

Exploring options to establish an EU Guardian for Future Generations

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Where in the world?

Inspiring institutions in:

Canada, Chile, Finland, Germany, Hong Kong, Hungary, Namibia, New Zealand, the Philippines, Wales

Tip: Click on country names for more information.

- ★ Efforts underway to establish a representative
- ★ Functioning Institution
- ★ Constitutional Reference
- ★ Disbanded Function

Hungary
Deputy-Commissioner for Fundamental Rights responsible for the protection of the interest of future generations
Location: Hungary
Type: Commissioner
Established: 2007

[Deputy Commissioner for Fundamental Rights responsible for the protection of the interest of future generations](#). In 2007, as part of an overarching statute that created an Ombudsman for constitutional rights, the Hungarian Parliament established a Parliamentary Commissioner for Future Generations. The Commissioner has the same status as the three other special Ombudspersons, with the task to ensure the protection of the fundamental right to a healthy environment. (Taken from the Future Justice publication [Guarding our Future](#))

Blog: Business as 'un'-usual
30 March 2015

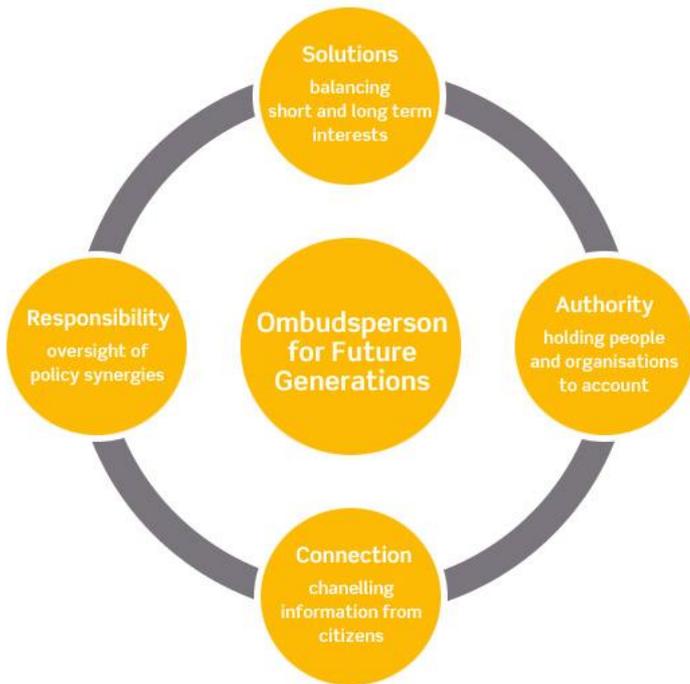
Blog: Essential ingredients for a sustainable future - Why do we need independent institutions, and how should they work for the long term?
13 March 2015

Events

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Key Functions of a Guardian for Future Generations



evaluate policies

provide analysis, insight and advice on long-term trends – contributing to the science policy interface

mediate between different departments to ensure policy coherence

provide the checks and balances required to meet longer-term sustainability goals

act as catalysts bridging the interests of present and future generations

respond to citizen complaints

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Defining Principles



- 1. Independent**, and seen to be impartial and unbiased, they should not hold any another post. The office should be legally independent
- 2. Effective**; it should exercise certain powers and responsibilities and it should be resourced to sufficiently carry out its duties
- 3. Transparent**; it needs a clear and direct mandate and should report annually to the Parliament on its work and findings
- 4. Legitimate** by democratic standards. The individual should be selected and appointed by the Parliament
- 5. Access** to information; it needs extensive authority to request whatever files are deemed relevant
- 6. Accessible** for integrative assessments; it should allow for institutionalized and inclusive input and assessment, with full, open access from civil society

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Benefits of institutional innovation for the EU

Helping to future proof European policy making

- **Reinforce European values** of a sustainable social market economy - smart, sustainable and inclusive growth and increase policy coherence and regulation for a secure European future.
- **Ensure effective implementation.** Establishing a representative which supports implementation (2030 Agenda for Sustainable Development, legislation, flagship initiatives etc) with a future oriented and holistic understanding will increase acceptance of priorities and help the EU deliver on its commitments.
- **Modernise EU instruments** to address long term societal challenges including for example well being indicators which help the EU to 'go beyond GDP', how to apply social discount rates.
- **Creating a citizen's Europe.** Scepticism is leading to apathy across some of EU's citizens. A representative to receive citizen complaints on long term impacts of European policies helps to improve trust of Europeans in their institutions and provides good intelligence about major concerns.

Benefits of institutional innovation for the EU

- **Advising on policies and legislative proposals while they are being developed**

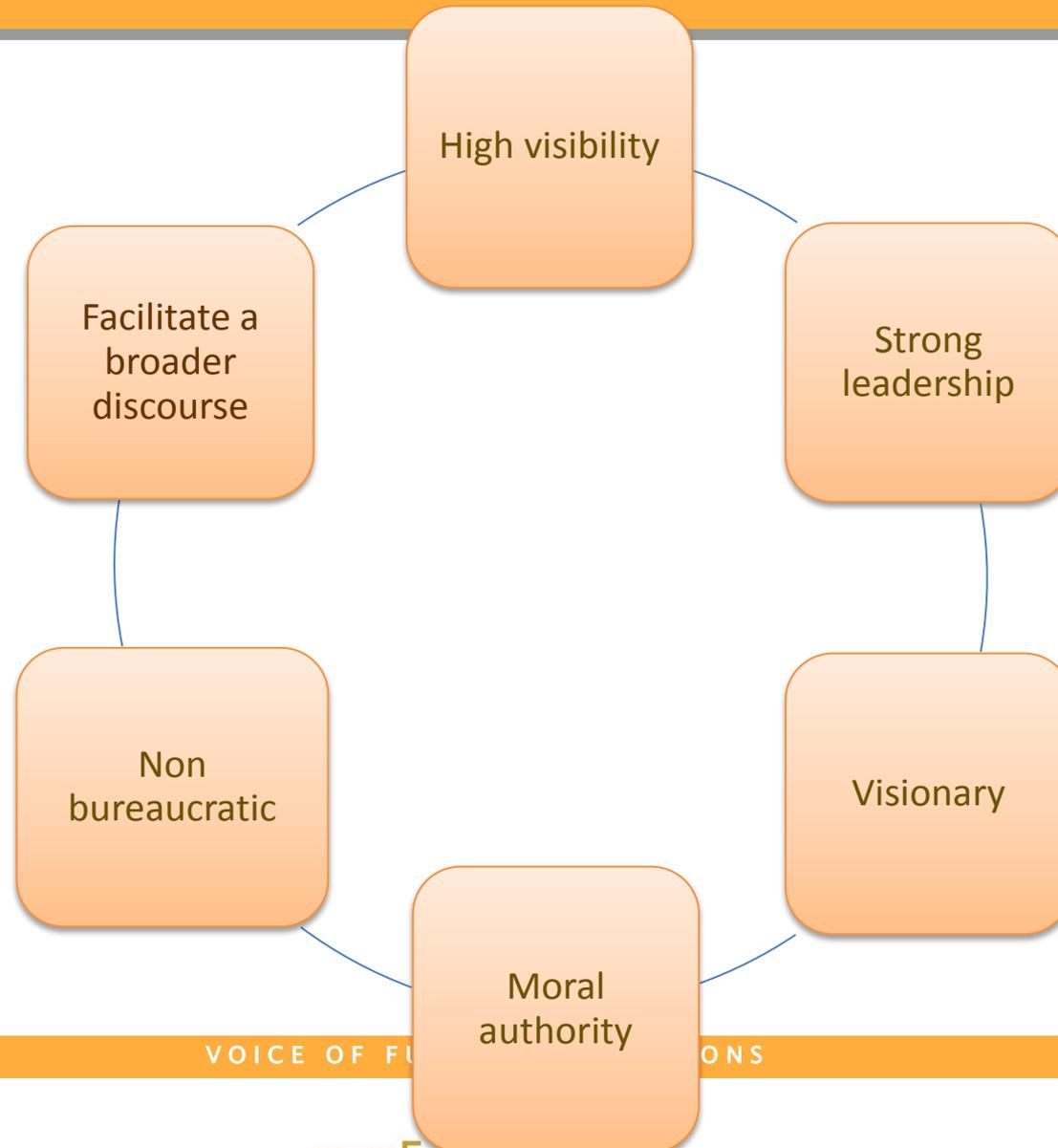
The Commission could enhance the effectiveness of this function by committing to an explicit response to Guardian observations on draft proposals when publishing a formal proposal.

- **Advising the co-legislators on published proposals**

Given timely opportunities to respond promptly to the publication of proposals, in order to ensure that its interventions are early enough to shape the debate in Council and Parliament.

- **Assessing the performance of the European institutions**

EU Representative for Future Generations



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Options

1. **Treaty change**
2. **Adapting an existing EU role**
3. **Separate legislation**
4. **Separate sectoral legislation**
5. **Ad hoc administrative agreement**
6. **Inter- Institutional Agreement**

Treaty Change

In principle, the most attractive approach to establishing an EU-level Guardian for Future Generations role is to enshrine it in the founding treaties of the EU.

There is precedent for the creation of new roles by the Treaties; a good example is the creation of the EU Ombudsman by the Maastricht Treaty in 1992 (with the first Ombudsman taking office in 1995).

Advantages:

More difficult to change or remove the institution - would help to guarantee their independence and powers

Disadvantages:

A demanding process! In the case of the Ombudsman role, this was included as an additional element in a negotiation which was already planned, and commonly accepted as necessary.

Appetite among the institutions and the Member States for a wide-ranging renegotiation of the EU treaties is currently very low.

It would not guarantee its relevance in policymaking or decision-making.

Adapting an existing EU role

A quicker route could be through adapting an existing role.

Eg. The **European Ombudsman**: an impartial, quasi-judicial investigator, who is called into action by the presentation of a complaint by an individual citizen or group of citizens in relation to maladministration in the EU institutions;

Disadvantages: It has no specific policy-making role.

A further hurdle in the way of expanding the EU Ombudsman role for this purpose would be that it is currently defined by the Treaty; the difficulty associated with removing Treaty-based offices also extends to amending them or adding to their responsibilities.

Eg. The **European Fundamental Rights Agency**: one of the EU's decentralised agencies, established in 2007. An independent institution which collects and analyses data on a range of fundamental right issues, assists EU institutions and Member States in safeguarding EU citizen's fundamental rights.

Disadvantages: Given the focus of the FRA on the Charter, and the challenges and risks that would be involved in reopening and renegotiating the Charter, it would be difficult to adapt the FRA to incorporate a Guardian role.

Separate Legislation: two options

Stand alone legislation

Eg, European Fundamental Rights Agency, the European Environment Agency

Advantages: The process of co-decision ensures that a new institution has support from all 3 main institutions (Commission, European Parliament, and Council), therefore ensuring that attention is paid to the Guardian's advice in the future deliberations of the institutions.

Would be difficult to abolish or severely limit the Guardian's role in future.

Disadvantages:

A cumbersome process, requiring substantial time and broad effort required, from both institutions and civil society, at a time when appetite is low.

Separate Legislation: two options

Separate sectoral legislation

Include the establishment of a new body as an additional element in a piece of sectoral legislation. Involves legislation creating both a framework for regulation of a particular activity or product, and an organisation to implement or help enforce that legislation. eg **European Chemicals Agency, European Medicines Agency**

Advantages: Use the scope of the European Environmental Action Programme. Since the entry into force of the Lisbon Treaty, environmental action programmes have had a specific legal base in the form of article 192 (3), which allows for the adoption by co-decision of 'general action programmes setting out priority objectives to be attained'.

Disadvantages: Explicit focus on environmental measures only

The treaty base for action programmes specifies that measures necessary for their implementation will be adopted separately, under the normal environmental legislation provisions of the Treaty.

Unlikely that the EEAP will be revised significantly before it comes to an end in 2020.

Ad-hoc Administrative Arrangement

Secure funding for such a body from philanthropic sources, and for it to operate as an entirely independent institution with no formal role.

Advantages: A role within the EU's administrative machinery could be achieved through decisions of the relevant institutions to allocate funding. Either the Commission's Regulatory Scrutiny Board, or secretariat roles in the European Parliament or the Council, could be strengthened by the explicit inclusion in their remit of tasks relating to the interests of future generations, or by creating separate cells charged with the task; and this could be achieved much more quickly than legislative routes.

Disadvantages: Creates uncertainty about the institution's longevity, independence and reach.

Part of the purpose of establishing a Guardian for Future Generations would be its capacity to inform and advise debate on policy in and between all 3 major EU institutions, yet this option potentially relates to working with only one institution.

Inter-Institutional Agreement

This is a mechanism which is used to commit 2 or more of the key EU institutions, and usually all 3: Commission, Council and European Parliament, to a course of action, or to a particular procedural approach.

Eg. for the implementation of the multi-annual financial framework; the current IIA on '*budgetary discipline, on cooperation in budgetary matters and on sound financial management*' is aimed at facilitating the annual budgetary procedure by laying down ground rules, and complements the provisions of the MFF regulation itself.

The IIA as a mechanism has had a formal Treaty basis (article 295) since the Lisbon Treaty. Article 295 states that:

'The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature.'

Inter-Institutional Agreement

Disadvantages: It would, in the first place, be difficult for an IIA to identify the funding necessary for establishment of a Guardian for Future Generations; this would need to be established separately (although in practice this could be achieved by one or more of the institutions committing part of their administrative budget to this objective).

Potentially vulnerable to one of the institutions choosing to pull out of the IIA, depending on its binding nature, the length of time for which an IIA is made binding, and the (as yet untested) limits of the 'binding nature' of article 295 IIAs.

Unlikely that there would be sufficient institutional and political will to develop an IIA on the issue of a Guardian for Future Generations in the absence of an immediate pressing political or practical need.

Advantages: Via an IIA, the issue would receive serious attention within all 3 institutions – arguably significantly more so than in the normal legislative process for sectoral acts. Greater buy-in and commitment, through collaboration between all 3 institutions.

Inter-Institutional Agreement

An immediate opportunity

Outlined by Commission Vice-President Timmermans: an IIA on Better Regulation. Designed particularly to gain greater traction in the Parliament and Council for impact assessments on legislation, and for ex post evaluation of existing legislation.

Why? A weakness of the process of impact assessment is that it often fails to address explicitly the impacts on future generations; and implicitly considers only the interests of current generations in the way that most cost benefit assessment is carried out.

The proposed IIA is now due to be negotiated through Parliament and Council

A possible approach would be to:

- ensure that there is an explicit reference in the IIA to the importance of addressing the interests of future generations, in both current proposals, and evaluations of the adequacy of the existing EU acquis and
- press for Council and Commission agreement to the establishment of a specific office which would be consulted on the development of legislative proposals, on impact assessments, and on evaluations, and whose reports would be made public to inform wider stakeholder discussion, as well as the legislative process

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A dilemma?

A key question that follows from this discussion is whether a weaker Guardian for Future Generations role established through a weaker route – such as an ad hoc administrative agreement presents a first step

Advantages: Arguably, any development which improves the scope for adequately reflecting the principle of solidarity with future generations in EU policymaking is a step in the right direction.

Disadvantages: A risk that it compromises more decisive, more formal and stronger actions

And is used by reluctant voices as an excuse for not establishing more effective arrangements.

6 Myth Busters

1. Not adding bureaucracy or intended to drain from existing limited resources
2. Not a trade off between future and present generations
3. Not a youth representative
4. No political veto
5. Not limited to the environment or even sustainable development – this is about a common heritage
6. Not a new idea – reflects historical, spiritual and cultural understanding of our connection with our surroundings, and our responsibility, looking ahead to the Seventh Generation



“We are made wise not by the recollection of our past but by the responsibility for our future.”
George Bernard Shaw



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Thank you!



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