

## **The EU Constitutional Treaty: implications for Animal Welfare**

### **Introduction**

Although animal welfare is an issue of high concern for many EU citizens, its importance is currently not reflected in EC Treaties which lays down the legal basis for European initiatives in different policy areas. Animals are listed as agricultural products" (Annex I – referred to in Article 32 of the Treaty) and Community rules dealing with animal welfare have principally been generated by the need for common rules to ensure the proper functioning of the internal market thereby avoiding that operators with high animal welfare standards would face unfair competition from colleagues from other EU countries.

Through the recurring Treaty changes the animal welfare movement aimed to introduce animal welfare as a basic principle of the EU. These efforts resulted in a Declaration on Animal Welfare in the 1991 Maastricht Treaty and, after a long European-wide campaign, Member States agreed in 1997 to include a Protocol on Animal Welfare to the Amsterdam Treaty, which entered into force in 1999. This Protocol was an important step in imposing an obligation on Community institutions and Member States to take account of animal welfare considerations. Nevertheless, it could not be regarded as a sufficient or permanent solution to the need to establish the protection of animals as a legitimate subject for Community law or to prevent destructive effects on animal welfare resulting from other measures. Furthermore there are serious concerns about the application of the Protocol, as there does not seem to be a clear system to implement the legal obligations deriving from the Protocol.

In February 2002, a Convention on the Future of Europe was established to prepare a proposal for a draft Constitution, which was finalised in July 2003. This was the basis for discussions of the Inter-governmental conference (IGC), launched in October 2003 to reform the EU in order to cope with enlargement.

Eurogroup aimed for the Constitution to include provisions on animal protection in particular; within the objectives of the Union, in the list of shared competences of EU and Member States, and in the relevant policy areas. Unfortunately the Convention focused on major institutional and political issues and failed to include improvements for animal welfare

### **The Treaty establishing a Constitution for Europe**

The new European Constitutional Treaty was debated by the Italian and Irish Presidency and agreed on 18 June 2004. It is due to come into force on 1<sup>st</sup> November 2006 provided that it has been ratified by all the Member States. If not all have ratified it by then, it will commence on the first day of the second month following ratification by the last State to do so.

With the help of the Italian Presidency, animal welfare was included as an article in the Constitution and other provisions listed below may further facilitate the role of animal welfare organisations in developing the EU's policy on animal welfare.

However a great weakness in the new Constitution is the fact that the Policies have remained as they were in the Treaty. This has created inconsistencies with the new objectives and the actual policy reviews. For instance the old Agriculture policy is still aimed at ensuring food is available while the Midterm review of the Common

Agricultural Policy has given animal welfare a central place in its aim to move from quantity to quality food production.

### **New Article on animal welfare**

The Constitutional Treaty makes the provision on animal welfare a Treaty Article rather than a Protocol. The Article is placed in Part III of the Treaty, which is entitled “The Policies and Functioning of the Union”. The new Article is similar in its wording to the Protocol and reads:

*“Article III-121*

*In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall pay full regard to the welfare requirements of animals, as sentient beings, while respecting the legislative or administrative provisions and customs of Member States relating in particular to religious rites, cultural traditions and regional heritage.”*

The Article has two key elements: (1) It recognises animals as “sentient beings” - this means they cannot be regarded as just goods or products – and (2) It requires the EU and the Member States, when formulating, and then later when implementing, the Union’s policies in a number of key areas, to pay **full** regard to the welfare requirements of animals.

The new Article relates both to policies that directly affect animals (for example, a proposed Directive on cattle welfare) and to policies that may have an indirect impact on animals (such as a new policy on the safety of certain products, which could lead to more animal testing). In the latter case the Commission should be pressed to recognise that it must, as a consequence of the new Article, carry out an ‘animal welfare impact assessment’ before adopting any new policy to ensure that it does not have a damaging effect on welfare.

The Protocol applies to EU policies in the fields of agriculture, transport, internal market and research. The new Article also applies to fisheries, technological development and space. Disappointingly, the new Article, like the Protocol, contains exceptions for provisions relating to religious rites, cultural traditions and regional heritage.

### **New petition power for citizens**

Article I-47 is entitled “The principle of participatory democracy”. Paragraph 4 provides that a petition signed by not less than one million citizens coming from a significant number of Member States may invite the Commission to submit a proposal for a new law on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law will be enacted to determine the minimum number of Member States from which the signatures for such a citizens’ initiative must come.

It has been easy so far for the Commission to ignore petitions as they have had no basis in the Treaty. Although the new Article does not oblige the Commission to take a petition seriously, it will be difficult for it not to give a petition proper consideration as the Article clearly views a citizens’ petition as an important part of participatory democracy.

There is a limit to the subjects that can be covered by a petition under Article I-47(4); it must be concerned with something where a new law is needed to implement the Constitution. This could, for example, be a new law that is needed to implement the requirement that, in formulating its policies in certain areas such as agriculture, the Union must pay full regard to the welfare requirements of animals.

Citizens also continue to have the right to petition the European Parliament under Articles I-10, II-104 and III-334. Such petitions can be extremely effective; for example, it was a petition with over 1 million signatures to the European Parliament that led to animals being given a new status as sentient beings by the Treaty of Amsterdam.

### New legislative and budgetary powers for European Parliament

Under the current Treaty many laws are made jointly by the Council and the Parliament, but laws on agriculture – including the welfare of farm animals – are made by the Council with the Parliament just giving an opinion which can be ignored by the Council.

Under the Constitution most (around 95%) laws and framework laws have to be made jointly (co-decision) by the European Parliament and the Council of Ministers; there are just a few exceptions provided for by the Constitution. This giving of greater power to the Parliament should be beneficial for animal welfare as the Parliament has traditionally been the most sympathetic of the EU institutions to improve the welfare of animals.

Under the current Treaty the Parliament is only able to give an opinion on the budget for agriculture. Under the Constitution, however, all budgets – including agriculture - have to be agreed jointly by the Parliament and the Council. This greater power for the Parliament concerning the agriculture budget could be most helpful for animal welfare.

### Voting in the Council

In order to take account of enlargement, from 1<sup>st</sup> November 2004 there is a new weighting of votes in the Council; this was agreed in the Treaty of Nice. The distribution of votes will be:

Germany, France, Italy, UK	29
Spain, Poland	27
Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12
Austria, Sweden	10
Denmark, Ireland, Lithuania, Slovakia, Finland	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3

This gives a total of 321 votes. To obtain a qualified majority, a proposal must be approved by a majority of Member States and a minimum of 232 votes must be cast in favour of the proposal. This means that at least 90 votes are needed for a blocking minority.

The Constitution provides that from 1<sup>st</sup> November 2009 a qualified majority must consist of at least 55% of the Member States, comprising at least 15 of them, who represent at least 65% of the population of the Union. A blocking minority must include at least 4 Member States.

### Presidency of the Council

At present Member States hold the Presidency on a rotating basis, with each Presidency lasting for 6 months. Under the new Constitution, the Presidency of the Council will be held by a group of 3 Member States for a period of 18 months. Each member of the group will in turn chair the Council for 6 months; the other members of the group will assist the Chair on the basis of a common programme. This will make it harder for a country that is inimical to animal welfare to block progress when it holds the Presidency. The greater continuity that a Presidency of 18 months will give could also be beneficial for animal welfare.

## Greater openness and transparency

A number of provisions should improve the ability of citizens and NGOs to participate in EU decision-making:

- **Council law-making meetings to be public:** the Constitution provides that the part of Council meetings when the Council deliberates and votes on draft legislative acts must be held in public. It will make it easier for animal welfare NGOs to hold Governments to account for their actions in Council.
- **Participatory democracy and transparency:** under Article I-47 the Commission is obliged to carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent. Article I-50 provides that in order to promote good governance and ensure the participation of civil society, the Union Institutions, bodies, offices and agencies must conduct their work as openly as possible. Moreover, under Article I-47, the EU Institutions are required to:
  - a) give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action, and
  - b) maintain an open, transparent and regular dialogue with representative associations and civil society.

The existing provisions on **right of access to documents** and **consumers' right to information** are kept in the Constitution (Articles I-50 and III-235 respectively).

## The role of national Parliaments

A Protocol annexed to the Constitution requires many documents and proposals of the Commission and other EU institutions to be sent to the national Parliaments.

The Constitution requires the European Parliament and the national Parliaments to together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the EU. A body called the Conference of European Affairs Committees may submit contributions to the EU institutions.

The Protocol's express intention is to encourage greater involvement of national Parliaments in the activities of the EU and to enhance their ability to express their views on legislative proposals and other matters which may be of particular interest to them. The Protocol gives animal protection organisations the opportunity to encourage their national Parliament to play a more pro-active role in persuading the EU institutions (not just the European Parliament) to introduce strong policies and laws on animals.

## Internal market

The rules that prevent Member States from restricting imports and exports continue in place and will continue to frustrate certain ways of improving welfare. It is these rules that prevent a Member State from, for example, prohibiting the export of live animals or the import of foie gras.

Like the present Treaty, the Constitution has exceptions to the free trade rules. A Member State may restrict exports or imports on grounds of public morality or the protection of the health and life of humans, animals or plants. Unfortunately, the European Court has interpreted these exceptions very restrictively; for example a Member State may not unilaterally apply restrictions in a field that is already covered by EU law.