

## **Protecting future generations in EU law:**

**Proposal for a**

**REGULATION**

**on safeguarding and enhancing the conditions for life  
of present and future generations**

**The natural environment which forms the life support system of our planet is gravely at risk. The earth's atmosphere is seriously threatened. The condition of water resources, including the seas and oceans, is causing concern, natural resources are being depleted and there is growing loss of genetic diversity. The quality of life - indeed, the continuation of life - could no longer be assured were recent trends to proceed unchallenged...**

**The Community and its Member States have a special responsibility to encourage and participate in international action to combat global environmental problems. Their capacity to provide leadership in this sphere is enormous. The Community must use more effectively its position of moral, economic and political authority to advance international efforts to solve global problems and to promote sustainable development and respect for the global commons.**

**The European Council, 1990**

**By Peter Roderick, for the World Future Council  
8<sup>th</sup> July 2010**

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## **Acknowledgements**

I would like to thank several individuals for their help in developing and finalising this paper, especially Maja Göpel and Malte Arhelger at the World Future Council, Shlomo Shoham and Francesco Acerboni.

## EXPLANATORY MEMORANDUM

*“[T]his is a crucial century. The earth has existed for 45 million centuries, but this is the first when one species, ours, can determine for good or ill the future of the entire biosphere.”*

Martin Rees, President of the Royal Society, June 2010<sup>1</sup>

**Synopsis:** This paper sets out and explains a proposed new EU law which would help EU decision-makers understand the comparative effect of decisions on present and on future generations; would minimize the risk of their decisions having significant future adverse effects; would set up a bureaucratic centre of expertise within the Commission; and would establish a Guardian for Future Generations elected by the European Parliament with investigative, consultative and other functions.

### 1. CONTEXT

It is nearly fifty years since the 1972 UN Stockholm Conference proclaimed that:  
**“...To defend and improve the human environment for present and future generations has become an imperative goal for mankind...”**<sup>2</sup>

It was in 1987 that Brundtland Commission wrote:

**“We act as we do because we can get away with it: future generations do not vote, they have no political or financial power; they cannot challenge our decisions. But the results of the present profligacy are rapidly closing the options for future generations.”**<sup>3</sup>

And the words on the front page of this paper were declared by the European Council twenty years ago<sup>4</sup>.

If such statements were true then, they have become all the more evident, pressing and acknowledged since. For example:

- biodiversity continues to decline at an unprecedented rate, both globally<sup>5</sup>, and in the EU<sup>6</sup>;

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<sup>1</sup> 'Scientific Horizons', Reith Lectures 2010, first lecture, 1<sup>st</sup> June 2010, available here:

<http://www.bbc.co.uk/podcasts/series/reith>

<sup>2</sup> Declaration of the United Nations Conference on the Human Environment, 1972 (the Stockholm Declaration), Preamble paragraph 6, available here: <http://www.un-documents.net/unchedec.htm>

<sup>3</sup> Our Common Future: Report of the World Commission on Environment and Development, 1987, paragraphs 25 and 26, available here: <http://www.un-documents.net/ocf-ov.htm>

<sup>4</sup> Dublin European Council, 25 - 26 June 1990, Conclusions of the Presidency, Annex II, The Environmental Imperative, Declaration by the European Council:  
[http://www.europarl.europa.eu/summits/dublin/du2\\_en.pdf](http://www.europarl.europa.eu/summits/dublin/du2_en.pdf)

<sup>5</sup> Biodiversity loss brings ecological systems closer to a tipping point, Ban says, UN News Centre, 22nd May 2010: <http://www.un.org/apps/news/story.asp?NewsID=34779&Cr=Biodiversity&Cr1=>

- global warming is unequivocal and likely to lead to some irreversible impacts - in Europe, regional differences in natural resources are expected to be magnified; negative impacts will include increased risk of inland flash floods and more frequent coastal flooding, glacier retreat, and extensive species losses; and high temperatures, drought and reduced water availability in southern Europe, and increased health risks due to heat waves, are projected<sup>7</sup>;
- all commercial fisheries may have collapsed by 2050 if urgent measures are not taken<sup>8</sup>, while 88 % of EU fish stocks are being fished beyond their maximum sustainable yield after decades of over-fishing, fleet over-capacity, heavy subsidises, low economic resilience and decline in the volume of fish caught;<sup>9</sup>

As well as these major environmental and other problems, which affect both biological and material existence, there are serious social and other issues with implications for the future. For example:

- one in six people worldwide go hungry everyday,<sup>10</sup> and intractable poverty can feed a vicious circle of economic insecurity, political instability and, even, ferocious communal violence<sup>11</sup> – whilst in the EU the economic crisis has aggravated poverty, with the Commission forecasting that unemployment could exceed 10% in 2010, and may stay high for some time, with attendant risks of long-term unemployment and exclusion;<sup>12</sup>
- hundreds of millions of people worldwide are affected by mental, behavioural, neurological and substance use disorders<sup>13</sup>. Mental disorders are on the rise in the

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<sup>6</sup> What does the EU Do? How is the European Commission fighting biodiversity loss?

[http://ec.europa.eu/environment/biodiversity/campaign/index\\_en.htm](http://ec.europa.eu/environment/biodiversity/campaign/index_en.htm)

<sup>7</sup> Climate Change 2007: Synthesis Report, Intergovernmental Panel on Climate Change, Fourth Assessment Report, available here:

[http://www.ipcc.ch/publications\\_and\\_data/publications\\_ipcc\\_fourth\\_assessment\\_report\\_synthesis\\_report.htm](http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_synthesis_report.htm)

<sup>8</sup> Turning the Tide on Falling Fish Stocks - UNEP-Led Green Economy Charts Sustainable Investment Path, UN News Centre, 17th May 2010,

<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=624&ArticleID=6566&l=en&t=long>

<sup>9</sup> Reform of the Common Fisheries Policy, Green Paper, European Commission, COM(2009)163 final, available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0163:FIN:EN:PDF>

<sup>10</sup> With global hunger a top concern, UN launches online drive to spur action, UN News Centre, 11th May 2010, <http://www.un.org/apps/news/story.asp?NewsID=34660&Cr=hunger&Cr1>

<sup>11</sup> UN World Economic and Social Survey 2008, Overview, p. 1, available here:

<http://www.un.org/esa/policy/wess/wess2008files/wess08/wess2008.pdf>

<sup>12</sup> Commission Communication, Proposal for the Joint Report on Social Protection and Social Inclusion 2010, COM(2010)25 final, available here:

<http://register.consilium.europa.eu/pdf/en/10/st06/st06323.en10.pdf>

<sup>13</sup> [http://www.who.int/mental\\_health/en/](http://www.who.int/mental_health/en/)

EU, estimated to affect almost 50 million citizens, with somebody dying every nine minutes as a consequence of suicide in the EU.<sup>14</sup>

- there has been a 45% real terms increase in global military expenditure since 1999, totalling \$1,464 billion in 2008, with four EU Member States amongst the world's top ten spenders<sup>15</sup> - whilst the estimated cost of meeting the Millennium Goals in all countries in 2015 was put at US \$189 billion in 2005<sup>16</sup>.

The structural shortcoming of democracies, to favour present voters and economic interests over future citizens without a voice, needs to be mitigated by mechanisms for temporal checks and balances.

Europe is well placed to address these challenges, and urgently. Its history of war, and its political responses to prevent conflict, demonstrate that positive change is possible. Its history of colonialism and oppression have taught it that respect for human dignity, democracy and the rule of law, and cooperation are more likely to achieve a better world.

Drawing on the experiences of its Member States,<sup>17</sup> building on its aim of promoting the well-being of its peoples and on its own actions to date, the EU can make progress towards achieving long-term policy objectives by leading international efforts to ensure an intact, prosperous and just world for generations to come. This paper therefore sets out and explains a proposed new EU Regulation which would help decision-makers understand the comparative effect of decisions on present and on future generations; would minimize the risk of their decisions having significant future adverse effects; would set up a bureaucratic centre of expertise within the Commission; and would establish a Guardian for Future Generations elected by the European Parliament with investigative, consultative and other functions.

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<sup>14</sup> European Pact for Mental Health and Well-Being, 13th June 2008, available here:

[http://ec.europa.eu/health/ph\\_determinants/life\\_style/mental/docs/pact\\_en.pdf](http://ec.europa.eu/health/ph_determinants/life_style/mental/docs/pact_en.pdf)

<sup>15</sup> Stockholm International Peace Research Institute, Yearbook 2009, Chapter 5, available here:

<http://www.sipri.org/yearbook/2009/files/SIPRIYB0905.pdf>

<sup>16</sup> Investing in Development: A Practical Plan to Achieve the Millennium Development Goals, UN Millennium Project (2005), available here:

<http://www.unmillenniumproject.org/documents/overviewEng55-65LowRes.pdf>

<sup>17</sup> For example, the constitutions of Belgium, the Czech Republic, Estonia, France, Germany, Luxemburg, Poland and Sweden contain explicit references to future citizens, and the constitutions of Finland, Italy, Portugal, Slovakia and Slovenia do so indirectly through the concept of heritage: see Göpel & Arhelger (2010): How to Protect Future Generations' Rights in European Governance. In the Intergenerational Justice Review (forthcoming), citing Earthjustice (2007): Environmental Rights Report 2007, <http://www.earthjustice.org/library/references/2007-environmental-rights-report.pdf>. Viewed 27 March 2010; and Tremmel, Joerg Chet (2006): Establishing intergenerational justice in national constitutions. In: Tremmel, Joerg Chet (ed.): Handbook of Intergenerational Justice. Cheltenham/ Northampton, MA: Edward Elgar, 187-214. Hungary has established a Parliamentary Commissioner for Future Generations: <http://jno.hu/en/>.

## 2. ELEMENTS OF THE PROPOSAL

The text of the proposal is set out in section 3 below. In this section 2, an explanation is provided of its preambular and operative provisions.

### 2.1 The Preamble

#### 2.1.1 Legal basis

It is doubtful whether the current Treaties<sup>18</sup> are adequately designed to safeguard the conditions for life of future generations. As Einstein is reported to have said “we can't solve problems by using the same kind of thinking we used when we created them.” Evidence of a different kind of thinking might, for example, be the inclusion of a concept such as ‘trusteeship’ amongst the Union’s foundational values. Whilst amendment of the Treaties is not imminent, it is possible to make progress in that direction within the current set-up.

The legal basis for the Regulation would therefore be TFEU Article 352, which provides in paragraph 1 as follows:

**“If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. ...”**

As well as having to satisfy the three pre-conditions for this Article’s use, Article 352 cannot be used to widen the scope of Union powers beyond the general framework created by the Treaties and, in particular, by those defining the tasks and the activities of the Community; and the choice of legal basis must rest on objective factors which are amenable to judicial review, including, in particular, the aim and the content of the measure.<sup>19</sup>

The three pre-conditions are clearly met. Satisfying the necessity pre-condition depends, firstly, on the evidence that exists as to the future conditions for life in the EU. It is beyond the scope of this paper to set this evidence out extensively. However, from the

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<sup>18</sup> The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

<sup>19</sup> For example, see paragraphs 203 and 182, respectively, of the judgment of the Court of Justice (Grand Chamber) of 3<sup>rd</sup> September 2008 in *Kadi v Council and Commission*, C-402/05 P; C-415/05 P, [2008] ECR I-6351, available here: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&alljur=alljur&jurcdj=jurcdj&jurtpi=jurtpi&jurftp=jurftp&numaff=C-402/05&nomusuel=&docnodecision=docnodecision&allcommjo=allcommjo&affint=affint&affclose=affclose&alldocrec=alldocrec&docor=docor&docav=docav&docsom=docsom&docinf=docinf&alldocnorec=alldocnorec&docnoor=docnoor&radtypeord=on&newform=newform&docj=docj&docop=docop&docnoj=docnoj&typeord=ALL&domaine=&mots=&resmax=100&Submit=Rechercher>

examples given in section 1 above, and many more that could be cited, the overall biological and material conditions for life in the EU today are clearly under threat and in important instances have deteriorated. If current trends continue – for example, as regards greenhouse gas emissions, species’ decline and mental disorders – a more impoverished future society in (say) 20 or 50 or even 100 years’ time is almost guaranteed. Current policy outcomes are not safeguarding future conditions for life sufficiently. Given that the well-being aim is clearly one of the objectives of the Treaties, it is necessary, in order to help achieve that aim, to take action now to safeguard conditions for life of future generations. The action envisaged in the proposed Regulation would help safeguard those conditions.

Such action must also be necessary “within the framework of the policies defined in the Treaties”. This means that a Regulation under Article 352 is limited to including provisions which apply within the Treaties’ policy frameworks. It cannot, for example, add new or modify existing policy areas. The draft proposed Regulation set out in section 3 respects this limitation.

The powers set out in the Regulation to safeguard the well-being of future generations have not been provided in the Treaties.

There are, however, two important limitations to note. Firstly, Article 352 cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy (Article 352.4). Secondly, action in the field of nuclear energy is not covered because, although politically and administratively almost identical, the Treaty establishing the European Atomic Energy Community provides a legally-separate regime. This means, therefore, that the highly irresponsible continued accumulation of long-lasting radioactive waste, for example, cannot be addressed via Article 352.

### **2.1.2 Paragraphs (1) – (7)**

The Preamble starts with references to the Union’s foundational values, one aim, and many internal and external objectives set out in Article 3 of the Treaty on European Union (TEU) (Article 3 objectives). It then highlights the sustainable development objective, in relation to Europe and the world; describes some of the other Article 3 objectives which supplements it; and mentions the remaining objectives.

Extensive opening reference to the highest level of the TEU’s provisions recalls and provides the necessary context for EU action, based on an honest assessment and fundamental understanding of what lies behind our economic, social and ecological problems.

### **2.1.3 Paragraphs (8) – (10)**

Much has been done to achieve the Article 3 objectives, but there are serious problems remaining and facing the EU, necessitating action to achieve the objectives.

#### 2.1.4 Paragraph (11)

This paragraph makes a special reference to the current economic crisis. The reference to short-term measures is based on the words of the Commission in 2009:

**“The current economic and financial crisis has shown that sustainability is a key factor for financial systems and the economy as a whole; that it is crucial that measures to support the real economy and reduce the social impact of the current crisis are compatible with long-term sustainability goals; and that the Union should turn the crisis into an opportunity to address financial and ecological sustainability and develop a dynamic low-carbon and resource-efficient, knowledge-based, socially inclusive society, and promote this approach globally.”<sup>20</sup>**

However, a fundamental rethink of financial markets and the monetary system, and a reduction in production and consumption patterns, must be at the core of a new economy that will help safeguard the conditions for life of future generations. Current EU economic thinking will not safeguard these conditions, but there are indications that it is not totally petrified,<sup>21</sup> and there is much that can be achieved within the present Treaties with political will, expertise and determination.

#### 2.1.5 Paragraphs (12) – (14)

The well-being of future generations requires action across the range of Article 3 objectives. These paragraphs highlight the link to the objective of sustainable development within Article 3, pointing out how recognition of the interests of future generations dates back internally to 1973; how those interests have been recognised in international agreements to which the Union is a Party over many decades; and how they are further strengthened by being based on a high level of environmental protection, by the duty to integrate environmental protection into all policies, and by the Charter for Fundamental Rights. The Charter guarantees citizens rights relating to dignity, freedom, equality, solidarity, citizenship and justice, whilst expressly recognising that their enjoyment entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States, on the 1973 programme of action on the environment provided in paragraph 9 as follows, for example<sup>22</sup>:

**“The protection of the environment is a matter for all in the Community, who should therefore be made aware of its importance. The success of an environment policy presupposes that all categories of the population and all the social forces of**

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<sup>20</sup> Mainstreaming sustainable development into EU policies: 2009 Review of the European Union Strategy for Sustainable Development, Commission Communication, COM(2009) 400 final, 24.7.2009, available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0400:FIN:EN:PDF>

<sup>21</sup> For example, see most recently the Commission’s Proposal for a Regulation on European environmental economic accounts, COM(2010)132 final, 9.4.2010, available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0132:FIN:EN:PDF>

<sup>22</sup> OJ No C 112, 20.12.1973, p. 1. Available here: <http://www.ecolex.org/ecolex/ledge/view/RecordDetails.jsessionid=816D307340C3E0787BEFAE5A2A323594?id=LEX-FAOC039574&index=documents>

**the Community help to protect and improve the environment. This means that at all levels continuous and detailed educational activity should take place in order that the entire Community may become aware of the problem and assume its responsibilities in full towards the generations to come.”**

The Dublin European Council in 1990 stated:

**“Mankind is the trustee of the natural environment and has the duty to ensure its enlightened stewardship for the benefit of this and future generations.... All our decisions matter. The environment is dependent on our collective actions and tomorrow’s environment depends on how we act today.”**

There are also several examples of express recognition of future generations as a result of international agreements which the EU has approved:

By Council Decision of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals (82/461/EEC)<sup>23</sup>, the European Economic Community approved that Convention. In the second paragraph of the preamble to the Convention, the Parties express their awareness:

**“that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely”.**

By Council Decision of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (93/626/EEC)<sup>24</sup>, the European Economic Community approved that Convention. In the final paragraph of the preamble to the Convention, the Parties expressed their determination:

**“to conserve and sustainably use biological diversity for the benefit of present and future generations”**

and in Article 2 of the Convention, ‘sustainable use’ is defined as:

**“the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations”.**

By Council Decision of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (94/69/EC)<sup>25</sup>, the European Community approved that Convention. In particular, Article 3.1 of the Convention provides (in relevant part):

**“1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities”**

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<sup>23</sup> Official Journal L 210 , 19/07/1982 P. 0010 – 0022; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982D0461:EN:HTML>

<sup>24</sup> Official Journal L 309 , 13/12/1993 P. 0001 – 0020; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993D0626:EN:HTML>

<sup>25</sup> Official Journal L 033 , 07/02/1994 P. 0011 – 0012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994D0069:EN:HTML>

By Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (2005/370/EC)<sup>26</sup>, the community approved that Convention, generally known as the Aarhus Convention. In the seventh paragraph of the preamble to the Convention, the Parties express their recognition:

**“that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations”**

Article 1 of that Convention provides as follows:

**“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention”.**

It can also be noted that paragraphs 2 and 6 of the United Nations Millennium Declaration state (in relevant part)<sup>27</sup>:

**“We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world’s people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs....**

**Respect for nature. Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.”**

This Regulation would help strengthen the EU’s implementation of these international instruments and commitments.

### **2.1.6 Paragraphs (15) – (19)**

The proposed Regulation’s key provisions are summarized, and the justification for using Article 352 asserted.

## **2.2 Article 1 – Definitions**

The terms defined in Article 1 will be explained below when the provision in which they are first used is explained.

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<sup>26</sup> 17.5.2005 EN Official Journal of the European Union L 124/1

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:124:0001:0003:EN:PDF>

<sup>27</sup> <http://www.un.org/millennium/declaration/ares552e.pdf>

### **2.3 Article 2 – Purpose**

This Article sets out simply the purpose of the Regulation, and makes clear that the purpose must be within the framework of the policies defined in the Treaties in order to meet one of the preconditions for the application of TFEU Article 352.

The need for the Regulation is based on concern for the kind of world that those yet to be born will inherit. However, the Article also reflects the equal concern for those alive now, and for the world that those already born will live in during their lifetime.

The term ‘conditions for life’ is defined in Article 1 and would be the core of the Regulation. It is intended to cover both the conditions for biological existence of human and non-human species, and the material conditions for well-being; and is thus significantly wider than environmental conditions. By expressly including individual conditions, and through the link to well-being, the conditions for physical and mental health and security, for example, would be covered. By linking to the objectives set out in TEU Article 3, it ensures respect for another of the preconditions for a lawful proposal under TEU Article 352. The definition does not make reference to the actions taken by the Union’s institutions in pursuance of the objectives, as this element is covered by the “relevant action” definition.

The purpose of the Regulation extends to “relevant institutions”, defined in Article 1 as the European Parliament, the European Council, the Council, the Commission and the European Central Bank. These are five of the seven Union institutions listed in TEU Article 13, and the Regulation would cover them all in different ways. The Court of Justice of the European Union and the Court of Auditors are not included. Distinctions are made in the duties imposed on each relevant institution, both in the operative text and by virtue of the “relevant action” definition.

Union bodies, offices and agencies are also covered.

The term ‘safeguarding’ has been chosen rather than ‘protecting’ as this implies a stronger duty, linked to an outcome, and the phrase ‘safeguarding and enhancing’ reflects the same wording in TEU Article 3.3 in relation to Europe’s cultural heritage.

The adjective ‘effectively’ has been included to reflect the increased likelihood that conditions for life will be safeguarded and enhanced through the establishment of the Guardian for Future Generations and the exercise of his or her functions.

### **2.4 Article 3 - Scope**

This Article sets out the twin pillars of the Regulation – institutional duties, and the establishment of the Guardian. It also makes clear that the common foreign and defence policy is not within the scope of the Regulation, as this is not permitted by TFEU Article 352.4.

## 2.5 Article 4 – Inter-generational analysis

### 2.5.1 Article 4, paragraph 1

This provision would require the Commission to undertake an inter-generational analysis (IGA) before proposing relevant action, with the active participation of the Guardian.

An IGA is defined in Article 1(b) as an analysis, appropriate to the level of the relevant action, of how adoption of a relevant action which favoured the conditions for life of present generations would be likely to affect adversely the conditions for life of future generations, and vice versa.

Relevant action is defined in Article 1(c) as including most legislative and non-legislative initiatives and, in the case of the European Council, it covers its external action decisions under TEU Article 22, excluding the common foreign and defence policy.

The IGA would be a procedural mechanism to help decision-makers understand the comparative implications of their proposed initiatives on the conditions necessary for the well-being of both present and future generations. It should not be confused with an Impact Assessment, or seen as another sectoral impact assessment, although some, and perhaps many, aspects of an (improved) Impact Assessment could be used to formulate and understand the comparative inter-generational implications.

Like an Impact Assessment, an IGA would not be a substitute for political decision-making. However, unlike an Impact Assessment, which considers (on a voluntary basis) short and long term economic, environmental and social impacts (not expressly linked to well-being), the IGA would be a legally-required comparative analysis which could expressly recognize that the well-being of present and of future generations might conflict. Depending on the nature of the decision in question, it would benefit from the technique of strategic foresight<sup>28</sup>.

The IGA would *not* be a balancing exercise, because the analysis would not be a substitute for political decision-making. However, it would support that decision-making, and also provide the public, and the Guardian, with information on whether, for example, the well-being of future generations is likely in time to be significantly adversely affected by the decision in question.

This definition of relevant action is intended to cover all significant initiatives by relevant Union institutions, primarily (but not only) by the Commission, within the framework of the policies defined in the 24 policy and internal action areas<sup>29</sup>, and in respect of external action, set out in the Treaty on the Functioning of the European Union.

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<sup>28</sup> One definition of this term is “developing policy based on long-run scenario planning” (see Leigh, Andrew. 2003. “Thinking Ahead: Strategic Foresight and Government Thinking.” *Australian Journal of Public Administration* 62, no. 2: 3-10.

<sup>29</sup> The 24 policy and internal action area titles listed in the TFEU are: the internal market (I); free movement of goods (II); agriculture and fisheries (III); free movement of persons, services and capital

The breadth of this definition reflects the need for all Union policies to help achieve well-being. It is not, strictly, a ‘cross-cutting’ issue, which suggests horizontal parity, but rather there is a vertical relationship between the well-being aim and, on the next level, the policies adopted to achieve that aim in line with the other Article 3 objectives.

The definition’s description of the scope of the initiatives covered has taken into account the coverage of the Commission’s January 2009 Impact Assessment Guidelines<sup>30</sup>, and the Commission’s forwarding duty in respect of national Parliaments set out in Article 1 of Protocol 1 to the Treaties.

The European Council is treated differently, because action under Article 352 must be necessary within the policy framework, which operates generally (but not entirely) at a sub-EC level – that is because the EC’s duties under TEU Article 15 are at a higher level, namely to provide the necessary impetus for the EU’s development and to define its general political directions and priorities.

Additionally, in relation to external action, Article 21(2) requires the Union to “define and pursue common policies and actions, and [to] work for a high degree of cooperation in all fields of international relations, in order to” achieve eight listed objectives, such as supporting human rights; fostering the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; helping develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development; and promoting an international system based on stronger multilateral cooperation and good global governance. Under Article 22, the EC is given the duty, on the basis of Article 21’s principles and objectives, to identify the Union’s strategic interests and objectives, and to make decisions on these (acting unanimously on a recommendation from the Council). When the EC acts under Article 22 it is acting within the framework of one of the policies defined in the Treaties, and so is covered by Article 352.

The common foreign and defence policy is excluded from the definition, as it is from the Regulation generally, in view of TEU Article 352.4.

### **2.5.2 Article 4, paragraph 2**

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(IV); area of freedom, security and justice (V); transport (VI); common rules on competition, taxation and approximation of laws (VII); economic and monetary policy (VIII); employment (IX); social policy (X); the European social fund (XI); education, vocational training, youth and sport (XII); culture (XIII); public health (XIV); consumer protection (XV); trans-European networks (XVI); industry (XVII); economic, social and territorial cohesion (XVIII); research and technological development and space (XIX); environment (XX); energy (XXI); tourism (XXII); civil protection (XXIII); administrative cooperation (XXIV).

<sup>30</sup> See page 16, [http://ec.europa.eu/governance/impact/index\\_en.htm](http://ec.europa.eu/governance/impact/index_en.htm)

This paragraph would introduce an ‘inter-generational threshold’, based on a mechanism found in Article 6.4 of the Habitats Directive<sup>31</sup> which is aimed at ensuring that adverse effects on the integrity of special areas of conservation are only allowed if there are special overriding imperative public interest reasons for doing so.

A similar device here to level the playing field *at the political level* - strengthened to require urgency, and clarified to highlight the need for reasons - would help ensure that the invariable, and often understandable, wish to make short-term decisions that would be likely to have significant longer-term adverse well-being effects is checked.

Given the Commission’s duty in TEU Article 17 to take initiatives to promote the Union’s general interest, and its role as the initiator of most legislation, it is necessary to place this inter-generational threshold on this institution, and at this juncture in the decision-making processes.

In other words, if the conditions for life of future generations are likely to be significantly adversely affected as a result of favouring the conditions for life of present generations, a rebuttable presumption against that would apply in respect of the Commission.

### **2.5.3 Article 4, paragraph 3**

It is also necessary for the European Parliament and the Council to be aware of, and to consider, the inter-generational analysis, especially, but not only, during the legislative process. Both these institutions are entitled to form, and should form, their own views on whether the inter-generational threshold is crossed, as this would (or at least should) influence their respective positions in relation to Commission proposals, and the Parliament would be assisted in this regard by the Guardian. However, once the legislative process has begun with a proposal from the Commission, it would not be appropriate under Article 352 to modify that *process* on the basis of the view on this matter of either institution, or of the Guardian. This limitation of what is possible under Article 352, however, would not in any way restrict the political positions that either institution wished to take, or affect the Guardian.

### **2.5.4 Article 4, paragraphs 4, 5 and 6**

The thinking behind economic and monetary policy plays a crucial role in affecting the future conditions for life. Short-term thinking leaves the future out of account. In addition, the use of statistics and indicators which diverge too far from real life means the decisions on which they are based will not deliver what they are intended to. GDP, for example, is not designed to be an adequate measure of well-being.

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<sup>31</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 , 22.7.1992, p. 7. More information, and a consolidated version of the Directive, are available from this web page:

[http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm)

New legal frameworks were introduced in 2009 and much positive work has been done by EU bodies over many years to develop better and more comprehensive well-being indicators<sup>32</sup>, though there is little or no evidence of their use within economic and monetary policy.

The purpose of these paragraphs is therefore to place future-relevant duties on the key economic and monetary policy institution (the European Central Bank (ECB)), and on the key statistical bodies (the ECB and the Union statistical authority).

Under TFEU Article 127, the primary objective of the European System of Central Banks ("the ESCB") is to "maintain price stability", and without prejudice to that primary objective, it shall also support the general economic policies in the Union with a view to contributing to the achievement of the Union's objectives as set out in TEU Article 3. It is obliged to act "in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119". The guiding principles referred to in Article 119 are stable prices, sound public finances and monetary conditions and a sustainable balance of payments. The ECB makes regulations, takes decisions, makes recommendations and delivers opinions in order to carry out the tasks entrusted to the ESCB (under TFEU Article 132). Union institutions, bodies, offices or agencies undertake not to seek to influence the members of the decision-making bodies of the ECB (under TFEU Article 130). Under Article 5 of the Statute of the ESCB and of the ECB, the ECB shall collect necessary statistical information, and shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.

To a very large extent, the ECB is a law unto itself. Its role and economic ideology has been clearly defined. Democratic accountability is limited, and its website provides a partial and now outdated description of EU objectives<sup>33</sup>. Its economic and monetary thinking is, however, critical to future conditions for life.

Paragraph 4 therefore proposes that the ECB considers how it can contribute to safeguarding and enhancing such conditions, for example by means of an

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<sup>32</sup> For example, the bi-annual Eurostat monitoring report on sustainable development indicators (the 2009 report is available here: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-78-09-865/EN/KS-78-09-865-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-78-09-865/EN/KS-78-09-865-EN.PDF)); the European Environment Agency's 2009 biodiversity indicators are available here: <http://www.eea.europa.eu/publications/progress-towards-the-european-2010-biodiversity-target-indicator-fact-sheets>; a list of all EEA indicators are available here: <http://themes.eea.europa.eu/indicators/>; common social inclusion and protection indicators have been agreed (see here: <http://ec.europa.eu/social/main.jsp?catId=756&langId=en>); Eurostat publishes a wide range of additional indicators covering, for example, the economy, education and transport: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>; and the Commission has proposed a Regulation on European environmental economic accounts, COM(2010)132 final, 9.4.2010, available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0132:FIN:EN:PDF>, as part of its 'Beyond GDP' initiative (more here: <http://www.beyond-gdp.eu/index.html>).

<sup>33</sup> The 'objectives' section of this web page has not been updated to reflect the Lisbon Treaty: <http://www.ecb.int/ecb/orga/tasks/html/index.en.html>. It should be updated, and should include all Article 3 objectives, including the well-being aim.

intergenerational analysis, and to report on this by the end of 2012. Special mention is made to its statistical function in view of the express reference to the design of new statistics and indicators in the definition of ‘development’, inserted in October 2009 into Regulation 2533/98 on the collection of statistical information by the ECB<sup>34</sup> by Regulation 951/2009.<sup>35</sup>

The Union statistical authority designated by the Commission to develop, produce and disseminate European statistics is Eurostat (which legally is a part of the Commission). Along with national statistical institutes, and other national authorities responsible in each Member State for the development, production and dissemination of European Statistics, it constitutes the European Statistical System (ESS). The ESS has a duty to “cooperate closely” with the ESCB in order to minimise the reporting burden and guarantee the coherence necessary to produce European statistics. The relationship between Eurostat and the ECB in respect of economic and financial statistics is governed by a 2003 Memorandum of Understanding (MoU)<sup>36</sup>. Under that MoU, for example, Eurostat “has prime responsibility for general economic statistics at the Community level”, whilst the ECB “has prime responsibility for money, banking and financial markets statistics at the Community level” (emphases omitted).

Paragraph 5 therefore proposes a similar (though of course narrower) duty on Eurostat as is proposed for the ECB.

Paragraph 6 would ensure that the ECB and Eurostat work closely together in producing their reports (including the possibility of a joint report), and consult with the Commission, the Guardian for Future Generations, the European Environment Agency, the Fundamental Rights Agency, national statistical institutes and authorities, and any other person or body as they think fit.

### **2.5.5 Article 4, paragraph 7**

Each Union body, office and agency would be obliged to consider how exercising its functions affects future generations, and to propose by the end of 2012 how it can safeguard and enhance their conditions for life.

### **2.5.6 Article 4, paragraph 8**

This provision is intended to help make an understanding of the conditions for life of present and of future generations more specific, through establishing indicators. There is a danger with this approach, in that measuring can replace understanding; but there are also advantages, particularly where decision-makers need to demonstrate reasons for their decisions.

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<sup>34</sup> OJ L 318, 27. 11. 98, p. 8.

<sup>35</sup> Council Regulation (EC) No 951/2009 of 9 October 2009 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank, OJ L 269, 14.10.2009, p. 1.

<sup>36</sup> Available here: [http://www.ecb.int/ecb/legal/pdf/en\\_mou\\_with\\_eurostat1.pdf](http://www.ecb.int/ecb/legal/pdf/en_mou_with_eurostat1.pdf)

The Commission would be given the duty to draw up these indicators, within two years of the Regulation entering into force<sup>37</sup>, linked to each of the areas of competence referred to in TFEU Articles 3-6. The Commission would draw on current and forthcoming EU future-relevant indicators, but would arrange them (and modify and/or extend them) through a generational lens.

### **2.5.7 Article 4, paragraph 9**

This paragraph draws together the various possible actions of the Guardian (not dealt with elsewhere) in relation to relevant institutions (*et al.*), and sets out the varying duties of the institutions (*et al.*) in respect of them.

### **2.6 Article 5 - Expertise**

This Article is aimed at creating within the Commission a bureaucratic centre of expertise relating to the conditions for life of present and of future generations. The duties set out in the first two paragraphs are based on similar tasks of the European Environment Agency<sup>38</sup>.

The third paragraph is intended to ensure that the Commission makes maximum use of, and does not duplicate, the expertise relevant to the purpose of the Regulation which already exists within the 37 Union agencies, and other bodies and offices<sup>39</sup>. These might include, for example, the European Environmental Agency, the Fundamental Rights Agency, the Fisheries Control Agency, the Plant Variety Office, the Safety and Health at Work Agency, the Centre for Disease Prevention and Control, the Chemicals Agency, the Food Safety Authority, and the European Foundation for the Improvement of Living and Working Conditions. It could be open to the Commission, in time, to consider establishing a separate specialised agency for the purposes of the Regulation.

### **2.7 Article 6 – Guardian for Future Generations**

This Article establishes the office of the European Guardian for Future Generations, elected by the Parliament.

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<sup>37</sup> As this provision delegates to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the Regulation, TFEU Article 290 applies. The objectives, content, scope and duration of the delegation of power must be explicitly defined in the Regulation, and any conditions must be explicitly laid down, such as the right of the Parliament or the Council to revoke the delegation, and providing that the delegated act may enter into force only if no objection has been expressed by the Parliament or the Council within a set period.

<sup>38</sup> See Article 2(e) of Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network, OJ L 126, 21.5.2009, p. 13, available from here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009R0401:EN:NOT>

<sup>39</sup> More information on the Union agencies is available here: [http://europa.eu/agencies/index\\_en.htm](http://europa.eu/agencies/index_en.htm)

The Guardian would be elected, rather than appointed, as this would increase his or her democratic legitimacy. The European Ombudsman is similarly elected by the Parliament (although was initially appointed).

Article 6.3 is based on the equivalent provision in respect of the European Ombudsman, though it does not give special precedence to qualification for highest judicial office. The Guardian should have a broad competence and experience relevant to the conditions for life of future generations, and not be limited to legally qualified individuals.

The Guardian's powers and duties must be exercised within the framework of the policies set out in the Treaties.

## **2.8 Article 7 - The Guardian's duties**

This Article sets out the duties of the Guardian - i.e., things that the Guardian must do. Apart from the Guardian's annual report to Parliament, these are restricted to the receipt and investigation of complaints from citizens that a decision of relevant institutions, or Union agencies, bodies or offices has had a significant effect on the conditions for life of future generations and imperative and stated reasons of overriding and urgent public interest have not been established, or initiation of his or her own investigation where the Guardian considers that a past decision has had such an effect.

In view of the wide nature of impacts that EU decisions can have on the rest of the world, complaints may be made by a citizen of any country, whether in the EU or not.

Following investigation of the complaint, the Guardian would make recommendations to the relevant institution (*et al.*).

It will be noted that unlike the dual focus of obligations imposed on the Commission and relevant institutions (*et al.*) in Article 4, the focus for the Guardian's duties are the conditions for life of future generations alone. This is because whilst it is necessary to acknowledge the decision-makers' duty to consider both present and future generations, the Guardian would be a champion of future generations.

The two-year limit on submission of complaints is the same as for complaints to the European Ombudsman, as is the requirement to use any administrative complaints procedure first, if any exist.

## **2.9 Article 8 – The Guardian's powers**

This Article sets out a range of powers that the Guardian could use, if he or she so wished, with corresponding obligations on relevant institutions (*et al.*) set out in Article 4.9, again for the sole purpose of safeguarding and enhancing the conditions for life of future generations, within the Treaties' policy frameworks.

It contains deliberative and consultative powers, such as expressing opinions on relevant action, both during and outside legislative and other decision-making processes, including to the European Council, and on whether the public interest threshold has been reached; consulting with the public; and asking to be heard by the Parliament before its first reading position is adopted.

As well as the Parliament's general reactive legislative powers, the Parliament has several powers which it could proactively exercise in order to safeguard and enhance the conditions of life for future generations. These include the power:

- to request the Commission to submit any appropriate proposal on matters on which the Parliament considers that a Union act is required for the purpose of implementing the Treaties (TFEU Article 225);
- to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law (TFEU Article 226);
- to seek the opinion of the Court of Justice as to whether an envisaged international agreement is compatible with the Treaties (TFEU Article 218);
- to ask the Court of Justice to review the legality of legislative and certain other acts of the Commission, the Council, the European Council and the European Central Bank (TFEU Article 263); and
- to bring an action before the Court of Justice to establish a failure to act by the same institutions in infringement of the Treaties (TFEU Article 265).

These powers are conferred by the Treaties on the Parliament, and so could not be exercised by the Guardian. However, the Guardian could, in an appropriate case, draw the Parliament's attention to any of these powers and recommend that they are used, and Article 8.1(g) would empower the Guardian to do so.

Article 8.1(h) empowers the Guardian to have access to information and files in pursuance of investigations, in which case Article 9 applies (see below). This power, based on the powers of the European Ombudsman, does not extend to the Guardian's other powers.

Article 8.1 also contains powers extending to international agreements, which have a significant effect on whether the conditions for life of future generations will be safeguarded and enhanced. Under the general procedure applying to the negotiation and conclusion of agreements between the Union and third countries or international organisations set out in TFEU Article 216, the Council shall adopt a decision concluding the agreement (unless the agreement relates exclusively to the common foreign and security policy) after having obtained the consent of the European Parliament (in most cases) or after having consulted with it (in some cases). Special provisions apply in relation to the common commercial policy, including trade and foreign direct investment (under TFEU Article 207) and in the field of transport (Title VI of Part Three), but the role of the Parliament also applies in those areas. The Guardian would therefore be able to advise and address recommendations to the Parliament in these contexts.

In appropriate cases, as a Union body, the Guardian would be able to intervene in cases before the Court of Justice in accordance with Article 40 of the Court's Statute and with Chapter 3 of its Rules of Procedure, and this is reflected in Article 8.1(n).

Article 8.2 concerns the Guardian's limited powers in relation to Member States. The focus of this Regulation, and of the Guardian's functions, would be on EU institutions. However, decisions of Member States and their authorities can also have a significant adverse effect on future generations. The Regulation would not give Member States the same obligations as EU institutions, and would not give the Guardian the same powers or investigative duties in relation to Member States.

If, however, significant adverse effects on future generations are possible in one (or more) of four circumstances, then Article 8.2 would enable the Guardian to provide an opinion on the matter and to make representations to the Member State's authorities considering the decision, and those authorities would be obliged to take the Guardian's opinion and/or representations into account. The four circumstances are because of the effects of a Member State's forthcoming decision affecting an area, site or buildings of European or international importance (such as a Special Area of Conservation under the Habitats Directive, or a World Heritage Site under the UNESCO World Heritage Convention); because of its transboundary effects; simply because of its sheer scale or magnitude; or where the decision relates to a project or activities supported by EU funding. If such a decision has already been taken, the Guardian would be able to report on it and to send the report to the Member State concerned.

The Regulation does not give the Guardian the duty to receive complaints from citizens about Member States' decisions, or the functions of investigating Member States' decisions and of making recommendations. It would be possible, however, for citizens to draw the Guardian's attention to decisions to which they consider Article 8.2 applies, and to request that he or she considers exercising the powers under this provision.

Article 8.3 would entitle the Guardian to cooperate with similar bodies in Member States and elsewhere, which could, for example, lead to the establishment of a European or wider networks. Article 8.4 would extend this power of cooperation to bodies concerned with the promotion and protection of fundamental rights, of the environment, of social inclusion, of human security,<sup>40</sup> of cultural and linguistic diversity and heritage, and with economic policy. These two paragraphs are modified and slightly extended versions of similar powers given to the European Ombudsman.

## **2.10 Article 9 – Access to information and files**

This Article would give the Guardian the same right for the purposes of an investigation under Article 7 to have access to information and files held by relevant institutions (*et al.*), that the European Ombudsman has. The same safeguards are also applied.

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<sup>40</sup> This power would not extend, however, to human security approaches within the common foreign and defence policy.

It is very important for the effectiveness of the Guardian's investigative functions, and for public trust in their outcome, that he or she is given these powers.

Article 9.6 applies the common EU rules on public access to documents, subject to the same qualification as is applicable to the European Ombudsman.

### **2.11 Article 10 – Investigations**

These provisions supplement those relating to investigations contained in Article 7.1, and are based on similar provisions applying to the European Ombudsman.

### **2.12 Article 11 - Term of office etc.**

This Article is based on the equivalent provisions for the European Ombudsman, save that only one period of re-election is allowed.

The first Guardian would be elected by the end of 2011, so that the person can be in post for at least two years before the next scheduled Parliamentary elections in 2014, and would be eligible for re-election after that.

### **2.13 Article 12 - Secretariat**

This Article provides for the Guardian to be assisted by a secretariat, based on the equivalent provisions for the European Ombudsman.

### **2.14 Article 13 - Budget**

These provisions are the same as the initial provisions applying under the European Ombudsman's Statute in 1994. However, those initial provisions were deleted in 2002, following inclusion of the Ombudsman in the list of entities that were to be regarded for budgetary purposes as an institution<sup>41</sup>. In time, the Guardian could also become similarly regarded.

### **2.15 Articles 14 – 16 – closing provisions**

The proposal closes with a common provision requiring Union institutions [*et al.*] to make any necessary adaptations to their rules of procedure, the Regulation to be reviewed after five years following reports from the Commission and the Guardian, and providing for its entry into force and application.

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<sup>41</sup> See, now, Article 1 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248, 16.9.2002, p. 1. Available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:248:0001:0048:EN:PDF>

### **3. THE PROPOSAL**

The proposed Regulation is set out on the following pages. The special legislative procedure would apply, which means that the Council must act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

Proposal for a  
**COUNCIL REGULATION (EU) No xxx/2011**  
**of xx day of xx, 2011**  
**on safeguarding and enhancing the conditions for life  
of present and future generations**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the Commission,

Having obtained the consent of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

After consulting the Committee of the Regions,

After transmission of the proposal to national Parliaments,

Acting in accordance with a special legislative procedure

Whereas:

(1) The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (Treaty on European Union (TEU), Article 2).

(2) Its aim is to promote peace, its values and the well-being of its peoples, the Union has a number of fundamental objectives (TEU Article 3) (“Article 3 objectives”).

(3) These Article 3 objectives include working for the sustainable development of Europe, and, in the Union’s relations with the wider world, to contribute to the sustainable development of the Earth.

(4) The Article 3 objective relating to sustainable development internally is based on balanced economic growth and price stability, a highly competitive social market

economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment;

(5) This Article 3 objective is supplemented by further fundamental objectives to promote scientific and technological advance; to combat social exclusion and discrimination; to promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child; to promote economic, social and territorial cohesion, and solidarity among Member States; to respect the Union's rich cultural and linguistic diversity, and to ensure that Europe's cultural heritage is safeguarded and enhanced;

(6) The Article 3 objective relating to sustainable development externally is supplemented by further fundamental objectives to contribute to peace, security, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

(7) Establishing an economic and monetary union whose currency is the euro, and offering citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime, are also Article 3 objectives.

(8) Much work has been undertaken by the Union to achieve the Article 3 objectives. However, the Commission's review of the Sustainable Development Strategy published in July 2009<sup>42</sup> found that unsustainable trends persist in several areas. The demand on natural resources has been growing fast and exceeds what the Earth can sustain in the long term. Biodiversity is in decline globally and major ecosystems are placed under increasing pressure. Energy consumption in transport continues to rise. Global poverty persists; the Millennium Development Goals need major efforts to be achieved.

(9) Moreover, the Commission's evaluation of the Lisbon Strategy published in February 2010<sup>43</sup> found that links between the Lisbon Strategy and other EU instruments and/or strategies, such as the Stability and Growth Pact, the Sustainable Development Strategy or the Social Agenda, have not been sufficiently strong, so that rather than being mutually reinforcing some of the strategies have been operating in isolation. The European Council of 25<sup>th</sup> and 26<sup>th</sup> March 2010 concluded that a new strategy for jobs and growth will focus on knowledge and innovation, a more sustainable economy, high employment and social inclusion.

(10) Unless additional measures are adopted across the range of Article 3 objectives, the well-being of Union citizens, and of the wider world, will not be assured in the years to

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<sup>42</sup> COM (2009) 400 final

<sup>43</sup> SEC (2010) 114 final

come; and therefore action by the Union is necessary, within the framework of the policies defined in the Treaties, to attain the Article 3 objectives.

(11) The current economic crisis has highlighted the need for a fundamental rethink of financial markets and the monetary system in order to help safeguard the conditions for life of future generations, whilst ensuring in the short-term that measures to support the real economy and reduce the social impact of the current crisis are compatible with long-term sustainability goals.

(12) The objective of sustainable development is the lynch-pin in the Treaties for recognising that meeting the needs of present generations should not jeopardise the ability of future generations to meet their own needs.

(13) It is strengthened by being based on a high level of environmental protection and improvement, by the compulsory integration of environmental protection requirements into the definition and implementation of policies and activities, by other Article 3 objectives and by the Charter of Fundamental Rights of the European Union.

(14) As well as underpinning many aspects of sustainable development and other objectives, the interests of future generations have been expressly recognized in acts originating from or approved by the Union over several decades, including: the 1973 Programme of Action of the European Communities on the Environment<sup>44</sup>; Council Decision of 24 June 1982 on the conclusion of the Convention on the conservation of migratory species of wild animals (82/461/EEC)<sup>45</sup>; Council Decision of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (93/626/EEC)<sup>46</sup>; Council Decision of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (94/69/EC)<sup>47</sup>; the Charter of Fundamental Rights of the European Union (2000/C 364/01)<sup>48</sup>; and Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (2005/370/EC)<sup>49</sup>.

(15) Assuring the well-being of the young and those yet to be born involves understanding how decisions which are made now, within the framework of the policies defined in the Treaties to deliver the range of Article 3 objectives, will affect them; and,

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<sup>44</sup> OJ No C 112, 20.12.1973, p. 1

<sup>45</sup> *Official Journal L 210*, 19/07/1982 P. 0010 – 0022; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982D0461:EN:HTML>

<sup>46</sup> *Official Journal L 309*, 13/12/1993 P. 0001 – 0020; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993D0626:EN:HTML>

<sup>47</sup> *Official Journal L 033*, 07/02/1994 P. 0011 – 0012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994D0069:EN:HTML>

<sup>48</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>49</sup> 17.5.2005 EN *Official Journal of the European Union L 124/1*  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:124:0001:0003:EN:PDF>

where there is likely to be significant adverse effects to their well-being, favouring present well-being when there are overriding public interest reasons for doing so.

(16) Creating a centre of expertise on these issues within the Commission will facilitate this assurance.

(17) An independent guardian of future generations under the auspices of the European Parliament, as representing the Union's citizens, can contribute to providing this assurance effectively. Giving the guardian the functions, for example, of investigating complaints, of making recommendations, of expressing opinions on proposed or actual Union action, and of requesting that certain measures are or are not taken, would help give Union citizens confidence that the well-being of future generations was being given full consideration in the decision-making of Union institutions.

(18) Providing this assurance, and creating the centre of expertise and the independent guardian, within the framework of the policies defined in the Treaties, is necessary for attaining the Article 3 objectives.

(19) With regard to the adoption of this Regulation, the Treaties do not provide for powers other than those set out in TEU Article 352, which does not extend to attaining objectives pertaining to the common foreign and security policy.

HAS ADOPTED THIS REGULATION:

### *Article 1* **Definitions**

In this Regulation:

(a) “conditions for life” means the conditions necessary for ensuring the sustainability of the Earth and all its life, including the economic, environmental, social, individual and other conditions necessary for achieving the Union's aim of promoting the well-being of its peoples by means of the objectives set out in Article 3 of the Treaty on European Union.

(b) “inter-generational analysis” means an analysis, appropriate to the level of the relevant action, of how adoption of a relevant action which favoured the conditions for life of present generations would be likely to affect adversely the conditions for life of future generations, and vice versa.

(c) “relevant action” means, within the framework of the policies defined in the Treaties, in relation to:

(i) a relevant institution except the European Council and the European Central Bank, any legislative initiative and any non-legislative initiative, such as a green

paper, white paper or communication, action plan and programme, which sets out commitments for future legislative or policy action;

(ii) the European Council, identification of and decisions on the strategic interests and objectives of the Union relating to external action under TEU Article 22, excluding the common foreign and defence policy;

(d) “relevant institution” means the European Parliament, the European Council, the Council, the Commission and the European Central Bank.

#### *Article 2*

##### **Purpose**

The purpose of this Regulation is to ensure that the conditions for life of present and of future generations are effectively safeguarded and enhanced in the decision-making of relevant institutions, bodies, offices and agencies of the Union within the framework of the policies defined in the Treaties.

#### *Article 3*

##### **Scope**

1. In order to achieve the purpose of this Regulation:

- (a) the relevant institutions and bodies shall have the duties set out in Articles 4 and 5; and
- (b) a Guardian for Future Generations shall be established in accordance with Article 6, with the duties and powers set out thereafter.

2. This Regulation shall not apply to the common foreign and defence policy.

#### *Article 4*

##### **Inter-generational analysis and institutional duties**

1. Before proposing relevant action, the Commission shall undertake an inter-generational analysis, which shall be published and a copy sent to the Guardian for Future Generations. It shall, whilst undertaking the analysis, inform the Guardian for Future Generations, and shall take into account any opinion provided by him or her.

2. Where the inter-generational analysis establishes that the relevant action would be likely to have significant adverse effects on the conditions for life of future generations, the Commission shall only proceed with its proposal for what it considers to be

imperative and stated reasons of overriding and urgent public interest. It shall, whilst considering whether such reasons exist, inform the Guardian for Future Generations, and shall take into account any opinion provided by him or her.

3. Where the ordinary or special legislative procedure applies, the European Parliament and the Council shall take into account the inter-generational analysis undertaken by the Commission. In circumstances where paragraph 2 above applies, during the legislative procedure the European Parliament and the Council shall form and express their own views on whether the proposal must proceed for imperative and stated reasons of overriding and urgent public interest.

4. The European Central Bank shall consider how, when exercising the powers and carrying out the tasks and duties conferred upon it by the Treaties and by the Statute of the European System of Central Banks (ESCB) and of the European Central Bank, it can ensure that it contributes to safeguarding and enhancing the conditions for life of future generations, including by means of an inter-generational analysis. In particular, in the context of the governing principles relating to the development, production and dissemination of European statistics by the ESCB, as set out in Article 3a of Council Regulation (EC) No 2533/98 of 23 November 1998,<sup>50</sup> the European Central Bank shall consider whether, for the purposes of safeguarding and enhancing such conditions, statistical methods, standards and procedures used for the production and dissemination of statistics should be set up, strengthened and improved, or whether new statistics and indicators should be designed. It shall publish a report on the results of its consideration, including proposals on how it can safeguard and enhance such conditions, by 31<sup>st</sup> December 2012.

5. The Union statistical authority (“Commission (Eurostat)”) shall consider how, in exercising its functions under Regulation (EC) No 223/2009 of 11 March 2009<sup>51</sup> relating to the development, production and dissemination of European statistics, it can ensure that it contributes to safeguarding and enhancing the conditions for life of future generations, including by means of an inter-generational analysis. It shall publish a report on the results of its consideration, including proposals on how it can safeguard and enhance such conditions, by 31<sup>st</sup> December 2012.

6. During their respective consideration under paragraphs 4 and 5 above, the European Central Bank and the Commission (Eurostat):

(a) shall cooperate closely and shall produce their reports simultaneously, or may produce a joint report if they so wish; and

(b) shall consult with the Commission, the Guardian for Future Generations, the European Environment Agency, the Fundamental Rights Agency, national

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<sup>50</sup> OJ L 318, 27. 11. 98, p. 8, inserted by Council Regulation (EC) No 951/2009 of 9 October 2009 amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank, OJ L 269, 14.10.2009, p. 1.

<sup>51</sup> OJ L 87, 31.3.2009, p. 164.

statistical institutes and other national authorities responsible in each Member State for the development, production and dissemination of European statistics, and any other person or body they consider fit.

7. Each Union body, agency or office shall consider how the exercise of its functions affects the conditions for life of future generations, and shall, by 31<sup>st</sup> December 2011, publish a report on how it proposes to ensure that it contributes to safeguarding and enhancing those conditions.

8. For the purposes of implementation of this Article, and whilst respecting the principles of conferral, subsidiarity and proportionality and acting in accordance with TFEU Article 290, and after consulting the Guardian and taking into account any opinion provided by him or her, the Commission may establish indicators for the conditions for life of present generations, and of future generations, within each of the areas of competence set out in TFEU Articles 3 – 6. This power of delegation shall remain in force for a period of two years from the date this Regulation comes into force. Any indicators established by the Commission shall enter into force only if no objection has been expressed by the Parliament or the Council within two months of their publication.

9. In respect of the Guardian's functions under Articles 7 and 8 below:

(a) each relevant institution, or body, agency or office of the Union, shall respond within [one month] to any recommendation addressed to it pursuant to Article 7(c);

(b) the Parliament shall comply with any request made pursuant to Article 8.1(c);

(c) each relevant institution or any office, body or agency of the Union shall respond within [one month] to any request made pursuant to Article 8.1(e);

(d) the President of the European Council shall include in his or her report presented to the European Parliament after each of the meetings of the European Council in accordance with TEU Article 15.6(d), a response to any opinion provided pursuant to Article 8.1(f);

(e) the Parliament shall respond within [one month] to any recommendation addressed to it pursuant to Article 8.1(g);

(f) each relevant institution, or any office, body or agency of the Union shall comply with any request made pursuant to Article 8.1(i);

(g) the Commission shall respond within [one month] to any request made pursuant to Article 8.1(h);

(h) the Council shall respond within [one month] of a recommendation made pursuant to Article 8.1(k);

(i) the Commission shall respond within [one month] of a suggestion or request made pursuant to Article 8.1(l);

(j) the Parliament shall respond within [one month] of a recommendation made pursuant to Article 8.1(m).

*Article 5*  
**Expertise**

The Commission shall:

(a) record, collate and assess data relevant to the conditions for life of present and of future generations;

(b) report on the factors, sensitivities and pressures which affect the conditions for life of present and of future generations, and shall use this information for the purposes of safeguarding and enhancing those conditions within the framework of, and in implementing, Union policies;

(c) make use, for the purposes of this Regulation, of the expertise of agencies, bodies and offices of the Union.

*Article 6*  
**Guardian for Future Generations**

1. The office of the Guardian for Future Generations is hereby established.
2. The Guardian shall be elected by the European Parliament.
3. The Guardian shall be elected from among persons who are Union citizens, have full civil and political rights, offer every guarantee of independence, and have the acknowledged competence and experience to undertake the duties of the Guardian (such as meeting the conditions required for the exercise of the highest judicial office in their country).
4. The Guardian shall have the duties set out in Article 7, and the powers set out in Article 8.
5. The exercise of the Guardian's duties and powers shall be within the framework of the policies defined in the Treaties.

*Article 7*  
**The Guardian's duties**

1. The Guardian shall:

(a) receive complaints from citizens, including citizens of third countries, that a decision taken by a relevant institution, or by a body, office or agency of the Union, would be likely to have significant adverse effects on the conditions for life of future generations and imperative and stated reasons of overriding and urgent public interest have not been established; and shall conduct investigations into those duly made;

(b) initiate his or her own investigations where he or she considers that a decision taken would be likely to have such an effect and such reasons have not been established;

(c) report on such investigations, and address recommendations to the relevant institution, body, office or agency concerned which result from them;

(d) report annually on his or her activities to the European Parliament.

2. A complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint and must be preceded by the appropriate administrative approaches to the institution, body, agency or office concerned, or to the Member State's authorities concerned, if any.

*Article 8*  
**The Guardian's powers**

1. The Guardian may:

(a) provide his or her opinion on the reasoning and/or effect of proposed and actual relevant action on the conditions for life of future generations, on any inter-generational analysis, on any consideration by the Commission as to whether there are imperative and stated reasons of overriding and urgent public interest for proceeding under Article 4.2, and on any finding by the Commission to that effect;

(b) hold a public consultation or inquiry for the purposes of assisting in the provision of such opinion;

(c) request to be heard by the Parliament before it adopts its position at first reading during the ordinary legislative procedure, or before it first exercises its powers or duties under a special legislative procedure;

- (d) provide his or her opinion on any indicators being established by the Commission under Article 4.8;
- (e) request any relevant institution, or any office, body or agency of the Union:
  - (i) to take measures authorised or required by the Treaties and/or the Charter of Fundamental Rights of the European Union which he or she considers necessary to safeguard and enhance the conditions for life of future generations;
  - (ii) not to take measures which he or she considers would be likely to have significant adverse effects on such conditions;
- (f) provide his or her opinion on any matter relating to the conditions for life of future generations which may be discussed at a meeting of the European Council;
- (g) advise and address recommendations to the European Parliament concerning the exercise of its powers under the Treaties for the purposes of safeguarding and enhancing the conditions for life of future generations;
- (h) request to have access to information and files in pursuance of investigations, in which case Article 9 below will apply;
- (i) request to be present and to speak at meetings of the Parliament, and at meetings of the Parliament with other relevant institutions and with any office, body or agency of the Union;
- (j) request participation in Union delegations to international negotiations and bodies relevant to the conditions for life of future generations;
- (k) address a recommendation to the Council that the Union should become, or should cease to be, a Party to any international agreement affecting such conditions;
- (l) suggest amendments to any existing, or suggest any new, international agreement affecting such conditions, including requesting the Commission to submit a recommendation to the Council under TFEU Article 217.3;
- (m) advise and address recommendations to the Parliament when the Parliament's consent is sought, or the Parliament is being consulted, in respect of international agreements under TFEU Article 216, including agreements to which TFEU Article 207 and TFEU Title VI of Part Three apply;
- (n) may intervene in cases before the Court of Justice which raise issues relevant to the Guardian's duties and other powers under this Regulation, in accordance

with Article 40 of the Statute of the Court and Chapter 3 of its Rules of Procedure; and

(o) report from time to time on issues relevant to the Guardian's duties and other powers under this Regulation.

2. Where a Member State is considering a decision which might have significant adverse effects on the conditions for life of future generations:

(a) because of its effects on an area, site or buildings designated as being of European or international importance;

(b) because of its transboundary effects;

(c) because of its scale or magnitude;

(d) where the decision relates to a project or activities in respect of which the Member State receives or may receive support from a Union funding scheme,

the Guardian may provide his or her opinion on the matter, and/or may make representations to the Member State's authorities, in which case they shall take such opinion and/or representations into account. Where such a decision has already been made, the Guardian may make a report thereon and forward it to the Member State.

3. To facilitate the efficient performance of his or her functions, the Guardian may cooperate with authorities, bodies and organisations of the same or similar type in Member States, and internationally, provided he or she complies with the national law applicable. The Guardian may not by this means demand to see documents to which access would not be possible under Article 9 below.

4. Within the scope of the Guardian's functions under this Regulation, and avoiding duplication with the activities of the other institutions, bodies, offices or agencies of the Union, the Guardian may, under the same conditions as those set out in paragraph 2, cooperate with institutions, bodies and organisations in Member States, and internationally, concerned with the promotion and protection of fundamental rights, of the environment, of social inclusion, of human security, of cultural and linguistic diversity and heritage, and with economic policy.

#### *Article 9*

#### **Access to information and files**

1. The relevant institutions, and any office, body or agency of the Union ("entity"), shall be obliged to supply the Guardian with any information he or she has requested from them and give him or her access to the files concerned. Access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of

Regulation (EC) No 1049/2001<sup>52</sup>, shall be subject to compliance with the rules on security of the institution concerned.

2. The entity supplying classified information or documents as mentioned in paragraph 1 shall inform the Guardian of such classification.

For the implementation of the rules provided for in paragraph 1, the Guardian shall have agreed in advance with the entity concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy.

The entity concerned shall give access to documents originating in a Member State and classed as secret by law or regulation only where that Member State has given its prior agreement. They shall give access to other documents originating in a Member State after having informed the Member State concerned. In both cases, in accordance with paragraph 7 below, the Guardian may not divulge the content of such documents.

Officials and other servants of any entity must testify at the request of the Guardian, whilst continuing to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy.

3. The Member States' authorities shall be obliged to provide the Guardian, whenever he or she may so request, via the Permanent Representations of the Member States to the European Union, with any information that may help to clarify instances where a decision has been made which significantly adversely affects the conditions for life of future generations by any entity, unless such information is covered by laws or regulations on secrecy or by provisions preventing its being communicated. Nonetheless, in the latter case, the Member State concerned may allow the Guardian to have this information provided that he or she undertakes not to divulge it.

4. If the assistance which he or she requests is not forthcoming, the Guardian shall inform the European Parliament, which shall make appropriate representations.

5. The Guardian and his or her staff, to whom TEU Article 339 shall apply, shall be required not to divulge information or documents which they obtain in the course of exercising the Guardian's powers and duties. They shall, in particular, be required not to divulge any classified information or any document supplied to the Guardian, in particular sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, or documents falling within the scope of Union legislation regarding the protection of personal data, as well as any information which could harm the person lodging the complaint or any other person involved, without prejudice to paragraph 8 below.

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<sup>52</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

6. Regulation (EC) No 1049/2001<sup>53</sup> shall apply to requests made to the Guardian for public access to documents, subject to paragraph 5 above.

*Article 10*  
**Investigations**

1. When conducting investigations pursuant to Article 7.1(a) and (b) above, the Guardian shall, as far as possible, seek a solution with the relevant institution, body, office or agency concerned.
2. When reporting on investigations pursuant to Article 7.1(c), the Guardian shall send the report to the European Parliament and to the relevant institution, body, office or agency concerned.
3. In respect of recommendations resulting from investigations, the Guardian shall first make draft recommendations and shall offer the addressee the opportunity to make observations.
4. The person lodging the complaint shall be informed by the Guardian of the outcome of the investigation, of the opinion expressed by the relevant institution, body, office or agency concerned, and of any recommendations made by the Guardian.
5. If, in the course of investigations, he or she learns of facts which he or she considers might relate to criminal law, the Guardian shall immediately notify the competent national authorities via the Permanent Representations of the Member States to the European Union and, in so far as the case falls within its powers, the competent Union institution, body or service in charge of combating fraud; if appropriate, the Guardian shall also notify the Union institution or body with authority over the official or servant concerned, which may apply the second paragraph of Article 17 of the Protocol on the Privileges and Immunities of the European Union. The Guardian may also inform the entity concerned of the facts calling into question the conduct of a member of their staff from a disciplinary point of view.

*Article 11*  
**Term of office etc.**

1. The Guardian shall be elected by the European Parliament for the duration of its mandate, and shall be eligible for re-election once.
2. The first Guardian shall be elected by the European Parliament before 1<sup>st</sup> January 2012, and shall continue in office until the next elections in 2014. The person first elected Guardian shall be eligible for re-election after those elections.

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<sup>53</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

3. The Guardian shall cease to exercise his or her functions at the end of his or her term of office, on resignation or on dismissal.
4. Unless dismissed, the Guardian shall remain in office until a successor has been appointed.
5. If the Guardian resigns or is dismissed, a successor shall be elected within three months of the office's falling vacant for the remainder of the parliamentary term.
6. A Guardian who no longer fulfils the conditions required for the performance of his or her functions or is guilty of serious misconduct may be dismissed by the Court of Justice of the European Union at the request of the European Parliament.
7. The Guardian shall perform his or her functions with complete independence, in the general interest of the Union, of future citizens, and of the sustainability of the Earth and all its life. In the performance of his or her functions he or she shall neither seek nor accept instructions from any government or other body. He or she shall refrain from any act incompatible with the nature of his or her functions.
8. When taking up his or her functions, the Guardian shall give a solemn undertaking before the Court of Justice of the European Union that he or she will perform his or her functions with complete independence and impartiality and that during and after his or her term of office he or she will respect the obligations arising therefrom, in particular to behave with integrity and discretion as regards the acceptance, after ceasing to hold office, of certain appointments or benefits.
9. During his or her term of office, the Guardian may not engage in any political or administrative duties, or any other occupation, whether gainful or not.
10. The Guardian shall have the same rank in terms of remuneration, allowances and pension as a judge at the Court of Justice of the European Union.

*Article 12*  
**Secretariat**

1. The Guardian shall be assisted by a secretariat, the principal officer of which he or she shall appoint.
2. The officials and servants of the Guardian's secretariat shall be subject to the rules and regulations applicable to officials and other servants of the European Communities. Their number shall be adopted each year as part of the budgetary procedure.
3. Officials of the European Union and of the Member States appointed to the secretariat shall be seconded in the interests of the service and guaranteed automatic reinstatement in their institution of origin.

4. In matters concerning his or her staff, the Guardian shall have the same status as the institutions within the meaning of Article 1 of the Staff Regulations of Officials of the European Union.
5. Articles 11 to 14 and Article 17 of the Protocol on the Privileges and Immunities of the European Union shall apply to the Guardian and to the officials and servants of the secretariat.
6. The seat of the Guardian shall be that of the European Parliament.
7. The Guardian shall adopt the implementing provisions for this Article.

#### *Article 13*

#### **Budget**

1. The Guardian's budget shall be annexed to section I (Parliament) of the general budget of the Union.
2. The European Parliament shall make provision in its budget for the staff and material facilities required by the first Guardian to perform his or her duties as soon as he or she is elected.

#### *Article 14*

#### **Application measures**

Where necessary, Union institutions, bodies, offices and agencies shall adapt their rules of procedure to the provisions of this Regulation.

These adaptations shall take effect from xx day of xx 2011.

#### *Article 15*

#### **Review clause**

This Regulation shall be reviewed five years after its entry into force, following reports on their experience of its implementation from the Commission and from the Guardian to the European Parliament and to the Council

#### *Article 16*

#### **Entry into force and application**

This Regulation shall enter into force on the 20<sup>th</sup> day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at xx, xx day of xx 2011.

*For the Council  
The President*