



To: Environment Ministers of EU Member States

Cc: Commissioners for Environment, Climate and Health and Consumer policy and the Chair of the European Parliament Environment Committee

Concerning: Input to the EU Environment Council Meeting, Brussels, 16 December 2015

Brussels, 27 November 2015

Dear Minister,

On behalf of the European Environmental Bureau, I am writing to share with you our views on some of the issues on the agenda of the forthcoming EU Environment Council. I invite you to take our concerns into account during final official level preparations as well as at the meeting itself.

1. Mid Term Review of the EU Biodiversity Strategy

The EEB is deeply concerned about the dire state of Europe's biodiversity. In its mid-term review of its Biodiversity Strategy to 2020, the European Commission has taken stock of progress in implementing the Strategy and has found that we are not on track to achieve the Strategy's overall goal of halting biodiversity loss by 2020. A significant stepping up of progress is needed with regard to almost all targets, which should start with full implementation, enforcement and financing of the Birds and Habitats Directives as a vital prerequisite if the EU is to have a chance of meeting its headline target. Fully implementing the Nature Directives will however not be sufficient alone. It is of crucial importance for the Council conclusions to recognise the role in perverse policy incentives in areas including agriculture, energy and fisheries in undermining the state of Europe's biodiversity and the ongoing need for reform in these areas.

The EEB therefore calls upon the Environment Council to:

- *Support a full and ambitious implementation of the Biodiversity Strategy;*
- *Emphasise the essential role that the Birds and Habitats Directives, as the main nature conservation tools in the EU, have played in conserving and helping in the recovery of protected species and oppose any revision of the legal texts;*
- *Acknowledge the need for a doubling of efforts in implementation, enforcement and financing of the Directives and recognise the key role of Member States in achieving this;*
- *Acknowledge the need for improved coherence between biodiversity objectives and relevant sectoral policies, in particular through proper and effective integration of biodiversity considerations in all relevant EU policies;*
- *Reiterate Member States' commitment to ending overfishing by setting fishing quotas below the maximum sustainable yield exploitation rate and to use opportunities offered under the new Common Fisheries Policy (CFP) to promote an ecosystem-based approach to fisheries management as means of minimising the impact of fisheries on the wider environment, especially in marine protected areas;*

- *Call on the Commission to propose an effective and ambitious legal instrument on environmental inspections.*

See Annex 1 for more detailed comments.

2. National Emission Ceilings Directive

The Commission proposal for a revised National Emission Ceilings (NEC) Directive is one of the few areas where we have an immediate opportunity to make some very significant progress towards solving a pressing public health and environmental problem and thereby save hundreds of thousands of peoples' lives. The EEB is therefore extremely concerned by the direction of discussions in Council where too much effort is going into the introduction of flexibility mechanisms. The Commission's proposal was a timid step in the right direction which needs to be strengthened through binding emission limits for 2025 and covering all major pollutants, including methane and mercury.

The EEB therefore calls upon the Environment Council to:

- *Support greater emission reduction commitments (ERCs) going beyond the 52% reduction in health impact by 2030 proposed by the European Commission;*
- *Include legally binding ERCs for 2025, as supported by the European Parliament, and gives priority to early action to cut air pollution;*
- *Reject flexibilities such as the adjustment of emission inventories, adjustment of emission factors and three-year averaging in case of dry summers or cold winters;*
- *Keep methane in the scope of the Directive in order to reduce the formation of ground-level ozone;*
- *Include additional ERCs for mercury, a toxic and highly transboundary pollutant causing great damage to health and ecosystems, thereby contributing to the effective implementation of the new Minamata Convention;*
- *Ensure better coherence between the objectives of the different pieces of EU air legislation (e.g. NEC and Ambient Air Quality) with the aim of achieving the EU's 6th and 7th Environmental Action Programmes (EAPs) health and environmental objectives by 2030;*
- *Improve the means for enforcing the NEC Directive, in particular through the inclusion of an express right of access to justice for citizens and NGOs;*
- *Call upon the Commission to align EU ambient air quality limit values with the latest World Health Organisation (WHO) health recommendations.*

See Annex 2 for more detailed comments.

3. Circular Economy Package

Following the planned release on 2 December of a new Circular Economy Package, we will know whether the Commission has delivered on its promise of a 'more ambitious' package. The EEB considers this to be a crucial first test as to whether the Commission has been listening to the criticisms levelled by, among others, Environment Ministers when it withdrew the previous proposal and, even more important, for its commitment to a new global agenda of sustainable development for 2030 including the 17 sustainable development goals (SDGs). However, the issuing of the Commission proposal is only the start of a process in which the support of the EU Member States for a progressive outcome will be crucial, in particular in relation to the legislative core of the package, namely a revised set of waste policies with a more ambitious set of recycling targets.

The EEB therefore calls upon the Environment Council to support:

- *A recycling target for municipal solid waste (MSW) of 70% by 2030, as well as separate collection of biowaste and a ban on landfilling and incineration of recyclable and compostable waste;*

- *More economic incentives for uptake of the higher performing business models, products and recycled material, such as tax rebates allowances, coupled with more economic penalties for less performing business models, products or materials;*
- *Clear formulations with regard to the prevention of waste, including adopting a food waste prevention target, setting specific preparation-for-reuse targets on top of defining a harmonised monitoring methodology;*
- *Minimum requirements with regard to producer responsibility schemes including EU-wide modulation criteria reflecting the properties of products at the end of their life;*
- *Use of EU Cohesion funding to support the implementation of EU waste policy and making receipt of such funding more stringently conditional upon respect of the waste hierarchy.*

See Annex 3 for more detailed comments.

4. Air pollution emissions from road vehicles

The EEB shares [the concerns of T&E](#) over the decision of the Technical Committee on Motor Vehicles (TCMV) of 28 October 2015 to weaken the emission limits which cars in future would need to meet on the basis of real world testing conditions. Not only is this decision vulnerable to legal challenges, it downplays the evidence on the health impacts of diesel and ignores the Commission's own impact assessments. It also sends out a disastrous political signal that the interest of companies who have been taking advantage of a lax enforcement environment is more important than the health of EU citizens, and that its main political conclusion from the 'dieselgate' scandal is that standards should be lowered, instead of taking every necessary action to ensure that they will in future be enforced.

The EEB therefore calls upon the Environment Council to:

- *Reject the decision taken on 28 October and request the TCMV to adopt a conformity factor of 1. Margins of error should be backed by robust scientific evidence, be limited in time and be as close as possible to 1.*

See Annex 4 for more detailed comments.

Thank you in advance for your consideration of these points.

Yours sincerely,



Jeremy Wates
Secretary General

ANNEX 1
EEB comments to the Environment Council of 16 December 2015 on:
Mid Term Review of the EU Biodiversity Strategy

In 2011, the European Commission adopted an EU Biodiversity Strategy to 2020 to halt the loss of biodiversity and ecosystem services in the EU by 2020. There are six main targets, and 20 actions to help Europe reach its goal. The mid-term review of the EU Biodiversity Strategy to 2020 describes progress made in implementing the actions and achieving the targets set out in the strategy adopted in 2011. The six targets cover:

- Full implementation of EU nature legislation to protect biodiversity
- Better protection for ecosystems, and more use of green infrastructure
- More sustainable agriculture and forestry
- Better management of fish stocks
- Tighter controls on invasive alien species
- A bigger EU contribution to averting global biodiversity loss

The strategy is in line with two commitments made by EU leaders in March 2010. The first is the 2020 headline target: "Halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss"; the second is the 2050 vision: "By 2050, European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided."

The latest EU State of the Environment report indicates clearly that the EU is not on track to reach its 2020 headline target, and faces serious challenges in achieving the six individual targets underpinning the headline target. At the same time, scientific evidence has demonstrated that Europe's nature would be in a much worse state without the positive impacts of the EU's Birds and Habitats Directives. Achieving full implementation, enforcement and financing of the Birds and Habitats Directives is a vital prerequisite if the EU is to have a chance of meeting its headline target.

The EEB is deeply concerned about the dire state of Europe's biodiversity. In its mid-term review of its Biodiversity Strategy to 2020, the European Commission takes stock of progress in implementing the Strategy and finds that we are not on track to achieve the Strategy's overall goal of halting biodiversity loss by 2020. While a significant stepping up of progress is needed with regard to almost all targets, achieving full implementation, enforcement and financing of the Birds and Habitats Directives is a vital prerequisite if the EU is to have a chance of meeting its headline target. Fully implementing the Nature Directives will however not suffice to address the challenge. It is important to recognise that the longer the detrimental impacts of other policies on biodiversity and ecosystems remain unaddressed, the more resources will be needed to halt the loss of biodiversity and ecosystem services. In this regard it is of particular importance that the Commission and Member States step up the work towards reforming environmentally harmful subsidies and other perverse incentives resulting from EU policies that lead to detrimental impacts on biodiversity. In particular the new CAP, CFP and EU energy policy are critical since the frameworks currently in place for these sectors fail to address the activities representing the major sources of pressures on EU's terrestrial, freshwater and marine biodiversity:

- The CAP greening has failed and under the new CAP, farming intensification will continue at the expense of biodiversity. We need a thorough assessment of the impacts of the new CAP on biodiversity. The Commission must quickly take the first steps to come up with a truly sustainable common agricultural policy.

- Since the reform of the Common Fisheries Policy in 2013, the Commission and Member States have continuously failed in setting all catch limits in line with scientific advice in order to achieve the Maximum Sustainable Yield (MSY) target.
- The Renewable Energy Directive includes sustainability criteria for biofuels used in the transport sector, but these criteria are incomplete, and for biomass used elsewhere in the energy sector, no criteria currently exist. EU policies on bioenergy should be overhauled to bring demand into line with what can be produced sustainably and to ensure effective safeguards for biodiversity.

Similarly, when it comes to EU regional policy, while there are positive examples of helpful projects, overall synergies remain largely underexploited and trade-offs at the expense of biodiversity are still ubiquitous. Hence, a true greening of the EU budget still needs to take place in order to ensure that as a minimum, EU spending overall does not result in a net loss of biodiversity and ecosystem services. The present approach to integration for biodiversity and Natura 2000 financing has largely failed and can be attributed to the severe underfunding of nature conservation from the EU budget. The current chronic lack of funding needs to be recognised and the potential for the present approach to yield satisfactory results needs to be seriously called into question.

In addition the Council should recognise the crucial contribution that a full and ambitious implementation of the EU environmental acquis could make in further reducing existing pressures on biodiversity. Especially the appropriate use of environmental impact assessment at project and strategic levels and ambitious approaches to implementing EU's Water Framework Directive and the National Emissions Ceilings Directive could yield important positive results.

The EEB therefore urges the Environment Council to:

- *Support a full and ambitious implementation of the Biodiversity Strategy;*
- *Emphasise the essential role that the Birds and Habitats Directives, as the main nature conservation tools in the EU, have played in conserving and helping in the recovery of protected species;*
- *Call for maintaining the protection standards set by the Directives and safeguarding the current legal texts by keeping them as they are, including the Annexes, as any re-opening of the texts will create legal uncertainty and is likely to result in a weakening of the levels of protection in the current political climate;*
- *Acknowledge the need for a doubling of efforts in implementation, enforcement and financing of the Nature Directives and recognise the key role of Member States in achieving this;*
- *Acknowledge the need for improved coherence between biodiversity objectives and relevant sectoral policies, in particular through proper and effective integration of biodiversity considerations in all relevant EU policies;*
- *Reiterate Member States' commitment to ending overfishing by setting fishing quotas below the maximum sustainable yield exploitation rate and to use opportunities offered under the new CFP to promote an ecosystem-based approach to fisheries management as a means of minimising the impact of fisheries to the wider environment, especially in marine protected areas;*
- *Call on the Commission to propose an effective and ambitious legal instrument on environmental inspections.*

ANNEX 2

EEB comments to the Environment Council of 16 December 2015 on: Revision of the National Emission Ceilings (NEC) Directive

Every year, air pollution is responsible for nearly half a million premature deaths in the European Union. Increased illness, hospital admissions, extra medication and millions of lost working days are a huge burden for our economy. The health-related costs of air pollution amounted to between €330 billion and €940 billion in 2010 alone, which is equivalent to between 3 and 9% of the EU's GDP.¹ Air pollution also impacts our nature and biodiversity, crops, buildings and monuments.

By reducing overall emissions, an ambitious NEC Directive will help to improve air quality at the national and local level, delivering huge benefits for EU citizens. The Commission's proposal to revise the NEC Directive is a step in the right direction but there is an urgent need to improve it in relation to the following key issues:

- Emission reduction commitments (ERCs) for 2020 were copy-pasted from the revised Gothenburg Protocol without consideration of possible additional health and environmental benefits for Europeans that could be gained through a more ambitious approach. In some cases, the proposed ERCs would actually allow higher emissions in 2020 than is allowed under the old NEC Directive as from 2010.
- The Commission's proposal to set legally binding targets for 2025 was abandoned despite evidence of great benefits for health and environment. Instead, it proposes to make 2025 targets indicative, delaying action to 2030.
- The proposed ERCs for 2030 which are estimated to reduce health impacts by 52% would still leave us far from achieving the World Health Organisation's recommended levels of air quality. Some 260,000 premature deaths would still occur in 2030, i.e. more than half of today's death toll. Large areas of sensitive ecosystems would still be exposed to excessive acidification and eutrophication. Also, it should be noted that the 52% target uses 2005 as a base year which means that part of the progress has already occurred in the past ten years.

We are concerned that the debate in the Council is focusing too much on adding further flexibility which will cause further delays in improving air quality instead of looking for ways to improve the Commission proposal. We are also concerned by the fact that the Council is considering deleting methane from the scope of the Directive. These tendencies are deeply worrying for a number of reasons.

First, ambitious and early ERCs would deliver higher socio-economic benefits. Studies have consistently demonstrated that the benefits of additional emission reductions outweigh the costs – in most cases by large margins.²

Second, greater emission reductions than were estimated in the Commission proposal can be achieved at the same cost, with greater health benefits and up to 42,800 additional premature deaths avoided every year. This is mainly due to co-benefits for air quality of synergies with climate and energy policies leading to reduced fossil fuel burning – co-benefits which were not sufficiently

¹ European Commission's Impact Assessment:

http://ec.europa.eu/environment/archives/air/pdf/Impact_assessment_en.pdf

² European Commission Impact Assessment and related IIASA reports

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factored into the Commission proposal.³

Third, flexibilities such as the adjustment of emission inventories, adjustment of emission factors or three-year averaging in case of dry summers or cold winters would seriously undermine the health improvement potential of the Directive. Calculation of average emissions over several years essentially legitimises greater air pollution and associated health problems during certain years. Air pollution causes immediate effects on people's health, no matter how little air pollution might occur in the year preceding or following a high pollution episode. Furthermore, air quality related health problems tend to be exacerbated during dry summers and cold winters due to reduced wind dispersion. If these specific conditions were to be reflected in the Directive, it should justify tighter air pollution control, not relaxed obligations.

Fourth, ERCs for mercury should be included. Mercury is a toxic and highly transboundary pollutant causing great damage to health and ecosystems. Its inclusion in the NEC Directive would ensure overall emission reductions which will help reducing people's exposure to mercury, thereby contributing to the effective implementation of the new Minamata Convention.

Last but not least, in order to reduce ozone formation and protect human health, methane must be included in the Directive, as proposed by the Commission. Under the Effort Sharing Decision (ESD), Member States are only required to meet an overall reduction target for a basket of six greenhouse gases, not specifically methane. Methane must be tackled in its own right in order to reduce ozone formation.

The EEB therefore calls upon the Environment Council to:

- *Agree on a common position on 16 December in order to start negotiations with the European Parliament as soon as possible and avoid further delay;*
- *Support greater ERCs going beyond the 52% reduction in health impact by 2030 proposed by the European Commission;*
- *Include legally binding ERCs for 2025, as supported by the European Parliament, with priority being given to early action to cut air pollution;*
- *Reject flexibilities such as the adjustment of emission inventories, adjustment of emission factors and three-year averaging in case of dry summers or cold winters;*
- *Keep methane in the scope of the Directive in order to reduce the formation of ground-level ozone;*
- *Include additional ERCs for mercury;*
- *Ensure better coherence between the objectives of the different pieces of EU air legislation (e.g. NEC and Ambient Air Quality) with the aim of achieving the EU's 6th and 7th EAP objectives of achieving 'levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment' by 2030;*
- *Improve the means for enforcing the NEC Directive, in particular through the inclusion of an express right of access to justice for citizens and NGOs;*
- *Call upon the Commission to align EU ambient air quality limit values with the latest WHO health recommendations.*

³ European Parliament Impact Assessment, IIASA, November 2014:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/528802/EPRS_STU\(2014\)528802_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/528802/EPRS_STU(2014)528802_REV1_EN.pdf)

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ANNEX 3

EEB comments to the Environment Council of 16 December 2015 on: A more ambitious Circular Economy Package

The EEB is convinced that a move towards circular economy practices is a unique opportunity to simultaneously address a pressing need to reduce our impact on the environment, reduce dependency of Europe with regards to resource imports and create investment and job opportunities. Furthermore if Europe will move swiftly enough and maintain leadership, circular and resource efficient consumption and production patterns can become key competitive advantages at a global level and enhance the long term industrial development of the EU.

Numerous reports from well known institutes, such as the Club of Rome and the Ellen MacArthur Foundation but also the Commission's own impact assessment, confirm the tremendous potential of a rapid transition to a circular economy. Europe stands to gain hundreds of billions of euro in net savings for the EU economy, hundreds of thousands of jobs in direct job creation and much more if indirect job creation is accounted for, and significant reductions in GHG emissions and virgin resources use⁴. The Commission sought to justify its decision to withdraw the former waste package proposal from July 2014 by reference to the need to be more ambitious, to be more comprehensive than just considering waste and more concrete than the communication emerging from the waste policy review "Towards a circular economy – A Zero waste programme for Europe".

By the time of the December Council meeting, we will know whether the Commission has kept its promise of a more ambitious package. In the EEB's view, this means the proposal should set out a set of actions to be investigated in coming years around product policy, mobilizing the leverage of consumer demand, a stabilised market for recycled material and other sector-specific measures. It would however not be acceptable if these measures would be used as an excuse to lower the level of ambition of the waste recycling targets that were proposed in 2014. The assessment that more ambition has been delivered will rely on two complementary pillars, a level of ambition maintained for waste policy as well as additional actions as outlined in the action plan coupled to a headline target to improve resource productivity by 30% by 2030, supported by a set of targets and indicators on arable land, freshwater, raw material and GHG footprints that will ensure an absolute reduction in Europe's over-consumption of resources.

Achieving a 70% recycling target for municipal solid waste (MSW) in 2030 is a challenge but one that is feasible to achieve and which would bring significant benefits. It would create 180,000 new jobs in Europe and avoid up to 244 million tonnes of GHG emissions by 2030. An ambitious target could provide the opportunity to enhance a proper implementation of waste policy by clarifying methodologies and definitions, which would result in €72 billion potential savings in waste management costs per year while making business more competitive and reducing demand for costly scarce resources from outside the continent. The region of Flanders for example has already achieved over 70% recycling, and many other regions committed to the Zero Waste objective, which include municipalities in central and Eastern Europe, are already well over 50%. This has been achieved by mobilising economic instruments, such as pay-as-you-throw and extended producer responsibility schemes, combined with regulatory targets, which provide long-term certainty, and requirements for infrastructure, such as selective curbside collection. They also involve civil society in developing waste management plans, while dedicating efforts and resources to proper implementation and enforcement.

While we acknowledge the need for a certain flexibility for Member States to best adapt the different economic instruments to their local situation, we believe it is now crucial that economic instruments such as producer responsibility, landfill and incineration taxes and price signals for end

⁴ See notably the report [The growth within](#) (EMF 2015) and [The circular economy and benefits for society](#) (CdR 2015).

users, such as pay as you throw and deposit/refund schemes, are promoted in a more binding way at European level. The setting of minimum requirements to deploy these instruments and minimum improvement rates in terms of increased taxes and geographic coverage should at least be considered.

The EEB therefore calls upon the Environment Council to support:

- *Waste policy provisions that at least maintains the ambition compared to the July 2014 proposal, making sure that high recycling targets will be preserved, as well as separate collection of biowaste, a ban on landfilling and incineration for recyclable and compostable waste, as a minimum making clear that untreated mixed waste cannot be landfilled or incinerated even with energy recovery;*
- *More economic incentives for uptake of higher performing business models, products and recycled materials, such as tax rebates allowances, and conversely more economic penalties for less performing business models, products or materials;*
- *Clear formulations with regard to the prevention of waste, including adopting a food waste prevention target, setting specific preparation-for-reuse targets on top of defining harmonised monitoring methodology;*
- *Minimum requirements with regard to producer responsibility schemes including EU wide modulation criteria reflecting the properties of products at the end of their life;*
- *The proper allocation of cohesion funding in less advanced countries to help them leapfrog from landfill to recycling and create local jobs opportunities around collecting, sorting, disassembly and pre-treatment facilities, and not allowing use of such funding for investment in technological options which are incompatible with or not adaptable to the circular economy vision and increase the risk of lock-in to long term over-capacity of treatment options low in the hierarchy;*
- *A more specific requirement that access to cohesion funding is conditional on achieved performances with regards moving up the waste hierarchy compared to current situation (for example by allocating funding in different installments that would be released only if certain achievements can be proven).*

ANNEX 4

EEB comments to the Environment Council of 16 December 2015 on: Air Pollution Emissions From Road Vehicles

The recent “dieselpgate” scandal and the discovery that 8.5 million vehicles in the EU were fitted with a defeat device have highlighted the inadequate system of testing cars in Europe. Just 1 in 10 Euro 6 diesel cars achieve the 80mg/km nitrogen oxides (NOx) legal limit on the road with an average exceedance of nearly five times.⁵

On 28 October 2015, the Technical Committee on Motor Vehicles (TCMV) found an agreement on new conformity factors allowing Euro 6 diesel cars to emit over twice as much as the legal limit from 2017 to 2020 (conformity factor of 2.1) and 50% more than the legal limit after 2020 (conformity factor of 1.5), de facto increasing the standard to 120 mg/km indefinitely. The EEB considers this to be a disastrous decision for a number of reasons:

- There is clear evidence of serious health effects of air pollution from diesel cars, including from NO₂ emissions. Diesel exhausts have been classified as carcinogenic to humans and NO₂ pollution is proven to cause premature deaths, asthma and birth abnormalities.
- The decision to increase the original NO_x limit by 110% and 50% is legally doubtful. The Euro 6 regulation states that the 80mg/km diesel NO_x limit must be achieved in “normal driving” i.e. on the road. It does not make any mention of tolerance margin or flexibility to be added at a later stage through comitology. In our view, there is no legal basis for the real-world driving emission (RDE) regulation to be allowed to reach 210% and 150% of the limits in real driving conditions.
- The conformity factors of 2.1 and 1.5 contradict the Commission’s own assessment. Based on research done by the Joint Research Centre (JRC) on the margin of error of measurement equipment (PEMS)⁶, the Commission estimated an average error of measurement of 18.75%, corresponding to a conformity factor of less than 1.2.

In addition to increasing air pollution, agreeing to such weak emission standards would send the wrong signal to EU citizens, at a time when euroscepticism is on the rise, namely that the interest of companies who have cheated is more important than people’s health. It sends an equally disastrous signal to the rest of the world who so far have seen the EU as a global leader and standard setter, namely that the priority for the EU even after such a scandal is to protect its offending companies (it is already clear that the scandal is not limited to Volkswagen), instead of its global reputation. EU governments should stand firm and show EU citizens that the protection of their health and the enforcement of the law prevails over car manufacturers’ interests.

EEB therefore calls upon the Environment Council to:

- *Reject the decision taken on 28 October 2015 and request the TCMW to adopt a conformity factor of 1. Margins of error should be backed by robust scientific evidence, be limited in time and be as close as possible to 1.*

⁵http://www.transportenvironment.org/sites/te/files/publications/Dont_Breathe_Here_exec_summary_FINAL.pdf

⁶ See presentation by JRC: https://circabc.europa.eu/d/a/workspace/SpacesStore/a4c8455f-de18-4f3a-9571-9410827c4f87/2015_10_01_Error_analysis_JRC.pdf