

Brussels, 19 May 2008

To: The Environment Ministers of EU Member States

Concerning: Input to the EU Environment Council Meeting, 5 June 2008

Dear Minister,

On behalf of the European Environmental Bureau I offer you our views on three of the issues on the agenda at the forthcoming EU Environment Council, as well as on three other issues needing discussion.

I invite you to take our concerns into account during final official-level preparations, and at the meeting itself. Below, you will find the key messages.

1. Climate-Energy Legislative Package

The EEB reiterates comments we made in our March (8.3.2008) letter to the Environment Council concerning the Commission's climate and energy package. We welcomed the package as a whole as potentially an important step towards a more sustainable demand and use of energy. However, some aspects of the measures will not lead to a regional and global low carbon society, the only possible route to prevent major climate change. The package measures need to be strengthened if Europe is to maintain credible global leadership in climate change.

So the EEB calls upon the Council of Ministers to improve the quality of the package, in particular by:

- Raising to 30% the overall EU reduction target for Greenhouse Gas (GHG) by 2020; Allow Member States to set more strict reduction targets than required by the Commission.
- Minimising the use of external credits in the proposed Emission Trading Scheme.
- Supporting full auctioning for the power sector and striving for full auctioning in the other sectors too.
- Challenging the doubtful environmental quality of the biofuels proposals in the Renewables Directive and setting sufficient sustainability criteria in the Fuel Quality Directive which would then also apply to the Renewables Directive, therewith making that Directive as a whole acceptable; rejecting the 10% biofuels target.
- Strengthening the safety requirements of the Carbon Capture and Storage Directive and preventing massive public funds being diverted to that technology.

See Annexes 1, 2 (biofuels) and 3 (Carbon Capture and Storage) for more specific EEB comments.

2. CO2 and cars (prepared by Transport and the Environment)

In December 2007, the European Commission presented a proposal for an EU Regulation setting carbon dioxide (CO₂) emission standards for passenger cars. The proposal aims to achieve an average level of 130 gram CO₂ per kilometer from new cars by 2012, without setting any further targets. It proposes that manufacturer targets are differentiated on the basis of vehicle weight, and penalties are phased in to reach a maximum EUR 95 per gram CO₂ per car sold in 2015.

Ministers held a first exchange on the Commission proposal on 3rd March 2008.

Climate emissions from passenger cars have been rising steadily in the EU. But car fuel efficiency has improved very slowly, despite the fact that EU policy efforts date back to December 1994 when EU Environment Ministers first called for a target of 120 g CO₂/km to be reached within 10 years. This target has been postponed several times, first to “in no case beyond 2010” (Environment Council of 25-26 June 1996), then to 2012 (Commission Recommendation of 5 February 1999). The Environment Council last reconfirmed its support of this target on 28 June 2007.

The EEB therefore calls upon the Council of Ministers to set an ambitious CO₂ emission standard, and in particular:

- Maintain the 2012 deadline for meeting the EU target of an average of 120 g CO₂/km for new cars;
- Set a further target of 80 g CO₂/km by 2020, with tightening intermediate targets;
- Reject the integrated approach and inclusion of biofuels, focusing instead on technical means only;
- Refuse differentiation on the basis of the car’s weight, and adopt the alternative parameter of the car’s ‘footprint’.
- Include stringent financial sanctions of 150 EUR per gram per car sold, to ensure that all carmakers comply with the new standard.

3. EURO VI Regulation on exhaust emissions from lorries and buses

EEB is pleased to see fast progress with the EURO VI file during First Reading with dedication from the Environment Council to reaching a timely agreement. However, a fast-track agreement should by no means jeopardise the high ambitions of the regulation. EEB wants to see the Council stand firm on its position on earlier entry into force and to not allow any dilution of the proposed engine emissions standards.

The EEB therefore calls upon the Environment Ministers to:

- Apply the EURO VI regulation by 2011, in line with the Air Quality Directive targets and dates.
- Demand an introduction of a particle number standard at the same time as EURO VI mass-based limit value for small particles, applying the state-of-the-art control technologies for fine dust emissions control.

- Call on the Commission to develop and adopt robust enforcement measures to ensure that new vehicles manufactured under Euro VI meet emission standards in-use throughout their lifetime under the full range of normal operating conditions.

See Annex 4 for more specific EEB comments.

Finally, the EEB also wants to draw your attention to three further issues of concern to us: **the Waste Framework Directive, the Soil Directive and the Aarhus Convention.**

Waste Framework Directive

Further to the European Parliament's Environment Committee vote in April 2008, we are disappointed at the Council's pressure to water down the European Parliament's second reading on key aspects of this Directive, including on prevention and recycling targets, the assessment of the energy efficiency formula to rebrand municipal incinerators as an energy recovery operation, the use of the waste hierarchy as a "general rule" and the precautionary and EU harmonised approach on end-of-waste and by-products.

The Environment Committee's proposals are crucial to ensure progress towards resource efficiency, including that waste production is prevented as far as possible, and that which remains is optimised for reuse, recycling or composting.

We therefore call on the Environment Ministers to:

- Accept the prevention objective of stabilisation of waste generation by 2012 and the setting of further reductions to be achieved by 2020.
- Accept the proposed recycling targets for households and similar waste (50%), and industrial and construction and demolition waste (70%) rather than watered-down and non-enforceable material-based recycling targets.
- Support the proposal for the 5-step hierarchy as the "general rule" of waste policy; insist on EU guidelines to clarify the concept of "life-cycle thinking" to deviate from the hierarchy.
- Support the mandatory assessment of the energy efficiency threshold formula for municipal solid waste incinerators; ensure that the formula does not undermine drivers towards material recycling and resource efficiency.
- Clarify the procedure to differentiate waste from non-waste by supporting an EU common approach, avoiding potential loopholes in waste definition. Any criteria should be set with full co-decision, with scrutiny on a case-by-case basis.

The Soil Framework Directive

Since the December 2007 Environment Council, very little progress has been made on finding an agreement on the Soil Framework Directive. The EEB has on many occasions underlined the importance of adopting a legal instrument for the protection of soils. The recent and probably sustained increase in food prices means that subsidies and incentives such as rural development measures will be less effective in developing a more sustainable agriculture, and the role of regulatory instruments will need to be expanded. We therefore call on the Environment Council to commit itself to finding an agreement on the proposed Soil Framework Directive and give this dossier a high political priority.

The Aarhus Convention

As you will meet just six days before the Third Meeting of Parties of the Aarhus Convention, and two days before the final preparations at official level, the EEB would like to remind you of the letter we sent on the 12th of April with three specific requests; three specific initiatives that EEB considers necessary to strengthen the Aarhus Convention and its meaningful implementation, inside and outside the EU.

The EEB calls upon the Environment Ministers to seek active support at the Council meeting for:

- Establishing a Convention Working Group on Public Participation, to improve implementation and enforcement of the second pillar of the Aarhus Convention;
- Establishing a strong and forward-looking Long Term Strategy Plan for the Convention, canceling the amendments the EU-coordination has presented before that are severely diluting the Strategy;
- Expanding the mandate of the Convention's Task Force on Access to Justice.

These are amongst the main demands of environmental citizens' organizations from the Vienna Declaration which were developed by the European ECO Forum Aarhus Strategy meeting on 17-18 December 2007 in Vienna and supported by more than 190 non-governmental organisations from 43 countries.

Yours sincerely,

John Hontelez
Secretary General
European Environmental Bureau

ANNEX 1:

EEB comments to the Environment Council of 5 June 2008 on THE ENERGY/CLIMATE PACKAGE

The EEB reiterates comments made in our March (8.3.2008) letter to the Environment Council concerning the Commission's climate and energy package. We welcomed the package as a whole as potentially an important step towards a more sustainable demand and use of energy. However, some aspects of the measures will not lead to a regional and global low carbon society, the only possible route to prevent major climate change. The package measures need to be strengthened if Europe is to maintain credible global leadership in climate change.

Therefore, the EEB calls upon the Council of Ministers to improve the quality of the package, with particular focus on:

- The overall EU reduction target for Greenhouse Gas (GHG) by 2020;
- The weaknesses in the proposed Emission Trading Scheme;
- The doubtful environmental quality of the biofuels proposals;
- The risk of too much focus on, and the uncertainty of 'permanent' Carbon Capture and Storage;
- The risk of a failure of the Energy Efficiency Strategy.

In particular the EEB calls upon the Council to:

1. Emphasise that, following the EU's participation in the agreement in Bali that industrialised countries have to reduce GHG emission by 25-40% by 2020, the internal EU 20% target is no longer relevant. Continuing with a 20% target will undermine the EU international negotiation position. It is positive that the Commission has already made proposals on how to increase the EU efforts towards 30%. The EEB proposes to already now take these proposals as starting point.
2. Strive for full implementation of the GHG reduction targets inside the EU, to maximise the impacts on energy efficiency, eco-innovation, and changes in consumption and production patterns. This will ensure the opportunities for the EU to make further reductions after 2020 and foster the ecological industrial innovation the German government was advocating during its Presidency last year. Also, ensure that individual Member States that want to go beyond the agreed EU target, are free to do so.
3. Support the full auctioning proposal for the power sector, and insist on working towards full auctioning for the other sectors as soon as possible. If necessary, this should be accompanied by measures that reduce the negative competitiveness impacts of the affected industries. For example, considering targeted border-tax adjustments, and/or introducing environmental taxation reforms which would reduce labour costs in the affected industries while increasing the taxes on the related products according to their environmental quality (which affects both domestic and imported products).

4. Support the proposals on renewables with the exception for the ones related to biofuels. See Annex 2.
5. Work on robust legislation for Carbon Capture and Storage. See Annex 3.

ANNEX 2:

EEB comments to the Environment Council of 5 June 2008 on BIOFUELS – RENEWABLE AND FUEL QUALITY DIRECTIVES

The EEB has already communicated to the Environment Ministers our concerns about the negative impacts biofuels promotion can have on the environment, both inside the EU and in other parts of the world. EEB recognises the role biomass can have in sustainable energy production, but this is very much depending on the conditions of the extraction/production and use.

In the last month a flood of studies, reports, warnings and critique from a wide range of different bodies has questioned the wisdom of adopting biofuel mandates and targets. Several government leaders in the fringes of the last Spring Council hinted at the possibility of a review of the EU's proposed 10% biofuel targets and the European Parliament's rapporteur on the Renewable Energy Directive has announced he wants the 10% target dropped. At the same time the Ad Hoc working group set up by the Council to develop robust and meaningful sustainability standards has not been able to tackle the most critical factor; leakage effects through indirect land use change. Although sustainability standards should be developed irrespective of whether the 10% target is adopted or not, their poor quality should now be additional reason not to pursue the 10% target.

The EEB therefore calls on the Environment Ministers to drop the 10% biofuel target as well as to develop meaningful and robust sustainability standards for all forms of bio-energy.

ANNEX 3:

EEB comments to the Environment Council of 5 June 2008 on CARBON CAPTURE AND STORAGE

In our March letter to the Environment Council the EEB raised some important issues on carbon capture and storage. We have since developed our position paper, elaborating our concerns. Our position paper will be sent to you separately. The following are issues and concerns which we ask you to take into account:

- CCS can possibly be part of climate policies, but it should not in any way reduce the attention and efforts on energy efficiency and increase in use of renewables. These should become priority and both political attention and public funding should concentrate on these. CCS research should be paid by the power-sector and other possible users themselves, public funds should be used only for research necessary to determine the necessary safety, environmental and monitoring requirements. The actual investments in CCS installations have to be covered by the power-sector, triggered by the price of CO₂ emissions.
- EU Member States should phase out all subsidies to coal energy as soon as possible, to avoid CCS legitimising prolonged use of coal in the EU.
- CCS reduces the efficiency of use of fossil fuels for power production by some 20%, which means that per kWh other environmental impacts than CO₂ emissions could increase by 25%, particularly those relating to mining, transport, waste generation and disposal, and emissions of pollutants to air and water. This means that for all these areas the environmental requirements need to be strengthened to prevent a negative eco-balance.
- The Commission proposes to use the IPPC Directive for setting the requirements for the capture and the quality of the CO₂ streams. For that reason it is important that in the IPPC recast the EU settles the obligatory use of the BREFs (Best Available Technique reference documents) produced in the Sevilla Process as minimum requirements.
- Furthermore, the proposed CCS Directive should make clear what in this case is meant with “concentrations (of incidental associated substances in the CO₂ stream) that should be below a level that would...pose a significant risk to the environment...” (Article 12). “Significant risk to the environment is not defined in this Directive. As there is as yet little experience with carbon storage, it is necessary that there is an agreed definition, based on the precautionary principle.
- The Commission proposes to leave the requirements for storage to the individual governments, linking it to their obligations under the Water Framework Directive. Competent Authorities do have to seek the opinion of the Commission on permitting decisions, but they can decide not to follow this opinion. The EEB considers this problematic, as this could lead to eco-dumping inside the EU (given that the Directive would also exclude CO₂ streams from the EU waste legislation, so that it does not fall under the proximity principle). So the EEB calls upon the Council to insist on the setting of robust minimum criteria for long term safety of storage places.
- The Commission proposes to include CCS in the Environmental Liability Directive. However, this Directive does not require financial security from the operators to ensure restoration of environmental damage. The CCS Directive does require financial security, but this seems not to cover restoration. It only concerns corrective measures (Article 16, defined in article 3.17) and provisions for closure and post-closure (Article

19). In our view this creates a significant loophole. The Directive should ensure that operators can be made responsible for restoration or compensation for human and environmental damage due to leakages, and that companies also have to guarantee financial security for these damages.

- The Directive prescribes that Competent Authorities take over responsibility for the sites after closure. These Authorities will have to monitor the situation for an indefinite period. The Directive does not seem to provide a mechanism for a financial provision from the operator to compensate for this.

ANNEX 4:

EEB comments to the Environment Council of 5 June 2008 on EURO VI REGULATION ON EXHAUST EMISSIONS FROM LORRIES AND BUSES

The EURO VI Regulation sets emissions standards for heavy-duty vehicles on particulate matter (PM), nitrogen oxides (NO_x), hydrocarbons, carbon monoxide and ammonia. It aims to help achieve the objectives of the EU's Thematic Strategy on Air Pollution, to reduce the number of premature deaths from air pollution-related diseases and to substantially reduce the area of forests and other ecosystems suffering damage from airborne pollutants. The Euro VI standards are particularly important for reducing air pollution in hotspots (e.g. along busy streets) and in urban areas, which would also help cities and Member States meet air quality limit values set in the Air Quality Directive (AQD).

EEB and other environmental NGOs, as well as industry, have welcomed the Commission's proposals for setting the standards levels. The proposed levels are ambitious and technically feasible. Despite this general support, EEB has three main concerns about key elements of the proposed Regulation.

Firstly, the date of applying the standards proposed by the Commission is 1st April 2013. The EEB considers this too late a date if air quality legislation is to be implemented in an integrated way. The AQD sets limit values on some emissions for public authorities such as cities, and these are to be implemented during 2008 at the earliest but with exemptions possible until end 2011. A later entry into force of the EURO VI regulation would work against public authority compliance with local air quality standards set in the AQD.

The need for quick action on Euro VI is also important in an international context. The current proposed date of enforcement for Euro VI standards (2013 for new models, and a year later for continuing models) places the EU far behind the international effort to reduce air pollution from heavy duty vehicles. Japan and the U.S. begin the enforcement of the next stages of their national emission standards in 2009 and 2010, respectively. Meanwhile heavy-duty vehicles offered for sale in Europe under the existing Euro V standards will be allowed to emit at least 50% more particulate matter (PM) and 185% more nitrogen oxides (NO_x) than comparable vehicles sold in either Japan or the United States. A delay is unacceptable considering the EU's ambitions to be a leading example in setting world-wide environmental standards. A delay in the EU will also delay action in the many developing countries that adopt Euro standards according to EU rule, and would jeopardise efforts to globally harmonize heavy-duty emission standards, as supported under the UN-ECE process. Failure to adopt EURO VI in 2008 may postpone legislative action until 2010 due to the 2009 Parliamentary elections, which could put off enforcement of Euro VI standards until as late as 2015.

Considering Member States' strong consensus over the need for new heavy-duty emission standards and the lack of controversy between industry and legislators to date, it appears quite possible that the regulation could be adopted during the Slovenian presidency in the first half of 2008, which would make possible the enforcement of the EURO VI standards from 2011.

Secondly, on particulate matter, the Commission's should enforce a number-based standard in tandem with its mass-based standard for particulate matter as soon as these take effect, and not wait until there is a methodology for how to set such a standard. The

EEB considers the mass and number approach a good proposal because the smallest particles are most damaging for people's health (demonstrated extensively by WHO and the US EPA) and diesel engines used in heavy-duty vehicles have been identified as the primary source of ultra-fine particles into the urban environment. Ultra-fine particles are known to induce oxidative stress, to increase inflammation and artery disease, and have been associated with respiratory diseases like asthma and premature death from heart attack and stroke. By introducing a number-based standard together with the mass-based one, the EURO VI regulation will stimulate manufacturers to adopt strategies that both reduce particle mass and cut ultra-fine particulate emissions, providing maximum certainty that currently available, state of the art control technologies will be applied.

Thirdly, the EEB considers the Commission's proposal on vehicle testing methods for compliance with the Regulation targets as unacceptable. Such an approach is a 'lazy' option that allows business as usual to continue, despite experience in the US, Japan and within the EU showing that vehicles that received 'clean' test results in the laboratory were actually 'dirty' in use. For example, data from Europe suggests that NOx emission reductions predicted using the prevailing test cycle (NEDC) have had worse results when the same vehicles are assessed using test cycles more representative of actual driving conditions (the CADC). Furthermore, as the goal of the EURO VI standards is to reduce emissions during use throughout the full range of normal operating conditions, special care must be taken to incorporate measures to monitor the operation and performance of pollution control equipment. Many of the concrete details regarding in-use enforcement remain under the auspices of the Commission at a later date. We call upon the Council to provide clear guidance to the Commission regarding the need for robust and transparent measures, most notably the desirability of mandatory routine testing of in-use vehicles by third-party authorities and appropriate recall provisions for vehicle models found to be systematically out of compliance with standards.