environment Council formation.

Although it may seem hard to imagine that, following from the Convention’s draft, there is a chance that the Environment Council as it exists today may no longer exist in the future, it is interesting to consider what other options would remain. In a scenario where the Environmental Council is abolished it seems most feasible to transfer external issues of environmental policy to the Foreign Affairs Council¹⁵ or to a Council that deals with other external dimensions of internal market policies. The Foreign Affairs Council will deal with the foreign policy issues that are currently dealt with by the General Affairs and External Relations Council. More specifically it will most likely have at least the following issues on its agenda: European security and defence policy, foreign trade, development cooperation and humanitarian aid. The addition of decisions on positions in multilateral environmental agreements would fit in to this list because there is already an existing relationship between the agreements and most of these issues. For instance, an important component of climate change policy involves the implementation of projects in developing countries and the transfer of technology to them. Moreover, the aim of integrating environmental issues in other policy areas (Article 6, TEU), explicitly promoted by the Cardiff process that was launched in June 1998 by the European Council, has already led to more attention for environmental

¹⁵ As a result, external climate change policy would be dealt with by COREPER II instead of COREPER I (see also footnote 3).

policies in the General Affairs and External Relations Council (CEC, 2002). Nevertheless it could be questioned if climate change would receive much attention in a Council that deals primarily with problems of war and peace.

The other option is that decision-making on the positions for multilateral environmental negotiations is brought under a Council that deals with internal market issues that are *not* decided upon through the co-decision procedure, i.e. through the Legislative Council. Such a Council would presumably look most like the current Ecofin Council, which deals primarily with macro-economic issues. On the one hand, this would benefit the integration of environmental issues into the broader economic policies of the EU. But on the other hand, it cannot be expected that ministers participating in such a Council have sufficient knowledge of environmental issues nor that the EU's position in climate negotiations would be a key issue for them.

3.2 The proposed Minister for Foreign Affairs and European External Action Service

The second issue is the proposal for the establishment of an EU Minister of Foreign Affairs, a 'double-hatted' position bringing together *ad personam* the current functions of the High Representative for the CFSP¹⁶ and those of the Commissioner for External Relations (Crum, 2003 and Convention, 2003, Article 27). This person would presumably lead a European external action service that brings together the staff of the Commission's Directorate-General on External Relations (DG RELEX),¹⁷ the staff of the High Representative for the CFSP and staff seconded from national diplomatic services (Crum, 2003 and Convention, 2003, Declaration on the Creation of a European External Action Service). 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 be responsible for handling external relations and for the coordination of other aspects of the Union's external action" (European Convention, 2003, Article 27).

As explained earlier, other countries in climate negotiations enter the stage with diplomats or inter-ministerial negotiating teams. It could benefit the integration of climate change with other policy areas if the policy field were brought under the new EU Ministry of Foreign Affairs. Yet again it could be argued that diplomats and foreign ministers may lack knowledge on the content of the policy area, when compared with officials of environment ministries and their ministers. It is important to realise that the implementation of international agreements would maintain the responsibility of the 'Environment track'. The EU's credibility in the international negotiations is to a large extent dependent on the success of this implementation. Therefore, it is important for the EU's credibility that its negotiators have sufficient knowledge of the measures implemented so far along with the implementation options and scope of issues under negotiation.

3.3 The presidency of the Council of Ministers

One of the most contested issues in the Convention has been the discussion about the leadership of the European Union. The current system of the rotating presidency poses severe limitations on the continuity of the leadership of the EU. Almost everyone agreed that

¹⁶ The High Representative of the Common Foreign and Security Policy (CFSP) has the task to assist 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.

¹⁷ DG RELEX deals with the EU-UN relationship among other things.

changes have to be made. The direction of reform, however, remained disputed. Until the last phase of the Convention, most proposals focused on the leadership of the European Council and not on the chairmanship of the Council of Ministers (which does not necessarily have to be organised in the same way as it is now under the rotating presidency system). Ultimately it was decided that the presidency of a council formation, other than that of foreign affairs, shall be held by one of the participating ministers on the basis of equal rotation, for periods of at least a year (Convention, 2003, Article 23). It was further decided that the rules of such rotation will be established by the European Council.

At this time, the role of the president concerning the EU's position in climate negotiations is considerable; the president chairs all meetings of the Council of Ministers and its subsidiary bodies, and speaks on behalf of the European Community and the EU member states in the climate negotiations. If the president holds office for a longer period than the current half year, this could increase the stability and consistency of the EU's external climate change policy. On the other hand, it will also mean that power will be concentrated in one member state for a longer time. In this respect, the creation of a longer-term presidency may imply the creation of a new institution that will compete with existing institutions (Crossick, 2003). Furthermore, the equal rotation system that has been proposed would presumably mean that different member states would chair different council formations. This could imply a risk of lack of coordination or even competition between council chairs about, for example, which council would be allowed to deal with prestigious policies that do not clearly belong to one policy area. Another implication of the system is that if different chairs are allowed to operate on the global scene, the overall picture of the EU could become even more diffused than it is now, with different chairs from different member states acting as EU spokespersons in several international organisations and regimes. Moreover, it is unclear whether in the future it will still be the president who represents the EU at climate negotiations, an important question to which we now turn.

3.4 Who will prepare the EU's position on and negotiate international climate agreements: The President, the Commission or the new foreign minister?

Several proposals brought up in the Convention may affect the current strong role of the EU presidency in climate negotiations, notably the articles on the EU's external action and those regarding international agreements.¹⁸ The proposed creation of a new foreign minister position might also have implications.

In the current situation, it is the president who prepares the first draft of the EU's position as written down in the Council conclusions. This may change. In the EU, proposals are normally made by the Commission, but the Convention's draft does not make explicit who would draft these in the area of international agreements. If decision-making is transferred to the Foreign Affairs Council, it would be the office of the foreign minister, i.e. the European External Action Service that would draft the proposals for the negotiations mandate. If the Environment Council is to remain or climate change is transferred to an 'Internal Market Council', the position could be prepared by the European External Action Service (by the Council Secretariat staff), by the Commission or by the civil servants of the presidency. In the latter case, hardly anything would change, at least not in the case when the preparation of the EU's position would remain with the environment ministries and would not be transferred to the Economic affairs ministries. A transfer of the activities to draft the EU's position from the presidency to the Commission or to the European External Action Service would, on the other

¹⁸ Convention, 2003: Part III, Title V, Chapters I and VI.

hand, imply a large deviation from the status quo. This would offer an opportunity to increase the consistency of the EU's position in climate negotiations by decreasing the agenda-setting power of the rotating presidency. If the European External Action Service prepares the negotiation positions, it could also have the benefit of coherence with other external policies of the EU.

There is still considerable ambiguity as to who would lead the negotiations. According to Article III-227 of the Convention's draft Treaty (2003), either the European Commission or the EU's minister of foreign affairs may ask the Council of Ministers to "open negotiations". This does not mean, however, that either of these parties will also be the actors that carry out the negotiations. This is because Article 174, para. 4 TEC has remained largely the same (it is now called Article III-129),¹⁹ meaning that the member states, i.e. the Council of Ministers, keep the competency to negotiate themselves. The Council of Ministers, according to Article III-227, will decide upon the "negotiator or leader of the Union's negotiating team". It may even "designate a special committee in consultation with which the negotiations must be conducted" (European Convention, 2003, Article III-227). For the moment, it is unclear which option will be chosen for the negotiations of multilateral climate change agreements. It may be that the Council of Ministers prefers to stick to the status quo and again appoints its chair or president as leader of the EU's negotiating team.

If the option to transfer decision-making to the Foreign Affairs Council were to materialise, an interesting question arises as to what would happen with the 'Council of Ministers' meetings at location' that take place during the negotiation weeks. It is difficult to imagine EU Foreign Ministers attending the yearly climate conferences (CoPs) to adjust the EU's position during the negotiations. It may therefore be more appropriate to give a broad negotiations mandate to the Minister of Foreign Affairs, the Commission, an EU 'negotiating team' consisting of representatives of the member states or a team consisting of a mixture of those actors (a troika-like construction).

4. Conclusions and policy recommendations

We use four criteria to assess which of the options discussed would be preferable in the case of climate change. The criteria are: i) strategic perspective; ii) incorporating economic, trade and foreign policy aspects; iii) environmental effectiveness; and, iv) democratic control/legitimacy of the position.

As our analysis points out, there is a small chance that in the future, the Environment Council formation will be abolished, especially since most of its tasks will be transferred to the Legislative Council. In this scenario, two options seem possible. The decision-making responsibilities could be either transferred to the Foreign Affairs Council or to a newly established council that would deal with 'internal market issues' that are *not* legislative acts under the co-decision procedure (the 'left-overs' of the Legislative Council).

The first option is to move these responsibilities to the Foreign Affairs Council, thereby offering a possibility for more integration of the EU's position in climate negotiations with other external policies of the EU. In this scenario, it could be expected that officials of the new External Action Service would draft the negotiating directives and participate in the Council working group on climate change. Involvement of the External Action Service could

¹⁹ In this respect, it is especially important to note that the the last sentence of Article 174, stating that, "The previous subparagraph shall be without prejudice to member states' competence to negotiate in international bodies and to conclude international agreements" has remained unchanged.

be beneficial for the strategic perspective of the EU's position in climate negotiations, because the organisation will presumably focus on the EU's long-term diplomatic relations.

The transfer from the 'environment track' to the 'foreign affairs track' could offer an opportunity to provide a more strategic perspective to the way the EU negotiates and to incorporate related external policies and foreign policy aspects. But answers need to be found to harness the expertise of the environment ministries, i.e. to secure environmental effectiveness. There are at least four ways to harness environmental knowledge:

- A similar construction as is proposed for the Legislative Council could be invented, i.e. to allow environment ministers into meetings where external climate change policy is on the agenda. In this scenario, the environment ministers would second their foreign ministers during sessions of the Foreign Affairs Council, when positions for climate negotiations (and other multilateral environmental negotiations) are debated.
- Cooperation could take place in the form of joint meetings of foreign ministers and environment ministers (for instance every half a year). Currently, the General Affairs and External Relations Council already cooperates closely with development ministers. This construction could be used as well for the environment ministers.
- The Council Working Group could be left intact. No changes would have to occur at the working-group level. If the Council working group on climate change remains the same, much of the environmental knowledge and consistency of the EU's position will stay intact. At the COREPER level, it seems most appropriate in this scenario to switch from COREPER I to COREPER II, which deals with the more political issues, including foreign policy. This raises, however, important questions of consistency and clear reporting lines.
- Close cooperation could be fostered between the External Action Service, DG Environment and national environment ministries. This would presumably facilitate information exchange on, for example, the environmental effectiveness of the negotiations position, implementation possibilities for topics debated in the international negotiations and the history of the negotiations.

The second option is that the proposals regarding the Council formations in the draft Treaty are accepted but that the European Council decides to install an 'internal market council that would deal with all the current Community policies that do not involve legislative acts and are under co-decision, such as many macro-economic policy decisions. This council would presumably focus mostly on economic issues and therefore this option could lead to more integration of such issues into the EU's position for climate negotiations. Attention to the broader foreign policy agenda could, however, be expected to be lower since these issues would not be dealt with by this council. Environmental legislation that is decided upon by co-decision would not be on the agenda either. Therefore, knowledge on environmental effectiveness can be expected to be less than in the option where an environment council decides upon both. Therefore, when it comes to environmental effectiveness, this option is comparable to the option in which a transfer of decision-making would take place in the Foreign Affairs Council. Similar ways, as the ones described above, could be thought of to harness the environmental expertise.

Finally, an alternative to the previous two options could be that the IGC and the European Council decide to maintain (re-install) the Environment Council, if it decides, for example, not to accept the Convention's proposal for a Legislative Council or if it decides to fill in its mandate in a marginal way, i.e. that the Legislative Council's public meetings only formalise

decisions taken by other Council of Ministers' formations that meet behind closed doors. In this scenario, little would change when compared with the current situation, notwithstanding the changes to the rotating presidency system. It is relevant to note that this option can be expected *not* to damage the environmental effectiveness criterion, since it can be expected that environment ministers have the most knowledge on the content of the EU's position.

If the Environment Council is maintained as a Council formation, there are still interesting opportunities presented by the Convention, which could lead to more involvement of the 'foreign policy' track. For instance, the position for the negotiations could be prepared by the new EU External Action Service instead of by the civil service of the Council's chair. Further, the Environment Council could appoint the EU foreign minister as head of its negotiations team or it could ask him or her to be part of such a team (a troika-like construction). This choice could be beneficial for the integration of other external policy issues in the EU's position and probably increase the consistency of the EU's position in climate negotiations. Hence, it could offer an opportunity to increase the chance for a more strategic approach towards climate negotiations.

In this policy brief little attention has been given to the legitimacy of the EU in climate negotiations, since the prospects for democratic accountability following from the Convention's draft Constitution (2003) look gloomy. A more substantial role for the European Parliament is not foreseen in any scenario. Nor do the Convention's proposals to increase the role of national parliaments seem to be applicable. Arrangements made to inform them at an earlier stage regarding new legislative proposals, for example, seem only to apply when the community method of decision-making is used i.e. when the Commission prepares legislative proposals. The legitimacy base of the EU's position in climate negotiations therefore remains weak.

The Convention on the Future of Europe and the subsequent treaty revision will probably lead to a fundamental change in how the EU operates. With no area being left untouched, the Convention and the draft treaty revision may also spell out major changes on how the EU operates in international climate change negotiations. This might very well lead to more integration of the broader range of external policies into the EU's position for climate negotiations. Furthermore, the proposed changes to the rotating Presidency system are in particular likely to lead to more consistency. Hence we see some interesting opportunities for a more strategic role of the EU in the climate negotiations.

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