

# FABIAN

S O C I E T Y

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## A European Environment Charter



*by Nick Robins*

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# Introduction

The European Community is at an historic juncture. The Cold War is over. Germany is now united, a symbol of East and West coming together.

**T**he countries of the former Soviet bloc are rapidly moving towards democracy; in November 1990, Hungary became the first member of the Warsaw Pact to join the Council of Europe. The Community has become the focus of hopes for the future: countries within the EFTA bloc, Eastern and Central Europe as well as the Mediterranean basin are all in the process of seeking closer relations, including full membership. In the Community itself, the Single Market is nearing its target completion date of 31 December 1992.

Despite this acceleration, the Community has yet to face perhaps the most pressing challenge to its future security and prosperity - the accelerating degradation of the environment. Current development paths in both the North and the South fail to ensure either equity or the preservation of the natural environment. Poverty is increasing and the damage to the local, national, regional and global environment continues to mount despite considerable legislative efforts over the past twenty years. As Brigitta Dahl, Sweden's Environment Minister said in 1989, 'We have won many battles, but we could lose the environmental war'.

However, the time is now ripe for a shift to more sustainable patterns of economic development. Following the publication in 1987 of the World Commission on Environment and Development's report, *Our Common Future* — known as the Brundtland Report after its chair, Norway's Prime Minister Gro Harlem Brundtland — a global consensus has emerged in favour of sustainable development, development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'. The European Community's Heads of State joined the chorus of support at their Rhodes Summit meeting in December 1988 when they declared that 'sustainable development must be one of the overriding objectives of all Community policies'.

But except for a few isolated cases — most notably the development of the 1989 Dutch National Environment Policy Plan — few governments in the Community, let alone the Commission itself, have attempted to map out a

strategy for the transition from current unsustainable practice. The British government's White Paper, *Our Common Inheritance*, represented a mass of missed opportunities — not least to engage in an open debate with the British people about the changes in lifestyle and expectations that will be necessary to ensure long-term quality of life.

One of the central messages of the Brundtland Report — that environmental factors must be fully integrated into economic practice — has been accepted, but not followed through. Integration is now written into the Community's constitution, following the signing of the Single Act in 1987, but there has been little evidence to date that the Commission is willing to interfere in current unsustainable programmes such as the Common Agricultural Policy.

The gulf between the new agenda of sustainable development and conventional economic policies dedicated to undifferentiated expansion has been exposed most clearly in the Community's Single Market programme, where considerations of environmental impact were merely an afterthought. Despite a comprehensive report by the Environmental Task Force in November 1989, the Community has still failed to produce a plan of action either to remedy the negative environmental effects of the creation of the Single Market or to set the Single Market onto a sustainable trajectory. A new political initiative is needed to break this deadlock.

### *Seizing the opportunity*

A number of factors are combining to present a substantial window of opportunity for such an initiative. The June 1990 Dublin Summit reflected a climate of environmental concern; the twelve Heads of State ended Ireland's 'green' presidency with a strongly worded declaration, *The Environmental Imperative*, which recognised the need to intensify efforts to protect the environment, in particular to ensure that the Single Market was 'sustainable and environmentally sound'. The document concluded that citizens should be guaranteed the right to a clean and healthy environment.

A second factor is the climate of reform, encouraged by the changes in Eastern Europe and the opening of the IGCs. The Dublin declaration asked the forthcoming IGC on political union to 'address ways of accelerating Community decision-making on environmental matters'. While this has been taken to mean simply extending the use of qualified majority voting in the Council of Ministers, there are many other changes to the Community's treaties which could also be made to promote sustainable development. This paper explores some of the possibilities.

The Labour Party has already made a useful contribution to this process of European environmental reform with its proposal in the Policy Review to launch a European Environmental Charter. This would mirror the Social Charter, which has galvanised the labour movement to seek to ensure that

the process of European integration benefits workers. An Environmental Charter could play a similar role to protect the environment. Current Labour Party announcements suggest that the role of the Charter would be limited to a restatement of principles and the introduction of environmental rights. However, it could also mark the start of the much wider shift to sustainable development by detailing the obligations of the Commission, member states, corporate bodies and individuals, and by proposing a range of treaty amendments necessary to lay the foundations for sustainable development.

The Charter should then be followed by the drafting by the Commission of a European Sustainable Development Programme, which would list specific measures needed to make a reality of the Charter's fine words. This would follow the pattern of the Social Charter, which started as a political declaration, agreed by 11 member states, and was then supplemented by a Social Action Programme. This listed more than 40 areas where action was needed to further the Social Dimension. Directives and other legislative measures have subsequently been presented by the Commission, covering issues such as improving rights for part-time workers and introducing information and consultation rights in multinational companies. The Single Market Programme was given a stimulus by the setting of a target date of 1992; the European Sustainable Development Programme should be given a deadline of 31 December 1999, highlighting the fact that the foundations for a sustainable society need to be built this decade, otherwise the damage to the environment could be irreversible.

The European Environmental Charter serves another purpose. It gives the Labour Party a strong pro-European card in the event of it being elected to government during the IGC negotiations — which could last until the end of 1991. The Charter could form a key part of a broader Labour platform, promoting the reform of the Community to achieve a just and democratic Europe. It could help sweep away Britain's reputation as the 'dirty man of Europe' and build a new reputation as an environmental leader in the post-Thatcher world. What better way to crown a Labour government's presidency of the Community's Council of Ministers in the second half of 1992?

# 1

## The environmental record

‘What is required is a new approach in which all nations aim at a type of development that integrates production with resource conservation and enhancement, and links both to the provision for all of an adequate livelihood and equitable access to resources’. Brundtland Report, 1987.

**S**ince the publication of the Brundtland Report, sustainable development has become almost universally adopted by governments, business, unions and environmentalists as the new goal for global society. A considerable amount of work has been done to assess some of the implications(1). At root, sustainable development is a statement of the obvious dependence of human welfare on the various services provided by the environment, and of the global interdependence of human society. It also implies a different quality of development to meet human needs, which are often non-economic. To achieve sustainable development, a new balance will have to be struck between present and future consumption, greater stress will have to be given to resolve inequalities both within and between countries and a reappraisal of the meaning of the standard of living will be needed, to include non-material factors.

The sustainable economy would respect environmental limits to the amount of resources that can be pulled from the earth and the quantity of waste that can be dumped. Governments would intervene to set ‘sustainability constraints’ on the market, reflecting appropriate levels of environmental scarcity or critical loads. This could be done through a variety of policy instruments, ranging from standard setting for factories and products to information campaigns and green taxes. The aim would be to internalise environmental costs as much as possible into economic activities, to make ‘prices tell the environmental truth’, in the words of Ernst von Weiszacker, Director of the Bonn Institute for European Environmental Policy. National and company accounts would also be modified to reflect environmental factors, such as the damage caused by pollution and the depreciation of natural capital

stocks. The result would be a new type of economic growth, according to Brundtland Report, 'less material and energy intensive and more equitable in its impact'.

The Brundtland report was clear that sustainable development involved a qualitative shift away from the traditionally reactive approach to environmental issues, towards a 'new agenda' of anticipation and prevention. The report identified two keys to this shift;

- Integration: Sustainable development must become a core goal of all governments, corporations and individuals: 'economics and ecology must be completely integrated in decision-making and lawmaking processes not just to protect the environment, but also to protect and promote development.'
- Participation: Sustainable development must respond to the needs and desires of present — and future — generations, otherwise it is nothing. This means facilitating participation in the development process from the local to the international. The best way of achieving this, according to the Brundtland report, was through decentralisation and empowering local communities, so that they have a real say over resource use. The Community itself subscribes to — but has yet to realise — the similar principle of subsidiarity, whereby decisions should be taken at the lowest appropriate level.

At the moment no model of sustainability exists, and shifting to a sustainable development path will mean almost revolutionary change in economic practice. A degree of planning and coordination perhaps not seen since wartime, will be necessary to redirect the economy. New relations between government, industry, employees, citizens and consumers will be needed, based on openness and accountability. Sustainable development does not mean sustaining the status quo. In particular, the rich countries of the North will have to act according to a new ethic of global solidarity, accepting that they have incurred a considerable environmental and moral debt to the South. This will be translated into technology and skill transfer, removing structural impediments to development. In this context, there could be considerable scope for Europe in particular to achieve environmental improvements on the basis of a 'victim pays' principle, in addition to the more traditional 'polluter pays' principle. This follows on from the basic recognition that pollution respects no boundaries: in the context of regional and global problems, the rich are potentially victims of the unsustainability of their poor neighbours. Already countries in the Nordic region are realising that paying for environmental programs in Eastern Europe is more cost effective than achieving further marginal benefits in their own relatively clean countries. The lessons of this for finding a way of cutting global warming emissions are particularly significant.

## Dutch pioneers

The scale of the changes necessary to bring about sustainability was demonstrated by the 1989 Dutch National Environment Policy Plan (NEPP), the most comprehensive attempt in Europe to devise a strategy to achieve sustainable development. The plan was based on a long-term assessment of the country's ecological prospects, *Concern for Tomorrow* which concluded that 'if we want to remain within the norms for environmental pollution, then reductions of 70-90% are required. This is beyond the capacity of most of the technologies that we know about.' In response, the NEPP proposed a long-term strategy to overcome environmental problems within a single generation (ie by 2010), with detailed measures for the first four years (1990-1994).

The plan was a collaborative effort of four ministries (Environment, Agriculture, Transport and Economic Affairs) with open discussion with a range of 'target groups' (such as industry, unions and consumers). To reach the targets, the task force realised that it had to discard both of its original scenarios ('business as usual' and the application of all known 'end of pipe' technologies). Instead it developed a plan based on structural reform to accelerate raw materials conservation, reduce energy use and promote quality production processes and products. The impact of these measures on traditional economic indicators such as gross national product (GNP) — which do not include the costs of pollution or resource depletion — was a minimal reduction in growth against the unsustainable 'business as usual' scenario over the twenty year period. However, if the Netherlands was joined by the rest of the EC in a drive for sustainable development, then its leadership position could bring it higher economic growth.

The Plan has been updated since the 1989 election, forced by the resignation of the Liberal Party from the Lubbers coalition over the financing of the plan. The new Christian Democrat-Labour coalition produced its NEPP Plus strategy this summer, which strengthened the original plan and included among other aspects, further reductions in carbon dioxide emissions.

Neither the NEPP nor the NEPP Plus is perfect. But they represent a determined attempt to put sustainable development into practice, and similar programmes are urgently needed in each of the eleven other member states of the Community and at the Community level itself. A proper balance needs to be maintained between Community, national, regional and local actions, according to the principle of subsidiarity. But the Community is playing an increasingly important role in setting the environmental policy framework, as economic and political interdependence increases. This should be extended to setting the framework for sustainable development.

Sadly, however, the economic trajectory of the Community remains strong-

ly in favour of indiscriminate growth, reflecting the historic post-war mission of the Community to promote economic expansion, still undiminished thirty years on.

### *The Community's record*

When the original Treaty of Rome was signed, there were no provisions for environmental protection. Sustained rather than sustainable growth was the aim, 'a continuous and balanced expansion' (Article 2). As a result of the first wave of environmental concern in the late 1960s and 1970s, the Community decided at the 1972 Paris Heads of State summit that the goal of economic expansion was 'not an end in itself' and that 'special attention will be paid to protection of the environment'. This was the phrase that launched four environmental action programmes and over 280 environmental measures. The Community can count a number of successes, including the introduction of environmental impact assessments, the 'Seveso' Directive on factory safety and Large Plant Combustion Directive against acid rain. Too often, however, EC legislation has been set below the highest level either of the member states or of its main trading partners in the EFTA, the US or Japan.

Since the First Environmental Action Programme in 1973, the EC has committed itself to a preventive approach to environmental problems, while integration has been the goal of EC policy since the Third Action Programme in 1983. These and other fundamental principles — such as the 'polluter pays principle' — were inserted into the Single Act, at the same time as the commitment to achieving the internal market by 1992 (see Article 130 r-t). This gave the Community a legal base to pursue environmental policy for the first time, and could have far-reaching long-term implications in the way economic activity is reconciled with the environment. The Community has indeed progressively extended environmental considerations into other policy areas. Thus the Lome IV Development Programme, signed at the end of 1989, promised environmental impact assessments for large aid projects. The introduction of environmentally sensitive areas has been described as 'a significant step in efforts to integrate environmental considerations into agricultural structural policy'(2). A joint statement on energy and the environment has been published, which represents a modest basis for future work.

But these developments are still too few and far between to constitute a comprehensive, integrated policy for sustainable development. Despite the impressive policy superstructure, the current Fourth Environmental Action Programme, published in 1987, acknowledged that 'the natural environment is still deteriorating in the Community' In the specific case of waste, although the First Environment Action Programme called for an 'immediate and hard-hitting campaign against waste', the total amount of waste produced in the Community has grown inexorably. There are a number of reasons for this state of affairs.

Despite considerable efforts, the environment is still regarded as a peripheral issue for the Community. This is reflected in the resources devoted to the environment directorate (DGXI). Only 0.1% of the EC budget is spent on environmental projects, and in terms of staff, DGXI has under 150 professional staff compared with over 1000 at Agriculture (DGVI). This limits the scope for integrating the environment into other policy areas. For instance, only six people assess the environmental impact of the structural funds. Environment Commissioner Carlo Ripa di Meana has suggested that coordination between the Brussels agencies could be improved if structural funds devoted to the environment are brought together into a single Environment Fund, bolstered with additional resources to assist implementation in poorer member states.

In addition, the 'democratic deficit' which afflicts the whole of the Community, hinders the prospects for environmental policy. Qualified majority voting, which was introduced to break the internal market logjam, can only be used for environmental purposes under exceptional circumstances (see Article 130s); environmental legislation can be agreed by a majority only if the aim is to complete the internal market. Much environmental legislation still has to be agreed unanimously, leaving it open to recalcitrant states (unfortunately often Britain) to slow the pace of environmental modernisation. The result is often policymaking according to the lowest common denominator.

A further obstacle is the limitation of the new 'cooperation procedure' — whereby the European Parliament obtains increased powers of review and revision — again to internal market legislation. Where the European Parliament has been involved through the new cooperation procedure, there has been greater openness, often with dramatic results, such as in the case of the small car emissions Directive in 1989. Here the Parliament used its right to a second reading of the Directive, which had been proposed as part of the 1992 programme, effectively to force the Council of Ministers to introduce tougher standards for air pollution from cars. Standing as the directly elected representative of the European people, the Parliament exposed the governments opposing tighter standards, such as the British and French, as servants of industrial interests.

The Community still suffers from its origins as an intergovernmental organisation where relations are governed by the principles of diplomacy, not democracy. As a result, EC legislation is adopted behind the closed doors of the Council of Ministers. Not only are the Council's minutes not published, but there are occasions when additional modifications are made which amount to 'secret legislation'(3). And while the Community has agreed a recent freedom of environmental information Directive for documents in public hands, this still does not apply to the Commission itself. As David Martin, Labour MEP for the Lothians has concluded, 'if the EC was a state and applied to join the Community, it would be turned down on the grounds that it was not a democracy'(4).

Not only has the range of environmental legislation failed to keep pace with the environmental situation, but the legislation that has been adopted suffers from widespread neglect. A report of member state compliance with EC environmental legislation published in February 1990 highlighted an 'intolerable situation', according to Environment Commissioner Ripa di Meana. Not a single directive had been applied on time and in a satisfactory manner in all of the 12 member states; Italy, Belgium and Spain were the worst offenders. The Community remains a legislation-creating body, where the mechanisms for implementing and enforcement of legislation are left up to member states. The introduction of the European Environment Agency will help with the monitoring process, but despite pressure from the European Parliament the agency will not be given inspection powers as well. The Commission's sanctions against offenders are also weak, limited largely to the embarrassment of a guilty verdict at the European Court of Justice.

### *1992: the green gap*

Nowhere has the gap between the rhetoric and reality been more evident than in the case of the Single Market programme, the centrepiece of the Community's strategy for the 1990s. The now famous 1985 Cockfield White Paper of 280 measures needed to ensure the free movement of goods, services, capital and labour within the EC was designed not only to complete the Community's original mission of establishing a common market, but also to relaunch the wider project of European Union. Thus the 1987 Single Act, which set the 1992 target date for the single market, also broadened the EC agenda to include economic and social cohesion, economic and monetary union, improved worker health and safety, strengthened research collaboration and environmental protection. In the words of Commission President Delors, the Single Market programme has unleashed a 'peaceful revolution', both in terms of economic and corporate restructuring and also a broader push to European integration.

Nevertheless, the arguments behind the programme very much reflect the old agenda of 'grow first, clean-up later', instead of Brundtland's new agenda of 'anticipate and prevent'. The Commission's arguments were presented in the controversial 1988 Cecchini Report which described 1992 as a 'supply-side shock' designed to 'propel Europe on an upward trajectory of economic growth lasting into the next century'. Cecchini estimated that the stimulus to GNP growth could be as much as between 4.5%-7% over the medium term, if accompanying measures, such as increased public spending, were taken alongside the removal of barriers. Subsequent studies suggest that this could be a considerable underestimate: one forecast from the Centre for Economic Policy Research, for instance, suggests that growth could increase by 3.5-19.5% over the medium term.

Although the Community has to take a 'high level of protection' in terms of

health, safety and the environment (see Article 100a - 3) when making specific proposals to complete the internal market, no comprehensive analysis was made in advance of the quality of the growth unleashed. There was no environmental impact assessment either of the direct consequences of the completion of the single market or of the type of market economy that would be created. It was not until late 1988 that the Environment Council of Ministers commissioned a Task Force to examine the environmental implications of 1992. When the Task Force concluded in November 1989 that the single market was potentially environmentally unsustainable, it committed a heresy in the eyes of the Commission, which refused officially to support its report. All the Task Force had done was to state the obvious truth that unless environmental measures were accelerated to take account of the growth surge, 'there is no guarantee the Internal Market growth is likely to be sustainable and to lead to an increase in welfare'. This conclusion was based on detailed analysis of the static, dynamic and geographical effects of the internal market.

The static effects concern the direct consequences of the suppression of national barriers to free trade, such as product standards, border controls and differing fiscal regimes. These have been powerful tools for environmental protection, and the internal market programme does not contain a guarantee that they will be replaced by equally or more efficient environmental management at the Community level. For instance, the removal of border controls raises the prospect of uncontrolled transfer of waste around the Community, from waste producers to cheap waste disposal sites. The Community is now developing a waste strategy to deal with this problem of 'waste tourism', but the potential remains. Similarly the application of the principle of mutual recognition, whereby goods that are legally sold in one member state can be sold in all others, could mean the circulation of goods produced in member states with low product standards.

The dynamic effects of the internal market are those produced by the stimulus caused to economic activity. Economic growth *per se* need not lead to environmental degradation: given the right stimulus, production can be increased, whilst simultaneously reducing pollution. But without intervention and in an already unsustainable economy, further growth is likely to increase its unsustainability. As the Task Force report put it, 'the importance of the Single Market is that by accelerating economic growth, it renders more acute issues which arise from the growth process'. As a result, the report expects the production of waste to grow in line with economic expansion.

But the report also highlights a number of areas where the increase in pollution will actually be greater than economic growth. The Task Force carried out a modelling exercise to establish the possible implications for the creation of acid rain emissions, sulphur dioxide and nitrogen oxide. It found that despite the implementation of environmental policies to cut emissions of

the two gases from power stations and cars, emissions would increase by 8-9% and 12-14% respectively by 2010. In the transport sector, the Task Force estimates an increase in transfrontier lorry traffic of 30-50%, with all the attendant noise and air pollution this entails. But as the European Environment Bureau (EEB) — the Brussels-based coordinating body for Community environmental groups — has pointed out, there is no European transport strategy to deliver transport services at minimal environmental cost.

The Task Force report also examined the marked regional differences in the impact of the 1992 programme. The trend towards the concentration of production in certain areas to achieve economies of scale could mean that environmental quality will be undermined. Other areas will be afflicted by increased dereliction, while in the peripheral regions the completion of the Single Market will intensify pressures on valuable natural habitats. In addition, the ECU 60 billion (over £ 40 billion) of Structural Funds to be spent in the disadvantaged peripheral regions of the Community between 1989 and 1993 have been insufficiently assessed for their environmental impacts. A recent report has suggested that 'the impact of the Structural Funds will be one of the most important environmental issues arising from 1992'(5).

The Task Force report's conclusions are worth detailing as they show the gap between the Community's formal commitment to sustainable development and the reality of the internal market programme. They point to a model of development that is still unsustainable, to a pattern of economic growth that remains locked to increased environmental degradation and to a chronic lack of countervailing measures to break the link between growth and pollution. The Commission has still failed to produce a programme to offset these negative impacts, despite the commitment at the Dublin Summit mentioned above to make the internal market 'sustainable and environmentally sound'. To date, its efforts have focussed on developing a coordinated approach to the use of market mechanisms, as recommended by the Task Force. But this is only one aspect of the problem. The EEB has talked of 'the incapacity of the Commission to set up or to open a discussion on a credible plan to counterbalance the adverse effects'.

1. Eg. Sustainable Development: greening the economy. Michael Jacobs. Fabian Society. July 1990.

2. EC Environment Policy and Britain. Nigel Haigh.

3. Environmental Policy and 1992. Nigel Haigh and David Baldock 1989.

4. European Union and the Democratic Deficit. David Martin.

5. The EC Structural Funds. World Wildlife Fund and Institute for European Environmental Policy. 1990.

# 2

## Tackling the 'green' deficit

The Community has entered the 1990s with a mixed balance sheet. On the positive side, there is a new enthusiasm to extend the range of cooperation between member states. On the negative side, the Community is faced with a number of deficits.

**T**he 'democratic deficit' — the lack of accountability of the EC institutions to the people — is perhaps the best known, and will be a central feature of the negotiations in the IGC on Political Union. There is also the social deficit and the regional deficit, both marked by high and rising levels of unemployment. And as we have seen, the Community also suffers from a large 'environmental deficit'. The inclusion of environmental paragraphs in the Single Act was only the first step towards a 'green' Community; 1992 has exposed its unregenerate nature. Since then the environmental pace has quickened, so that the Community's environmental policy as expressed in the Fourth Environmental Action Programme has been 'overtaken by events', according to Ken Collins, Labour MEP and chair of the European Parliament's Environment Committee.

A specifically European Environment Charter, rather than a nationally-based initiative, would be the right mechanism for updating EC policy. The current UK debate over national sovereignty versus European federalism has masked the fact that substantial powers have already been transferred to the Community level from member states; the extension of qualified majority voting to the environment would only reinforce this situation. The Community has played an important role not only in addressing transboundary pollution problems between member states, but also in setting general standards of performance, which have provided the framework for many countries' own legislation. In the context of the accelerating integration brought about by the Internal Market programme among others, further harmonization of environmental rules is necessary to ensure the free flow of goods and avoid 'environmental dumping' (the practice of locating polluting industries where environmental standards are lax). The Community is also playing an increas-

ingly important role in the wider international environmental debate. This was particularly noticeable at the November 1990 Second World Climate Conference in Geneva, where the 12 states of the Community and the seven of EFTA combined to present a joint target for stabilizing the emissions of the main global warming gas, carbon dioxide.

Nevertheless, the principle of subsidiarity — whereby decisions are taken at the most appropriate level — means that the Community cannot have universal jurisdiction in environmental matters. The Community is an area of considerable economic, social and environmental diversity; the rights of local people to decide for themselves the appropriate level of environmental protection is essential. However, for reasons of competition and consistency, local conditions need to respect *minimum* EC requirements. This should not stop the environmentally progressive member-states (historically Denmark, Germany and the Netherlands) from innovating and going beyond EC norms. Indeed the Single Act states that EC policy measures 'shall not prevent any member state from maintaining or introducing more stringent protective measures' (Article 130t). Since then, environmental protection has been judged to take precedence over the primacy of free trade, most notably in the celebrated Danish bottles case in 1987, where the Court of Justice ruled that the environmental rationale behind Denmark's ban on unreturnable beverage containers was sufficient to justify a ban on imported canned drinks. The Community can only benefit from the experience of the frontrunners, such as the Netherlands with its integrated environmental plan. EC legislation should be seen as a floor rather than a ceiling.

### *The will to change*

As important as the level at which decisions should be taken is the need to ensure that at each level the decisions are taken democratically. This would inevitably reflect the importance placed on environmental protection by the people of Europe: for instance, in the 1988 'The Europeans and their Environment' poll only 7% agreed that economic development should take priority over environmental issues. Currently both the Community and member states are failing to deliver the kind of environment that the people of Europe want. At the Community level, the low priority attached to the environment is a reflection of the unwillingness of many member states, acting within a secretive and unaccountable decision-making system, to respond adequately to the sustainability challenge. Changing the structures at the Community level without establishing the will to change at the national and local levels will be worthless. But the launch of an Environment Charter could help to stimulate this will to change at all levels of the Community.

## *The European Environment Charter*

The model for the Environment Charter is, of course, the Social Charter, a statement of fundamental worker rights, agreed by 11 of the 12 member states at the December 1989 Strasbourg summit, and designed to counterbalance the free market drive of the single market programme. While the Social Charter aimed at outlawing 'social dumping' (whereby the competitive pressures of the market forced down working standards), the goal of the Environment Charter would be to eliminate 'environmental dumping'. In the same way as the Social Charter laid down certain fundamental employee rights, the Environment Charter would include a commitment to individual and collective environmental rights. The Charter would have a dual purpose: empowerment and education. It has been the actions of a committed body of individuals and groups that has forced much of the last twenty year's environmental progress. Labour already recognises that 'new legal rights can turn every citizen into a powerful agent of environmental protection' (1). Furthermore, just as the Social Charter has sparked a new debate about the role of industrial democracy in Britain, so the Environment Charter would aim to stimulate a wider debate on the environment.

The charter would take the form of a declaration by the Community's heads of state, supplementing and taking forward the Dublin *Environmental Imperative* declaration. This declaration would commit the Community to take a number of steps to implement its conclusions, such as making changes to the Treaty of Rome and the Single Act and preparing a long-term plan for sustainable development. The charter's adoption would of course follow a long process of negotiation between member states, the Commission, the European Parliament and other groups. Since the Charter would specify treaty changes, it is essential that the current window of opportunity for constitutional reform at the IGCs is not missed; the Community could have to wait another five to ten years for another chance.

There are three possible routes for adoption of the Charter. First, it could be adopted directly by the Commission itself, as the Social Charter was, as a way of spurring action on the environment. Second, it could be championed by a member state (or a group of states). Third, the charter could be adopted by the European Parliament, or a particular group within the Parliament, (most likely the Socialist Group, of which the Labour Party is a member). The Parliament could then use its influence to press the member states and the Commission to adopt the charter.

The Charter would contain a number of specific sections, dealing with basic principles, environmental rights and responsibilities, the obligations of member states and the Community and changes to Community treaties (see Annex for a detailed account). It would lay down the basic principles for Community action on the environment, some drawn from the Brundtland Report's draft

charter, as well as reaffirming the existing principles of Community environmental policy in Articles 130r-t (ie the 'polluter pays' and 'preventive' principles), adding the precautionary principle and the principle of sustainable development, as agreed at Dublin. The acceptance by the Community as well as the rest of the members of the Economic Commission for Europe at the 1990 Bergen conference of the precautionary principle was an important step away from the inherently conservative policy of requiring an absolute burden of proof before action to protect the environment could be taken. 'Improved quality of life' would replace 'standard of living' as a goal of the Community; this could require new indicators and measurements to supplement traditional money-based indicators of welfare.

## *Rights*

The Dublin declaration committed itself to guaranteeing the right of citizens to a clean and healthy environment. This would be inserted into the list of objectives in Article 130 r. The Charter would amplify upon this simple right by specifying particular rights for citizens, employees and consumers. These would be based on the mounting body of work on environmental rights, such as the Charter of Environmental Rights and Obligations adopted by the environmental non-governmental organizations for the Bergen conference, the European Parliament's Declaration of Fundamental Rights and Freedoms and the environmental rights at work as identified by the Trades Union Congress. The latter includes the right to refuse to undertake work which leads to environmental destruction; already workers in Ontario, Canada have struck to enforce this right. With official Community backing, workers would be able to act as 'whistle blowers' on polluting industrial activities, free of the fear of reprisals. Rights to participation, consultation and access to information would be established for a variety of contexts, from the workplace to the council chamber. For consumers, there would be a right to adequate information to be able to use and dispose of a particular product in an environmentally responsible manner. This could imply mandatory environmental impact labelling, in addition to the existing series of eco-award schemes (such as the German 'Blue Angel' system). The Bergen Agenda for Action called for the elaboration of a set of environmental rights in time for the 1992 United Nations Conference on Environment and Development. This gives a powerful incentive for the Community to adopt its own charter of rights in the next two years, which could then serve as a model for the broader global charter.

An important feature of the Charter would be the identification of appropriate mechanisms to enforce these rights. Citizens and public interest groups would need to be allowed to challenge public authorities which fail to protect these rights at a local, national or Community level. This could require a decentralised network of specific Environment Courts, with the European

Court of Justice at the head of the pyramid. Extra resources would be needed to develop this judicial infrastructure, and to fund actions taken by the public against state or private institutions.

### *Obligations and responsibilities*

The Charter would contain three sections dealing with obligations and responsibilities: those of individuals and companies, those of member states and those of the Community. There is a growing awareness that government regulation is only a partial tool for sustainable development; ethical commitment is needed as well. A number of statements of corporate environmental excellence, such as the US Valdez Principles (which Labour has endorsed) have been published. The Charter would charge companies to act in an environmentally responsible way: one implication would be the publication of an independent annual audit of their operations. Member states would also be enjoined to respect EC legislation and to establish an enabling framework in which citizens, employees and consumers can enjoy their environmental rights.

The Charter would commit the Community to reform the outdated Article 2 of the Treaty of Rome in order to make sustainable development a core goal. From this would flow amendments to other treaty articles dealing with specific policy areas such as trade, transport, agriculture and the internal market to ensure that these programmes were compatible with sustainable development. Environmental protection would also be adopted as a common Community policy, financed by the European Environment Fund, as suggested by Commissioner Ripa di Meana. This would bring together existing expenditure on the environment within the structural funds (such as ENVIREG) and other environmental programmes (such as the ACE clean technology scheme), as well as raising new funds to promote the implementation of EC laws in poor regions.

The Charter would also recommend a number of institutional changes within the Commission to encourage the integration of environmental factors, such as establishment of environmental units within each Directorate-General (DG) to promote sustainable policies. One role for these units could be the publication of an annual audit of the impact of the DG's policies on the environment, as part of the budget process. Furthermore, article 93 of the treaty would be changed to give the Commission the right to abolish state aids incompatible with sustainable development.

Majority voting and the cooperation procedure would be extended to all environmental legislation, thus helping to accelerate the decision-making process, while giving the European Parliament enhanced powers of scrutiny and amendment. As part of the wider democratisation of the Community, the Council's proceedings should be opened to public scrutiny by the publication

of the minutes, as recommended by Ken Collins, MEP. Membership of the consultative Economic and Social Committee should be extended to include representatives of the environmental movement.

## *Resources*

Two new Community funds, the Environment Fund and a European Sustainable Development Fund should be created. The latter would be introduced to assist the process of transition to sustainability for regions particularly dependent on environmentally-intensive industries. The Charter would recommend that the Council of Ministers should decide by a qualified majority whether revenues raised from new environmental taxes should be dedicated to the Environmental Fund. The charter would also commit the Community to contribute to international funds, such as to assist the reconstruction process in Eastern and Central Europe or the development of sustainable technologies in developing countries.

The overall aim would be to increase the proportion of the Community's funding to be spent on the environment — coordinated in these two funds — from the current 0.1% to 10% by 2000. This should be achievable given the likely reduction in the proportion spent on agricultural support. Clearly the success of the integration process will be measured in the degree to which the Community's basic policies and funds include the goals of environmental protection and sustainable development, and not just on the amount of money spent directly on 'green' projects.

## *Enforcement*

A European Environment Inspectorate should be established to monitor the implementation and enforcement of EC legislation. The inspectorate would have powers to carry out on the spot checks, and would provide information upon which the Commission or individual citizens could take legal action. The European Environmental Agency would remain concerned with data-collection, and open to non-EC members. The Charter would endorse the European Parliament's proposal that the European Court should be able to levy financial sanctions against member states that fail to implement and enforce EC legislation.

Based on the revised Article 2, the Charter would call on the Commission to assess the prospects for sustainable development, based on scientific evidence provided by the European Environmental Agency and member states, and taking into account the precautionary principle. Following this — which could perhaps mirror the Dutch *Concern for Tomorrow* report — the Commission would draw up a European Sustainable Development Programme, outlining the changes in policy and economic activity needed to set the Community onto

a sustainable trajectory. In line with the Community's commitment to democracy and accountability, and to encourage the active participation of the Community's citizens, the programme would be subject to a series of consultative Round Tables in each member state. This process could be seen as merely part of a longer and more intensive effort to provide environmental education for the people of Europe. In addition, the Community would commit itself to consulting and incorporating the concerns of its international partners, particularly those in the countries of Eastern and Central Europe and in the developing world.

Following the successful precedent of the Internal Market initiative, this programme would contain a list of legislative measures needed to be in place by 31 December 1999. The industrial and regional restructuring process would be assisted by the European Sustainable Development Fund, and the programme would be monitored by a Task Force attached to the Commission President's office, to ensure that all aspects of Community policy conformed with its aims. The proposed fifth environmental action programme (to take effect from 1992) would be incorporated into this wider programme for sustainable development. While the Charter would be specifically directed at the current members of the Community, the Community would need to bear in mind the interests of the countries of Eastern and Central Europe and Scandinavia, some of which could become members during the coming decade. In particular, the Community would need to coordinate its activities with the Council of Europe, which is also planning to issue an Environment Charter, covering the whole of Europe, East and West. Furthermore, the Community would need to enter into a dialogue with developing countries about the possible implications of its sustainable development programme; if this was done in the preparatory stages it would mark a significant move from past EC practice, demonstrated most recently in the launch of the Single Market programme without consultation with the developing world.

The value of the European Environment Charter will be judged by the impact it has on the state of the environment. The lack of political will is often cited as the reason for the continuing degradation of the environment. Agreeing to all or some of the proposals in the European Environment Charter would be a major step forward. It would be a signal that the Community was responding both to the desires and the need for urgent action on the environment. It would also be a forceful example of the Community's desire to take a leading role in the global transition to sustainability in the run-up to the United Nations Conference on Environment and Development to be held in Brazil in June 1992. The developed world, and most importantly Europe, has to demonstrate that the conventional European model of development can no longer be followed by the developing world.

## *Summary of recommendations*

- The European Community's environmental policy needs updating in the light of the impact of the single market, the emergence of global problems and the acceptance of the goal of sustainable development.
- A major political initiative is needed to demonstrate the Community's commitment to sustainable development: this should take in the form of a European Environment Charter.
- The aim of the Charter would be to update the basis for Community environmental policy to include the 'sustainable development' and the 'precautionary' principles.
- The Charter would introduce a range of environmental rights to empower and educate citizens, consumers and employees. Member states would be obliged to provide enabling conditions for these rights.
- The Charter would also establish a range of obligations and responsibilities, legal and non-legal, for individuals, companies, member states and the Community itself.
- The commitment to sustainable development should be written into Article 2 of the Treaty of Rome, with the aim of shifting the Community's economic trajectory onto a sustainable path. Other articles should be altered for other policy areas, such as transport and agriculture. Extra resources should be devoted to environmental protection. Existing schemes should be coordinated into a single Environment Fund, while a separate Sustainable Development Fund should be established to facilitate the transition process. The Community should commit itself to increasing the proportion spent on these two funds to 10% of the total budget.
- An Environmental Inspectorate should be established, with powers to check the environmental performance of member states 'on the spot'.
- In addition to the Charter the undemocratic obstacles to environmental policy should be tackled by extending majority voting, opening the Council's proceedings to public scrutiny and including an environmental component in the ECOSOC.
- The Charter should start the process of creating a European Sustainable Development Programme. A list of legislative measures should be drawn up, to be implemented by 31 December 1999, and a wide-ranging consultation process with the Community's citizens and its international partners should be undertaken.

## *Annex: draft European Environment Charter*

The Heads Of State or of government of the Member States of the European Community meeting at ..... on ..... have adopted the following declaration constituting the 'Community Charter for the Environment'.

### 1. BASIC PRINCIPLES

- (1) All human beings have the fundamental right to an environment adequate for their health and well-being.
- (2) This right applies equally to all people alive now, and to all members of future generations (intergenerational equity).
- (3) The other species with whom humans share this planet also have rights, and human beings have an obligation to take action to safeguard these rights.
- (4) The European Community and member states shall maintain ecosystems and ecological processes essential for the functioning of the biosphere, and shall observe the principle of optimum sustainable yield in the use of living natural resources and ecosystems.
- (5) The EC and member states shall establish adequate environmental protection standards and monitor changes in and publish relevant data on, environmental quality and resource use.
- (6) The EC and member states shall make or require prior environmental assessments of proposed policies or activities which may significantly affect the environment or the use of a natural resource.
- (7) The EC and member states shall inform in a timely manner all persons likely to be significantly affected by a planned activity and grant them access to and due process in administrative and judicial proceedings.
- (8) The EC and member states shall ensure that conservation is treated as an integral part of planning and implementation of development activities and shall provide assistance to other states, especially to developing countries, in support of environmental protection and sustainable development.
- (9) Policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation, even if final scientific proof is lacking. Doubt should not be used as a reason for postponing measures to prevent environmental degradation.
- (10) Environmental damage should as a priority be rectified at source and the polluter should pay. People and organisations which damage the environment must pay for reversing the damage done, where it is possible to do so.
- (11) Environmental considerations must be integrated into all areas of policy-making and action.
- (12) The EC and member states shall co-operate in good faith with other

member states in implementing these principles.

(13) We invite other states to adopt these principles, and where they consider it appropriate, also the details of this Charter.

## 2. RIGHTS

The Environmental Imperative declaration of the June 1990 European Council meeting in Dublin recognised that the objective of Community action to protect the environment was to guarantee its citizens the right to a clean and healthy environment. This implies certain specific rights for individuals and groups, including the right to:

(1) participate in all levels of decision-making affecting the environment. This may require new democratic structures.

(2) access to environmental information held by all public and private bodies (the environmental 'right to know').

(3) disseminate environmental information free from censorship.

(4) notification of proposed developments affecting the environment.

(5) consultation concerning projects affecting the environment.

(6) access to legal systems to enforce environmental legislation.

(7) adequate and timely compensation for environmental damage.

(8) environmental education.

In addition, employees and their organisations have particular environmental rights at work, including the right to:

(9) consultation and participation on company activities affecting the environment, including the right to participate in environmental audits.

(10) access to information on environmental hazards and environmental performance.

(11) refuse to undertake work which leads to environmental destruction.

(12) inspect the workplace.

(13) take part in investigations of accidents, incidents and complaints.

(14) environmental training.

Consumers and their organisations also have particular rights, including the right to:

(15) adequate information to use and dispose of a product in an environmentally responsible fashion.

(16) sufficient information to assess the product's environmental impact.

(17) representation on product standards authorities.

Citizens will have the right to seek redress concerning infringement of these rights at local and national courts, and also at the European Court of Justice.

### 3. RESPONSIBILITIES

Environmental rights imply environmental obligations and responsibilities. These include both the responsibilities of member states, local and regional authorities, the European Community, and other international organisations; and also the responsibilities of individuals and non-state organisations, including private sector companies. In each case, they include both legal obligations to obey laws designed to ensure environmental protection, and also moral obligations going beyond the letter of the law.

The European Community believes that its citizens and their organisations have the following moral responsibilities, and should act accordingly:

(1) To minimise and strive to eliminate the release of any pollutant that may cause environmental damage, and to safeguard habitats in rivers, lakes, wetlands, coastal zones and oceans.

(2) To make sustainable use of renewable natural resources, such as water, soil and forests; and to act to preserve biological diversity and protect wildlife.

(3) To minimise the creation of waste, especially hazardous waste, and wherever possible recycle materials; and to dispose of all waste through safe and responsible methods.

(4) To make every effort to use environmentally safe and sustainable energy source, and to promote energy efficiency.

In the case of companies and other business units, the European Community believes that the following additional responsibilities apply:

(5) Minimisation of environmental, health and safety risks to employees and the communities in which they operate.

(6) Minimisation of environmental, health and safety risks to consumers and to the environment from the consumption of goods and services.

(7) Disclosure to employees and to the public of any incidents relating to their operations that cause environmental harm or pose health or safety hazards. This implies an obligation not to take action against employees who report any condition that creates a danger to the environment or poses health and safety hazards.

(8) Application of environmental standards to their foreign operations which are at least as high as those used in the European Community.

(9) Publication of an independent annual environmental audit of their operations.

### 4. OBLIGATIONS OF MEMBER STATES

(1) Member states commit themselves to take all steps necessary to achieve

specified environmental targets agreed at the Community level.

(2) Member states commit themselves to enforce fully European and national legislation on environmental issues, and to commit the resources necessary to achieve this.

(3) Member states commit themselves to participate constructively in discussion of environmental issues in the United Nations and other international organisations, and to abide by obligations agreed as a result of such discussions.

(4) Member states commit themselves to encourage the full democratic participation of their citizens, including non-governmental organisations concerned with the environment, on all environmental issues.

(5) Member states commit themselves to ensure the implementation of the right of access by their citizens to environmental information held by public and private bodies, the right to disseminate environmental information, and the right to receive environmental education.

(6) Member states commit themselves to ensure the implementation of the environmental rights at work set out in Section 2, points 9-14.

(7) Member states commit themselves to ensure the implementation of consumer environmental rights, including changes to product information legislation and membership of product standards authorities.

(8) Member states commit themselves to establish structures and processes in government designed to ensure that environmental considerations are integrated into all areas of policymaking.

(9) Member states commit themselves to formulate national plans for environmental sustainability, and to report annually on their progress in this field.

(10) Member states shall use transboundary natural resources in a reasonable and equitable manner.

(11) Member states shall prevent or abate any transboundary environmental degradation.

(12) Member states shall apply as a minimum at least the same standards for environmental conduct and impacts regarding transboundary resources and environmental degradation as are applied domestically.

(13) Member states shall provide timely and relevant information to other concerned states regarding existing or planned activities affecting transboundary natural resources and environmental quality.

## 5. OBLIGATIONS OF THE EUROPEAN COMMUNITY

(1) To fulfil its commitment to sustainable development, the Community shall assess its long-term prospects, taking into account the best available scientific evidence on the state of the environment and the Community's principles for environmental policy, especially the prevention at source and

precautionary principles, and the need for equity and regional balance.

(2) Based on this assessment, the Community shall propose a European Sustainable Development Programme, containing a list of measures which shall be adopted over a period expiring 31 December 1999. The programme shall be agreed by the Council by a qualified majority in cooperation with the European Parliament, after consulting the Economic and Social Committee and following extensive dialogue with citizens through the establishment of Round Tables. A Task Force attached to the President's office shall monitor progress and suggest amendments to the programme. A European Sustainable Development Fund shall be established to facilitate the transition in regions with environmentally-intensive industries. The Community shall also consult and incorporate the interests of its international partners, particularly its neighbours in Central and Eastern Europe and countries in the developing world.

(3) The Community shall provide the necessary resources, according to the principle of subsidiarity, to implement and enforce all legislation on the environment. The Community shall establish a European Environment Fund, comprising existing environmental schemes and extra resources to facilitate the implementation of EC environmental legislation. The Community will also provide adequate funds on the basis of international solidarity to assist the countries of Central and Eastern Europe and of the developing world to adopt sustainable practices. Overall, it shall aim to increase the proportion of the budget spent on the environment to 10% by 2000.

(4) The Council will decide by a qualified majority whether all or part of revenues raised by environmental taxes shall contribute to the European Environment Fund.

(5) The Community shall establish a European Environment Inspectorate to monitor the implementation and enforcement of environmental legislation by member states. It shall have powers to send inspectors into member states. It shall publish regular reports of its findings.

(6) The Court of Justice shall be able to authorise financial sanctions against member states found to be in default of treaty obligations.

(7) The Commission shall take measures to ensure that the environment becomes an integral component of all other policies. This will include the establishment of an environment unit within each Directorate General responsible for: assessing the environmental impact of its policies and publishing the findings; and publishing an audit of its environmental impact as part of the annual budgetary process.

(8) The Community shall seek to take a leading role in international negotiations on the environment.

(9) The Community shall reform its Treaty foundations where necessary to achieve these obligations.



## A European Environment Charter

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The European Community's environmental policy is in urgent need of reform in the light of emerging global environmental problems and the impact of changes in the Community such as the Single Market programme.

Nick Robins argues that a major political initiative is required, in the form of a European Environment Charter. The aim would be to democratise and intensify environmental policy, and to launch a Sustainable Development programme, to be completed by the end of the century. Following the model of the Social Charter, this should:

- introduce a range of environmental rights for citizens, consumers and employees, which could be enforced through special environmental courts;
- establish a range of obligations, both legal and non-legal, for individuals, companies, member states and the Community itself;
- base Community environmental policy on the principle of sustainable development and the 'precautionary principle'.

In addition to the Charter, Robins proposes that the Treaty of Rome be amended to include a commitment to sustainable development, and that the Community commit itself to spend 10% of its budget on environmental protection.

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