



EEB

European
Environmental
Bureau

EEB MEMORANDUM TO THE ESTONIAN PRESIDENCY OF THE EUROPEAN UNION



Including the Ten Green Tests

JULY - DECEMBER 2017

*Prepared in cooperation with
BirdLife Europe and Seas At Risk*



EUROPE'S LARGEST NETWORK
OF ENVIRONMENTAL CITIZENS'
ORGANISATIONS



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INTRODUCTION

Estonia has taken over the Presidency of the European Union after the Dutch and French elections of 2017 have created a decidedly more upbeat political mood around the EU. At the same time the UK has formally notified the EU of its intentions to leave and, following a delay as a result of a snap-election leading to a weakened UK government with an unclear mandate, formal

negotiations have just begun towards the end of the Maltese Presidency. The first phase of those negotiations will likely reach their first climax under the Estonian Presidency over the issues of financial commitments, EU citizens' rights and the Irish border question.

The lack of clarity in the UK negotiating position and the UK government's weakened status, coupled with the sense of a renewed Franco-German commitment to the EU, has increased the sense that Brexit is most of all a UK problem which will need to run its course and should not unduly distract the rest of the EU from continuing in its path. At the same time the challenge to the values underlying the EU, which threatens to stall or even put into reverse the development of a common set of laws, policies and standards built up over several decades, has not gone away and should not be underestimated. The crisis precipitated by the Brexit vote has come on top of continuing political instability at Europe's borders leading to a refugee crisis that continues to be characterized by human tragedies.

Even if the scenario of the Brexit process having a domino effect seems to have been averted for the time being, and indeed there are some indications that it may have provided a kind of inoculation against anti-EU populism, there are important lessons to be learned. The lack of popularity of the EU among large sections of the public is partially the outcome of a decades old tendency among EU leaders to take personal credit for the EU's success and put all blame and responsibility on 'the EU' for its failures. This applied in particular to the UK, but the same happens in the rest of Europe as well. In addition to that, the EU and its leaders have failed at a more substantive level to give sufficient priority to addressing issues that are of direct concern to citizens. Successive opinion polls show that the environment is high among the issues that the public care about and that there is broad support for more action on the environment at EU level.¹

So the Brexit process, rather than being allowed to distract the EU from pursuing its environmental agenda, should rather be a reason for the EU to increase its efforts to address environmental challenges. It must be seized on as an opportunity to realign the EU around an agenda of transformational change, one that puts the interests of people and planet first in everything that it does, guided by the global 2030 Agenda for Sustainable Development and the Paris climate deal. This implies a significant change in political emphasis and direction, away from the deregulatory jobs-and-growth agenda that so clearly failed to convince British voters that belonging to Europe is a good thing.

Instead, it means strengthening the accountability of the EU institutions, which urgently need to regain public confidence. This shift in priorities needs to be reflected in short-term instruments such as the Commission's Work Programme for 2017, medium-term instruments such as the Commission's Political Guidelines and Europe 2020, and longer-term instruments such as a new Sustainable Development Strategy that should address the implement of the SDGs in the EU. Most importantly, however, this shift in direction needs to be reflected in the outcome of the 'Future of Europe' debate. In March 2017, the Juncker Commission published its somewhat disappointing White Paper setting out five scenarios for the future of the EU, none of them identifying sustainable



development as the overarching policy framework. This was followed later in March by a more promising statement in Rome from the leaders of the EU-27 marking the 60th anniversary of the Treaty of Rome, with several references to environment and/or sustainability. To contribute to the next phase of the debate, a broad range of civil society organisations including the EEB have put together a 'sixth scenario' which we hope the Estonian Presidency will use as it prepares Council Conclusions on the future of Europe for adoption in December.

By the end of 2016, the Juncker Commission concluded, after much uncertainty and debate, that a number of crucial EU policies are fit for purpose; the Birds and Habitats Directives, Ecodesign and the Energy Label with negotiations continuing on revised recycling laws. 2017 therefore now provides a unique opportunity to move away from questioning and undermining EU environmental policies to recognizing them for what they are: one of the EU's strongest success stories that should be continued and strengthened.

As important as this change in political direction and priorities is the need to ensure that all EU leaders will stand up for the rule of law, not only in theory but especially in practice when the Commission is carrying out its task to ensure that Member States comply with the laws to which they have agreed. The so-called Better Regulation agenda has had a paralysing effect on many badly needed new proposals such as in the area of endocrine disrupting chemicals (EDCs), environmental inspections and even straightforward implementation, as in the case of REACH. It also threatens to undermine the prospects for the EU to meet its climate commitments under the Paris agreement, which will require an ambitious and enforceable legal framework covering energy efficiency, renewables and GHG reductions.

The Estonian Presidency will have one specific opportunity to affirm its commitment to reinforcing the accountability of the EU institutions, as it will coordinate the EU presence at the forthcoming session of the Meeting of the Parties (MoP) to the Aarhus Convention (Montenegro, September

2017) where the MoP will discuss a finding of the Convention's Compliance Committee that the EU is in violation of the Convention due to the lack of effective possibilities for the public to have access to justice in environmental matters at the EU level. It will be important that the EU supports the endorsement of the findings and commits to moving swiftly to revise the relevant EU legislation so as to improve access to justice.

This Memorandum, prepared in cooperation with BirdLife Europe and Seas at Risk, reflects on the issues that the EEB would like to see advanced during the Estonian Presidency. The most important issues are highlighted in the Ten Green Tests. These have been prepared in consultation with the EEB Board which has representatives from more than 30 countries and several European networks. In December 2017, the Ten Green Tests will be used to evaluate the Presidency's performance over the next six months. While the Memorandum is directly addressed to the Presidency, we recognise that progress depends upon the cooperation of the European Commission, the European Parliament and other Member States. However, Presidencies can often make a difference if they invest their political and technical capacities in the right issues and if there is sufficient political will.

We look forward to engaging in a constructive dialogue with the Estonian Government throughout the Presidency and beyond.



Jeremy Wates
Secretary General

TEN GREEN TESTS FOR THE ESTONIAN PRESIDENCY

We call upon the Estonian Presidency of the European Union to help restore public confidence in the European Union following the Brexit vote by promoting a greener, more sustainable Europe, where our destructive impact on the climate, biodiversity and public health in Europe and beyond is rapidly decreased in line with citizens' expectations and scientific imperatives, through the following measures:

1. Make sustainable development central to the future of Europe

- Ensure that the December Council conclusions on the Future of the European Union promote a people-centred agenda of transformational change in the EU based on the global 2030 Agenda for Sustainable Development;
- Ensure that the Commission's Work Programme for 2018 follows up on the June 2017 Council conclusions on Agenda 2030 and implementing the SDGs by carrying out an in-depth gap analysis and putting in place a solid, transparent, participatory mechanism for implementing the Sustainable Development Goals within the planetary boundaries;
- Use available opportunities to ensure that in the preparation of the post-2020 multi-annual financial framework (MFF), the allocation of budgetary resources is fully consistent with the need to implement the 2030 Agenda for Sustainable Development, e.g. in formulating a position in relation to the Commission's recently published reflection paper on the future of EU finances;
- Share the Estonian experience in presenting a Voluntary National Review (VNR) at the UN High Level Political Forum (HLPF) on Sustainable Development last year, press the Commission to actively participate in this year's HLPF and to commit to present a first report on the EU's implementation of the SDGs in 2019 (in line with the June 2017 Council conclusions);

2. From better regulation to better governance

- Ensure that the December Council Conclusions on the future of the European Union reflect a shift away from the current ideology-driven 'Better Regulation' agenda with its deregulatory bias and towards a balanced, evidence-based approach that fully recognizes the public benefits of regulatory action;
- Re-build confidence in Europe's regulatory systems by calling on the Commission to use the outcome of the environmental implementation review as the basis for developing new legislative and budgetary proposals aimed at strengthening inspection and enforcement capacities at EU and Member State level;





3. Fight climate change

- Ensure the environmental integrity of the EU climate objective for 2030 having in mind the need to bring the EU's contribution in line with the Paris commitment to pursue efforts to limit global warming to 1.5°C above pre-industrial levels. This requires a push for strengthened targets of at least 60% greenhouse gas emission reductions, 40% energy savings and 45% renewable energy by 2030 at the latest, and that EU upgrades its policies by setting out a path to net zero emissions by 2040;
- Support consistent, transparent and reliable climate action enshrined in the Emissions Trading System, the Effort-Sharing Regulation and a separate pillar for Land Use, Land Use Change and Forestry (LULUCF), which should ensure that efforts required by the agriculture sector are not watered down but rather lead to a strengthening of climate ambition.

4. Reform energy policy

- Put Energy Efficiency first in the revision of the Energy Efficiency Directive (EED) and the Energy Performance of Buildings Directive, taking into consideration the full body of evidence on the multiple benefits of energy efficiency and the position of the European Parliament as co-legislator calling for a binding 40% energy efficiency target with individual national targets, and ensure consistency and strengthened energy savings measures in Article 7 of the EED ;
- Guide the Council discussions on how to operationalise the objective of EU-wide nearly Zero Energy building (nZEB) stock by 2050 in the Energy Performance of Buildings Directive;
- Make sure that the ecodesign and energy labeling implementing measures for priority products, namely electronic displays, washing machines, dishwashers, refrigerators-freezers and lamps are finalized or at the very least ready to be voted/adopted, and that unduly delayed measures on commercial refrigeration, motors, fans and pumps are effectively processed by the Commission and not stalled without valid justification and calendar commitments;
- Support measures that facilitate an energy transition to 100% renewable energy such as cutting all subsidies to fossil fuels, increasing the renewables target for 2030 to 45%, continuation of the current national binding targets also for 2030 with a linear trajectory and continuation of existing support provisions including priority dispatch and access to the grid for renewable energy, while ensuring that those renewable energy sources which are promoted are genuinely sustainable and are located and constructed in a way that minimises environmental impacts together with an interconnected and more flexible grid;

5. Restore ecosystems and biodiversity

- Use the EU Action Plan for Nature, People and the Economy as an opportunity for scaling up efforts towards full and effective implementation of the nature directives, and take all measures needed to keep up momentum throughout and beyond its Presidency;
- Support any additional fast-track measures proposed by the Commission to meet the Biodiversity Strategy's headline target, such as an EU initiative on pollinators;
- Push for securing predictable, adequate, regular and targeted EU financing for biodiversity and Natura 2000 in the next multiannual financial framework (MFF) including through a ten-fold increase in the LIFE Fund;





6. Transform agriculture policy

- Continue the debate on the future of the CAP and EU food policy, taking into account the outcomes of the EC public consultation on the modernisation and simplification of the CAP, in a more inclusive manner, including by seeking input from environmental NGOs into discussions on the future CAP at the informal Agriculture Ministers' meeting;
- Focus the CAP simplification debate on outcome and what the new CAP delivers on the ground, including in relation to the achievement of nature conservation objectives, rather than on its administrative burden;
- Following the European Parliament's adoption of its position on the omnibus and in particular the agriculture part, ensure that the negotiations do not result in a further watering down of the existing greening and that they are limited to the scope of the Commission's proposals;

7. Support the circular economy and waste minimisation

- Finalise the waste policy revision, encompassing the setting of quantitative and qualitative waste prevention targets and measures with associated methodologies before 2020, the alignment with the preparation for reuse and recycling targets set by the Parliament, the harmonized minimum requirements for establishing extended producer responsibility (EPR) schemes, the setting of targets for commercial and industrial waste and the revision of ecodesign policy and essential packaging requirements to lever waste minimization through product and material design;
- Promote as part of the Presidency 'eco-innovation' initiative a proper implementation of the Circular Economy Action Plan, notably the design of a coherent product policy framework based on a set of criteria defined at the EU level to be applied in ecodesign, EPR, green public procurement (GPP) and Ecolabel policies, with binding targets for the implementation of GPP at the national level, and more emphasis on the role of Ecolabel in establishing benchmark products for a dynamic market transformation;
- Ensure that the Commission delivers on ecodesign implementing measures, notably those suffering from unjustified delays and presenting obvious resource-saving potential, such as electronic displays, white goods, commercial refrigeration, taps and shower heads;

8. Protect the public from hazardous chemicals including mercury

- Encourage the Commission to develop a new strategy for a non-toxic environment that builds on a strengthened implementation of REACH, fills regulatory gaps such as on nanomaterials and mixture effects, and sets out a way forward following the fitness checks of REACH and all other EU Chemical safety legislation;
- Ensure that the Commission develops scientific and horizontal criteria for the identification of endocrine-disrupting chemicals (EDCs) that are consistent with the EU identification system for CMRs (carcinogenic, mutagenic, or toxic for reproduction) and are protective enough to catch all EDCs to which the public and the environment are exposed;
- Maintain EU leadership in relation to the Minamata Convention on Mercury by working towards establishing an effective international operational framework to achieve significant mercury reductions, ensuring swift ratification of the Convention by the remaining EU Member States and promoting further actions to address mercury pollution in the EU;





9. Safeguard sustainable fisheries

- Ensure that the North Sea Multi Annual Plan supports the objectives of the reformed Common Fisheries Policy (CFP) and, in particular, that fishing rates are set below the maximum rate of fishing mortality FMSY in order to provide at least a chance to restore and maintain fish stocks above levels capable of producing the maximum sustainable yield;
- Ensure that the final agreed Technical Measures Regulation: is based on a European framework of principles and requirements; supports the objectives of the Natura 2000 network and other Marine Protected Areas; does not provide permission to conduct previously prohibited, destructive fisheries; leads to the avoidance or at least the minimisation of unwanted catches including through tactical selectivity measures; and minimises the ecosystem impact of fishing in general, including on seabirds;
- Ensure that the fishing opportunities for 2018 are set below the exploitation rate that corresponds with FMSY in order to achieve the main CFP objective to restore and maintain stocks above biomass levels that can deliver Maximum Sustainable Yield;

10. Strengthen democratic governance

- Ensure that the EU and its Member States play a progressive and constructive role at the forthcoming sessions of the Meetings of the Parties to the Aarhus Convention and its Protocol (Montenegro, 11-15 September), notably by endorsing the findings of the Convention's Compliance Committee and committing to an early revision of the Aarhus Regulation so as to improve access to justice and bring the EU back into compliance with the Convention;
- Push for measures to apply and monitor the application of the interpretative guidance on access to justice in environmental matters adopted in April 2017 with a view to eventual preparation of a new legislative proposal on access to justice.



1. EUROPEAN COUNCIL

1.1 Better Regulation

On 19 May 2015, the European Commission's First Vice-President Timmermans presented the Commission's plans for a new Better Regulation agenda. Most elements of this package applied directly to the Commission's internal procedures without further negotiations, but one crucial element, a new Inter Institutional Agreement on Better Lawmaking (IIABLM), was subject to negotiations with the EP and Council.

The Communication that accompanied the IIABLM contained encouraging language about the body of EU law being one of Europe's strengths and an insistence that the agreement was not about deregulation or the lowering of existing environmental standards. However, all the proposals for new procedures and bodies both for the Commission and under the IIABLM created the risk that it would become more cumbersome to develop new and much-needed rules to support key environmental objectives.

The IIABLM was adopted at the end of December 2015, following negotiations with the EP and Council which led to some significant changes to the Commission proposal. Although the final IIABLM improved in a number of important points, including a more appropriate use of Impact Assessment and the removal of President Juncker's political guidelines as a basis for joint work programming, some rather worrying new elements were added as well. In particular, a commitment by the Commission as part of a 'simplification' effort to systematically quantify regulatory costs to business and to assess the feasibility of putting in place targets to reduce those costs in certain sectors is alarming. This was given a further push during the Dutch Presidency in the first half of 2016 with the adoption of conclusions from the Competitiveness Council to press the Commission to not only assess feasibility, but also commit to put burden reduction targets in place by 2017.

The goal of cutting so-called red tape also formed a central part of David Cameron's negotiation on a new settlement for the UK in the EU. The settlement package, which was subsequently annulled by the outcome of the UK referendum vote, contained a number of similarly problematic provisions. The post-referendum demographic analysis suggests that it is doubtful whether these business-driven efforts to weaken the EU's regulatory role had any significant impact in convincing British Eurosceptics

to vote 'remain'. It has also been a central part of the new US President Trump's political programme which introduced a 1 in, 2 out rule.

Most worryingly, the Commission is still continuing to consider putting forward quantifiable burden reduction targets, inter alia by launching a consultation on the issue in the REFIT Platform.

Setting a target to reduce the burden of regulation is the wrong approach for a number of reasons.

Addressing global challenges such as climate change, ecosystem collapse, antimicrobial resistance, inequality or resource depletion will require the EU to adopt new, effective and legally binding policies. A blanket requirement to offset any new regulatory cost arising from such new policies by slashing costs elsewhere irrespective of the benefits arising would seriously hamper these efforts.

Second, the premise that the EU regulatory system is overly burdensome and a major barrier to economic development is a highly subjective one, underpinned by little, if any, evidence. In fact, the available evidence, in particular in the environmental field, shows that a competitive industry is easily able to absorb and adjust to the costs of new regulations. Further, a continuous focus on reducing regulatory costs would mean the subsidising of Europe's least competitive enterprises by allowing them to externalise part of their production costs. As a result, consumers and tax payers would foot the bill through, for example, increased health care costs, while efforts by leaders and frontrunners within industry would be undermined.

The appalling fire at Grenfell Tower apartment block in London in June is the latest tragedy to underline the dangers of inadequate regulatory oversight and highlight the reckless folly of those advocates of deregulation who have been seeking a 'bonfire of regulations'.

We therefore urge the Estonian Presidency to take a more balanced approach to much needed efforts to improve the EU regulatory system, most crucially, by opposing the setting of a target to reduce regulatory burdens and by ensuring that the public benefits of regulatory action are given sufficient weight and that rules, once in place, are effectively enforced irrespective of whether they address competition law, pollution, public health or workers' protection.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Rethink the EU's approach to Better Regulation so that the public benefits of regulatory action are given first priority and that all development respects planetary boundaries;
- Support more efforts to improve compliance and the enforcement of EU legislation through the adoption of legally binding minimum standards for inspections and by providing citizens with access to justice.

1.2 Implementing the Global Sustainable Development agenda in Europe

The EU has for a number of years been ambivalent in its approach towards the concept of sustainable development. At a rhetorical level, it strongly endorses the concept, presents itself as a leader in the global debate on sustainable development, and indeed has been one of the more progressive forces among the developed countries in that debate. On the other hand, since the economic crisis began in 2008, European leaders have increasingly tended to prioritise short-term economic considerations over environmental and social ones, which led to a gradual slowdown in environmental policy initiatives during the Barroso Commission and worsened further under the Juncker Commission. Furthermore, Europe continues to consume considerably more than its fair share of the Earth's resources and outside planetary boundaries, without demonstrating a serious commitment to reduce its ecological footprint in absolute amounts within the short to medium term to the extent required to allow the poorest countries the 'environmental space' to develop. Our European lifestyles are built on the account of the natural resources from those countries, which blocks them for endogenous development – a fact which is regularly omitted in high-level debates on the EU's contribution to sustainable development.

The adoption in September 2015 of the Global 2030 Agenda for Sustainable Development (2030 Agenda) with its 17 Sustainable Development Goals (SDGs) was a major milestone on the path to international recognition of the need for a more sustainable

way of living. Whereas developing countries were the primary target of the Millennium Development Goals, the SDGs are universally applicable, reflecting both the fact that developed countries need to change their model of development in order for humanity's environmental footprint to remain within planetary boundaries, and to address the alarming inequalities that the current economic model has created. A completely new narrative on development needs to be put in place, where achieving well-being, social and environmental justice and respect for human rights enjoyed within planetary boundaries replace an excessive focus on material wealth. It should also support and allow developing countries to achieve a decent standard of living without repeating the mistakes made by the developed countries.

Despite the EU having played an important role in the development of the 2030 Agenda, the Commission did not appear to give its implementation high priority in the following months. Less than one year after its adoption, Commission President Juncker's 2016 State of the Union address failed to even mention the 2030 Agenda or the SDGs. However, in November 2016, the Commission came forward with a package of proposals on how to carry the 2030 Agenda forward, including a Communication "Proposal for a new European consensus on development: our world, our dignity, our future" and a second Communication "Next steps for a sustainable European future: European action for sustainability".

The latter of these Communications is the most relevant to policies shaping the future development of the EU itself (as opposed to its overseas development policies). It distinguishes between the period up to 2020, where it describes the aim to "fully integrate the SDGs in the European policy framework and current Commission priorities, assessing where we stand and identifying the most relevant sustainability concerns", and the period after 2020 where it identifies the need to "launch reflection work on further developing our longer term vision and the focus of sectoral policies after 2020", but actually does little more than signal that this should be done in the future.

The Communication affirms many positive policy principles such as the commitment to development that meets the needs of the present without compromising the ability of future generations to meet their own needs, inter alia through accelerating the transition to a low-carbon, climate resilient, resource-efficient and circular economy. However, it is disappointing in a number of respects. Given that it comes out more than a year after the adoption of the 2030 Agenda, it is very thin on detail about how the implementation will be delivered,

and essentially only covers the period up to the 2020, where the existing priorities and actions of the Commission are claimed to be largely adequate.

Regrettably, the call by many civil society organisations for an overarching sustainable development strategy for the EU mirroring the global 2030 strategy has been ignored, at least so far. Instead the Communication goes to great lengths to describe synergies between the SDGs and the Juncker priorities while significantly overstating the extent to which the EU's policies already promote sustainability. It argues that under the current Commission "sustainable development is mainstreamed in key cross-cutting projects as well as in sectoral policies and initiatives", that "many of the SDGs are at the heart of the highest political priorities of the Juncker Commission" and that "The SDGs are already being pursued through many of the EU's policies and integrated in all the Commission's ten priorities". These last claims are particularly unconvincing: the reality is that with their narrow focus on growth and jobs, the ten priorities contained in Juncker's Political Guidelines virtually ignore sustainable development and environmental issues other than climate change.

As a face-saving exercise, such 'spin' could be harmless enough even if it stretches credibility but the concern is that it reflects a genuine failure at the top of the Commission to grasp the extent to which current trends are unsustainable and the scale of the transition that is consequently needed. The correct and logical reaction to the adoption of the 2030 Agenda would have been for the Commission to present a revised set of political priorities to the Parliament and Council reflecting a new era heralded in by the 2030 Agenda.¹ Given the Commission's refusal to do that, looking for synergies between the Ten Priorities and the SDGs is perhaps better than not doing so but comes across as unwillingness to concede that the Commission's Priorities lack a sustainability perspective and need to be changed, replaced or superseded.

The Communication attempts to justify this attempt to link the SDGs to the Juncker priorities through the argument of political relevance, namely that "exploiting these synergies between the SDGs and the Commission's highest priorities ensures strong political ownership and avoids that implementation of the SDGs takes place in a political vacuum". However, it is questionable whether the SDGs are seen by the Commission as having the central political role that they deserve. The lack of any connection being made in the Communication

¹ In early 2016, the EEB published [The Juncker Commission Political Priorities Revisited](#) to demonstrate what a set of post-2030 Agenda priorities could look like.

with the political debate on the future of Europe triggered by the Brexit vote leading up to the Rome Summit in March 2017 suggests otherwise and is a matter of concern.

Several existing strategies that the Commission is executing will support part of the whole 2030 Agenda, but what is urgently needed is policy coherence amongst them all, filling in the gaps where the EU is lagging behind and making all action in line with the SDG ambitions. The value in having some of the current policies and priorities supporting sustainable development is undermined if others directly work in the opposite direction. The new Communication implies in some places that the fact that the EU has a policy in a field covered by an SDG (e.g. the Common Agriculture Policy) means that it is implementing that SDG (SDG-2), irrespective of the fact that the policy manifestly fails to achieve the result prescribed in the SDG.

Among the positive elements in the Communication are the commitment by the Commission to "explore how EU budgets and future financial programmes can best continue to adequately contribute to the delivery of the 2030 Agenda and support Member States in their efforts; and its recognition of the important role of impact assessments in ensuring mainstreaming of sustainable development in EU policies.

Assuring policy coherence for sustainable development implies the institutionalisation of the treaty-based objective of sustainable development in the governance structures at EU and member state level. At European level there is a need for an overarching Sustainable Development Strategy (SDS), with concrete planning of the implementation of all goals, targets and timelines. A central focus should go to multi-sectoral policymaking and guaranteeing policy coherence. Introducing a new SDS could to some extent compensate for and address the deficiencies of the Commission's ten political priorities.

The Europe 2020 Strategy on competitiveness and growth has some elements relating to environmental sustainability. In 2011 and 2012, the Strategy was given shape through a series of Flagship Initiatives, EU budget proposals, the Annual Growth Surveys, economic 'Semesters', National Reform Programmes and national budget consolidation plans. Having a strategy to bring about recovery from Europe's economic crisis is clearly important but it must be done in a way that secures sustainability from environmental and social points of view as well. In 2016, the tool of country-specific recommendations (CSRs) only provided energy related recommendations to five Member States and even then without making the link to their

climate obligations. Only one Member State, Latvia, was recommended to undertake “a growth-friendly tax shift towards environmental and property taxes”. This was despite the fact that Country Reports identified 21 EU member states with potential for environmental tax reforms, 14 states that needed to phase out environmentally harmful subsidies and another 18 that were recommended to act on circular economy. Thus there is clearly significant potential to make better use of the Semester as a tool to steer the economy in a more sustainable direction. Environmental accounting could and should be further integrated into national budgets. Although there is broad recognition that a shift in the tax base from labour to pollution and resources is an effective market based instrument, little progress has been made in implementing this. Phasing out environmentally harmful subsidies, while protecting against adverse social effects and short sighted cuts in investments in environmental protection and public services, is also important but again little progress is made. The Semester should also become more transparent and democratic with a stronger role for the European Parliament.

The existing EU Sustainable Development Strategy has never enjoyed the same level of prominence or priority as the Europe 2020 Strategy. Adopted in 2001, the SDS was reviewed and renewed in 2006, with a further review carried out in 2009. The European Council was expected to take a decision on the future of the SDS by the end of 2011, when a comprehensive review was due to be undertaken. In fact, it was October 2012 before the Council returned to the issue in the context of discussing the follow-up to Rio+20. It called for the SDS to be reviewed “as soon as possible, at the latest in 2014” and for the commitments in the Rio+20 outcome document to be implemented through the SDS and the Europe 2020 Strategy. The conclusions also stressed “the need to consider and review, as deemed necessary and on a case by case basis, all other relevant EU and national policies, strategies and programmes, and to implement through them the Rio+20 outcomes”. The Commission, being focused on a deregulatory 20th century jobs-and-growth agenda, did little in the subsequent years to follow up on these conclusions and the SDS is by now well outdated. While it can serve as an important reference document, a new SDS should rather be inspired by and designed to deliver on the global 2030 Agenda for Sustainable Development. The ambition reflected in latter’s title, ‘Transforming our World’, needs to be reflected in a strategy for ‘Transforming Europe’.

The 17 SDGs and targets are based in no small part on the recognition of and respect for planetary boundaries and the redistribution of wealth, opportunities and labour and a reduced use of

natural resources. Heightened concerns over energy security, following civil wars and unrest on the EU’s borders in Ukraine as well as in Syria and Libya where access to natural resources plays a crucial role, coupled with increased awareness around security of supply of food and raw materials for European industry, have strengthened the realization that continuing European over-consumption at current levels is no longer an option and that transitioning towards a comprehensive sustainable economic system is essential. That means taking seriously the discussions about limiting the use of energy and natural resources for “over-consumers” in absolute amounts. We also need to break down the global targets to an EU level, taking into consideration common but differentiated responsibilities. Europe has a special responsibility here: firstly to take the initiative to set such targets for its own economies, but also to show leadership by demonstrating that achieving prosperity and well being is possible within the limits of a fair share of the planet’s carrying capacity.

Strong accountability and review mechanisms of the 2030 Sustainable Development Agenda are crucial for achieving the targets. A dashboard of indicators, focusing on several targets, has to guide policymaking, instead of solely focusing on growth in terms of GDP. On 31 May, EuroStat published a first set of 100 indicators for the EU to measure progress in SDG implementation. However, the creation of the indicator set was not based on a broad stakeholder consultation as the process was rather rushed. While the set contains useful indicators, civil society has also quickly identified important gaps such as the lack of an indicator that helps to measure whether resource consumption in absolute terms continues to increase or whether we are able to bring down European over-consumption.

Under the Maltese Presidency, the Council in June 2017 adopted its conclusions in reaction to the Commission’s Communication on action for sustainable development. While the Communication had not provided any concrete details about whether an EU-wide SDG implementation plan with specific targets and deadlines would be developed, the Council urged the Commission to elaborate, by mid-2018, an implementation strategy for the Agenda 2030 outlining timeline, objectives and concrete measures for all relevant internal and external policies and to identify existing gaps by mid-2018 in all relevant policy areas in order to assess what more needs to be done on policy, legislation, governance structure for horizontal coherence and means of implementation. Moreover, the Council conclusions asked the Commission to implement the Agenda 2030 in a full, coherent, comprehensive, integrated and effective manner reflecting civil society’s persistent call for policy coherence for

sustainable development, and to report about its internal and external implementation of the SDGs at the UN High Level Political Forum in 2019. These elements have been welcomed by the EEB which is asking the Commission to follow the Council's conclusions.

While the Commission's Communication was already vague on how to operationalise civil society engagement, the Council Conclusions were also weak on this point: while the Council welcomes the establishment of an inclusive Multi-Stakeholder platform, which the Commission had meanwhile announced, and stressed that the platform should enable all stakeholders to contribute with best practices, policy recommendations, ideas and innovative potential, it does not ask for a clear monitoring and accountability role for the Platform.

The Estonian Presidency should play its part in supporting the development of a new EU SDS, as mentioned above, based on the 17 goals and 169 targets, with a concrete and legally binding implementation plan. The Presidency should also press for bold review mechanisms for all goals, considering all existing policies, strategies and programmes in order to guarantee policy coherence. It should furthermore follow up on how Vice-President Timmermans is approaching his sustainability mandate; the results of his request to all Commissioners to carry out gap analyses to check where, and where not, the EU is implementing the SDGs, are still awaited. This information should be the basis for the timely drafting of a coherent EU SDS and a plan of action in active consultation with civil society organisations.

Finally, an appropriate structure facilitating active and full multi stakeholder civil society participation needs to be set up. Even if the Multi-Stakeholder Platform, for which the Commission has now called for applications so that it can choose its members, fails to be based on the principle of self-organising representation, it must play an important role in contributing to and reviewing the EU's implementation of the Agenda 2030. The Estonian Presidency should ensure that the new Platform is set up with balanced participation of stakeholders representing the three dimensions of sustainable development (environmental, social, economic).

Aside from implementing the 2030 Agenda within Europe, the EU needs to continue playing an active and constructive role in the global follow-up processes. In this regard, having welcomed the establishment of the UN's High-Level Political Forum on Sustainable Development (HLPF), the EEB wants to underline the importance of it being given adequate authority and resources, with a board and a well funded secretariat and active participation

modalities for all stakeholders. Another concern is that since the HLPF is mainly under ECOSOC structures, trade and development ministers will be mostly present during the meetings, while ministers representing environmental and other relevant policy areas will be less actively involved.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Urge the Commission to follow up on its recent Communication on SDG implementation as well as the respective Council Conclusions by:
 - * Developing an EU Sustainable Development Strategy as the overarching strategic framework guiding Europe's future and to thereby ensure effective regional implementation of the 2030 Agenda for Sustainable Development, promoting a transformation of consumption and production patterns in the EU to an economy that respects planetary limits and is not at the expense of livelihoods in the Global South;
 - * Putting in place a more detailed SDG implementation plan with specific targets and deadlines, prepared with meaningful public participation and ensuring effective co-ordination within and between the EU institutions and Member States;
- Promote the establishment of innovative governance structures for the implementation of the 2030 Sustainable Development Agenda at EU and Member State level that include at EU level intersectoral working groups between the DGs, joint Council 'Jumbo' meetings and civil society engagement policies and structures;
- Seek to guarantee coherence between all European policies and strategies and sustainable development objectives, inter alia by seeking a strengthened role for sustainability considerations in the Commission's internal impact

assessment process with a view to ensuring that new policies advance or at least do not compromise environmental protection or social justice;

- Ensure that the eventual outcome of the delayed interim review of the Europe 2020 strategy is consistent with delivering on the SDGs and that the European semester is used to give maximum support to the transformation to a green and fair economy, in particular through integrating environmental accounting into the national budgets, socially just environmental fiscal reform and the removal of environmentally harmful subsidies;
- Ensure effective and inclusive modalities for civil society participation in the global (HLPF), pan-European and EU sustainable development processes, in all cases with full respect for the principle of self-organisation;
- Share experiences in provided the Estonian Voluntary National Review during the 2016 HLPF and urge the Commission to present its first report on SDG implementation during the 2019 HLPF;
- Use available opportunities to ensure that in the preparation of the post-2020 multi-annual financial framework (MFF), the allocation of budgetary resources is fully consistent with the need to implement the 2030 Agenda for Sustainable Development, e.g. in formulating a position in relation to the Commission's recently published reflection paper on the future of EU finances.

1.3 State of play of the 2030 Climate and Energy Framework

With the progress of the discussions on the 2030 "Clean Energy for All Europeans" package in the Council formations, the Estonian Presidency will have the opportunity to achieve general approaches on a number of files.

In light of the objectives of the Paris Agreement, the European Council needs to give its full support to the appropriate council formations, considering the need for more ambitious targets in light of the upcoming facilitative dialogue in 2018. In order to truly promote the Paris Agreement, the EU needs to upgrade its policies by setting out a path to net zero emissions by 2040.

2. ENERGY AND TRANSPORT COUNCIL

2.1 Towards stronger climate and energy policies

With the publication of the “Clean Energy for all Europeans” package, the European Commission has set the course for a comprehensive revision of EU energy legislation. Despite the improvement in energy efficiency, the overall package leaves the EU way off track to meet its international climate commitments by still rewarding fossil fuel companies and showing a lack of dedication to the transition towards renewable energies.

We welcome the announcement of the Estonian Presidency to pursue a comprehensive approach aligning climate- and energy-related discussions better, placing the Governance Regulation as a mean to ensure consistency. This is the perfect opportunity for the Presidency to show how to put energy efficiency first in the Council debate on the package.

On energy efficiency, the Commission has delivered its pre-Paris promise to increase ambition, but only to a limited degree. This is a step forward, but falls well short of tapping the full energy savings potential and additional benefits if the level of ambition were increased.

For the discussion of the level of ambition for 2030, the Presidency must take into consideration the full body of evidence and the commitment of the European Parliament as co-legislator to increase ambition and strengthen the framework. In the European Parliament’s Implementation report, it calls for a binding 40% energy efficiency target with individual national targets and an improvement of existing measures and the eradication of contradictions and loopholes in order to ensure regulatory predictability and enable investor confidence in the long term.

Now that the Energy Labelling reform is in its final procedural stage, the Presidency needs to ensure that the priorities product groups to which a rescaled label is to be applied before 2020 are seriously progressed by the European Commission and the national experts. These are electronic displays (televisions and monitors), washing machines, dishwashers, washer-driers, refrigerators-freezers and lamps & luminaires. The first features of the new product database to be established at European level should also be discussed, and we encourage the Presidency to consider how to

best use this database as a supporting instrument to enhance a product- and materials-harmonized information system that could promote the circular economy and be a relevant pillar of the eco-innovation strategy of the Presidency.

In the aftermath of the publication of the Communication on the new 2016/2019 ecodesign work plan in November 2016, the re-start of a proper implementation of ecodesign policy was expected. More than a whole semester after this announcement, no clear progress has been made, and long stalled measures, notably measures on commercial refrigeration, motors, fans, as well as measures to define an energy labelling scheme for windows and water taps, have not been released as expected. This situation is inconsistent with the energy efficiency first and the consumer empowerment principles put forward by the European institutions.

That is why we ask the Presidency to urge the Commission to release new ecodesign and energy label implementing measures and reinforce its communication activity on the policy in close collaboration with national authorities.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Lead the Council discussions to deliver an EU target for energy efficiency that will allow and encourage Member States to tap the cost-effective potential for energy savings and reflects the Energy Efficiency First principle, working in particular to mobilise the progressive and less-involved Member States;
- Ensure that the Council is aware of the need to adjust the 2030 climate and energy framework to be in line with the Paris Agreement and the need to achieve emission reductions in line with a path to net zero emissions by 2040 and to source most of the EU’s energy from renewables;
- Take into consideration the full body of evidence on the multiple benefits of energy efficiency and the position of the European Parliament

as co-legislator calling for a binding 40% energy efficiency target with individual national targets;

- Improve the existing measures of the Energy Efficiency Directive and remove contradictions and loopholes in order to ensure regulatory predictability and enable investor confidence in long-term investments;
- Establish a clear milestone for 2030 and a strong long-term vision for a nearly zero energy building stock in 2050 as part of the revision of the Energy Performance of Buildings Directive;
- Improve and harmonize the provisions for Energy Performance Certificates to ensure added value for consumers;
- Finalise the revision of the EU Energy Labelling legislation without delaying the re-scaling of energy labels for televisions, white goods and lamps;
- Support the expedited finalisation of stalled measures notably for displays, commercial refrigeration, taps and shower heads;
- Release public statements supporting the eco-design and labeling policies and invite national delegations to communicate on the benefits of these policies for EU citizens rather than allow anti-EU voices to deliver their misleading messages unchallenged.

2.2 Sustainable Renewable Energy and Bioenergy

The Clean Energy Package of the European Commission published in 2016 includes new and revised policy proposals on how to increase the uptake and production of renewable energy in the EU, namely the recast of the Renewable Energy Directive. After more focus on other parts of the Clean Energy Package in the Council, it is time for the Estonian Presidency to take forward the recast of the Renewable Energy Directive.

In order to live up to the commitments made at the Paris Climate Summit in 2015, the EU should gear up its ambition and set out a path to net zero emissions by 2040. Just as important, the EU needs to ensure that the development of renewable energy does not happen at the cost of the environment, biodiversity and other EU environmental commitments.

There is sufficient potential to have clean and green renewable energy without damaging Europe's habitats and species. However, there are currently insufficient environmental safeguards in the legislation for the adequate deployment of renewable energy. Renewable energy capacity can be built quickly and efficiently with intelligent strategic planning that identifies low ecological risk areas for the different technologies, and safeguards that ensure environmental conservation. Environmental constraints must be factored into strategic planning for renewable energy development to ensure coherence with the Nature Directives and that measures do not contribute to the global biodiversity crisis.

On bioenergy, the Clean Energy package failed to bring forward measures that would ensure that unsustainable bioenergy use is not continued, and that sustainable use is promoted.

From a cross sectoral perspective bioenergy meeting the following principles should be considered to be burnable as part of a renewable energy mix and promoted as part of a future EU renewable energy policy:

- The overall amount of biomass used for energy should not exceed the EU's 'fair share' of global biomass resources based on what the ecosystems can sustainably supply, taking account of the demands from other sectors and the extent to which these demands are sustainable, and should ensure that the total ecological footprint of Europe is not further expanded but rather decreased

Only bioenergy sources that produce very low or even negative net GHG emissions, or significantly reduce net GHG emissions in comparison to the energy sources or system they substitute or other practically available alternatives, should be used, taking into account the direct and indirect carbon emissions from forests and land use as well as from the production life cycle of the bioenergy and the other energy sources or system in question.

- The time frame for evaluating the climate impact of bioenergy should be compatible with emissions scenarios for limiting warming

to well below 2°C and pursuing efforts to limit temperature rises to 1.5°C.

- Energy production should not cause biodiversity degradation or the displacement of food production from agricultural land where this would, or would be likely to, have significant negative impacts, including through indirect land use changes.
- Any increase in forest harvest level for bioenergy purposes should only be allowed where it can be demonstrated, as a necessary but not sufficient condition, that this delivers significant net carbon benefits within relevant timeframes.
- The use of residues does not significantly harm soil quality, nutrients balance or carbon stocks of the soil or cause loss of biodiversity. Use of biomass for energy does not cause significant displacement of other, more efficient uses of biomass, including material uses.
- Waste biomass is used in line with the waste hierarchy as defined by Article 4 in the Waste Framework Directive and does not conflict with other aims of the EU waste policy, in particular moving the society towards a true circular economy.
- Bioenergy used does not drive the growing cultivation of invasive species.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure in particular cross compliance between the Renewable Energy and the Birds & Habitats directives and establish legislation on the governance of the Energy Union that ensures a Strategic Environmental Assessment is carried out within the national climate and energy action planning that Member States are required to produce;
- Bioenergy that does not meet the principles set out above should not be considered to be burnable carbon and should not be supported by public policies. Policies and criteria are needed by 2020 to steer the bioenergy demand towards burnable carbon, and to discourage and/or exclude the 'unburnable biomass carbon' from energy use. Legally binding sustainability criteria should be set to define what kind of bioenergy can be promoted or incentivised, including through being counted towards the EU's 2030 renewable energy targets or eligible for financial support.

3. COMPETITIVENESS COUNCIL

3.1 Updated type approval and market surveillance rules for road vehicles

Each year, air pollution is responsible for over 400,000 premature deaths in the EU, as well as serious illnesses, millions of lost working days, and damage to Europe's natural environment. Despite the existence of air pollution limits for cars, road traffic remains one of the major reasons for poor air quality in the EU and for breaches of air quality standards in the majority of EU Member States. It is now well known that emissions of vehicles are much higher on the road than on paper: even new Euro 6 diesel cars put on the market today emit four to five times their official limit for nitrogen oxides (NO_x) when driven on the road. In total, over 90% of new cars fail to meet their legal NO_x limits.

A major cause of euro standards' failure on the road lies in the weak enforcement of EU rules for approving new vehicles on the market in Member States. The approval of new cars and enforcement of the rules are currently the sole competency of national Type Approval Authorities (TAA) which do not operate as independent regulators, as does the US Environmental Protection Agency (EPA) for instance. TAAs are financed by car manufacturers so it is their business to attract and please those clients. Also, emission and safety tests often take place in carmakers' own laboratories and on "golden vehicles", i.e. vehicles which are not representative of the ones in use. The absence of independent testing and verification of results either at EU level or by independent third parties are the biggest flaws of the current system. It is therefore not surprising that TAAs have not taken any action to prevent ongoing breaches of euro standards, despite being aware of the problem for years.

In 2015, after the Volkswagen (VW) scandal broke, the weaknesses of the EU vehicle testing regime become widely known and it became clear that action was urgently needed to fix the rules. By 2017, it is established that the emissions cheating is much wider than VW, with around 35 million highly polluting diesel cars and vans driving on Europe's roads not in compliance with the Euro standards.

The EEB therefore welcomes the European Commission's proposal for a Regulation on the approval and market surveillance of motor vehicles published last year and the Parliament's amendments adopted in April 2017. In particular, we support provisions that would allow the Commission

to test cars that are on the road and to sanction carmakers, making the tests more independent and rigorous, as well as the introduction of an EU oversight on the work of national testing regulators. More transparency via independent observers on the new type approval forum and an open tests database are also welcomed.

While the Commission and the European Parliament have introduced new reforms and improvements, the Council general approach adopted in May 2017 falls short of ambition and change necessary. EEB, in line with the position of Transport & Environment, believes that the three institutions should without delay adopt ambitious type approval reform in the upcoming trilogue negotiations in second half of 2017.

IN PARTICULAR WE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Support a swift and ambitious agreement by the end of this year that gives the European Commission unrestricted powers to check vehicles already on the road and penalise non-compliant manufacturers.
- Support effective market surveillance. TAAs should be obliged to re-test 20% of new models entering the market each year, taken at random. Tests must be performed in the technical services' independent laboratories.
- Support regular independent reviews of national TAAs and joint audits of technical services. All actors involved in approving vehicles must undergo regular audits and be sanctioned in case serious failures are found.
- Support increased transparency. A single European register with public access to all type approvals issued across the EU should be established. This should include key testing specifications to allow third-party verification of test results.

4. AGRICULTURE COUNCIL

Despite efforts and claims that the Common Agricultural Policy (CAP) had been 'greened', a lot of evidence produced by the EEB together with BirdLife Europe² but also other stakeholders and academics shows that as it stands the CAP is not doing much to improve the sustainability of farming in Europe. The European Commission's latest figures on greening after two years of implementation are just confirming that trend. Facing this failure of the greening and criticism from civil society that the CAP is broken and from the farming community that it is far too complex and in parallel with its simplification efforts of the ongoing CAP, the Commission has launched reflections on the future of this policy with a public consultation that ran from February until May 2017. It will be followed by a conference on the outcomes of the consultation in July as well as a Communication that will be published towards the end of the year or early 2018. It should be followed by legislative proposals on the budget and on the CAP in mid-2018 and negotiations between the Parliament and the Council shortly after.

The consultation on the future EU agriculture policy attracted a higher number of responses than any CAP-related consultation in the past, and a large majority (more than 80%) of those came from concerned individuals responding to an EEB, BirdLife and WWF e-action calling for an overhaul of the CAP post 2020. Not only do these results show the need for an in-depth change of the CAP post 2020 but also the large and increasing interest citizens have in this policy.

Previous Presidencies (Dutch, Slovak and Maltese) initiated several rounds of exchanges on the future of the CAP. These initiatives are certainly welcome, though it is disappointing that until now environmental NGOs have not been invited to the table with Agriculture Ministers to express their views on greening and the future of the policy. Equally the Environment Ministers have not been asked to contribute sufficiently to the discussions on CAP and the environment. This omission is striking given that so many replies to the public consultation come from members of the public concerned about the environment.

In parallel to the work on the future of the CAP, the agriculture members of the European Parliament have tried to water down further the last bits of the greening of the current CAP through the simplification of the financial instruments (Omnibus) and have opposed a necessary correction of an

² http://eeb.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=53&wpfd_file_id=946&token=56e9a272c394b8200dd4d529462b9d34&preview=1
http://eeb.org/wp-admin/admin-ajax.php?juwpfisadmin=false&action=wpfd&task=file.download&wpfd_category_id=53&wpfd_file_id=8041&token=56e9a272c394b8200dd4d529462b9d34&preview=1

absurd and unacceptable aspect of the current CAP: the possibility to spray pesticides in Ecological Focus Areas (EFAs). The ban on the use of pesticides in EFAs finally went through in Plenary as its opponents did not manage to get the required majority for opposing it.

Finally, the first part of 2017 was also critical as regards the climate and energy package. After the Commission published two proposals for Regulations (ESR and LULUCF Regulation) that concern agriculture last year, the Parliament and the Council worked on their respective positions. The Commission's proposals unfortunately contained a possibility for non-CO₂ emissions from farming to be offset by CO₂ removals, albeit within certain limits, and the Parliament maintained that same level of flexibility. As agriculture contributes 10% of total EU GHG emissions, it is important that it plays a larger role in addressing climate change challenges. Emphasis should be put on ensuring that the sector plays its part in a nature-friendly way and that flexibility mechanisms are not used in a way to artificially hide emissions. After the decision from the US President to take the US out of the Paris Agreement, this has become even more of a priority.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Provide platforms for the debate on the future of the CAP (food policy) to make it more inclusive, to reflect better the outcome of the public consultation of the increasing societal interest in the CAP and to provide environmental NGOs with an opportunity to express their concerns and recommendations ahead of the ministers' debates but also the pesticides regulation;
- Following the European Parliament's adoption of its position on the omnibus and in particular the agriculture part, ensure that the negotiations do not result in a further watering down of the existing greening and that they are limited to the scope of the Commission's proposals;
- Ensure that efforts required by the agriculture sector within the climate and energy package are not watered down by providing further flexibility on top of the one proposed by the Commission and that the legislation is a win-win situation for climate, agriculture and environment and biodiversity;

5. FISHERIES COUNCIL

5.1 North SEA Multi-annual Plan

The Multi-Annual Plan (MAP) for the North Sea fisheries is foreseen to be adopted during the Estonian Presidency. The adopted Council General Approach falls short on several issues. Most importantly, it does not set fishing rates below the maximum rate of fishing mortality F_{MSY} . It is important that the objectives of the reformed CFP are not undermined in the new MAP, and the Trialogue needs to address this.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure that the North Sea Multi Annual Plan supports the objectives of the reformed Common Fisheries Policy (CFP) and, in particular, that fishing rates are set below the maximum rate of fishing mortality F_{MSY} in order to provide at least a chance to restore and maintain fish stocks above levels capable of producing the maximum sustainable yield.
- Ensure that management of the North Sea fisheries enables measures to be implemented to minimize and, where possible, eliminate impacts on the wider marine environment, including for the incidental catches of seabirds, marine mammals, and marine reptiles.

5.2 Technical Measures Regulation

As part of the Common Fisheries Policy (CFP) reform, the Commission has proposed a new overarching framework for the protection of the marine environment through technical fishery conservation measures (COM(2016) 134). The proposal foresees a set of objectives, targets to achieve the objectives and baselines as a minimum to achieve the targets. To deviate from the regional baselines, Member States can propose joint recommendation regionally. Therefore this proposal gives the EU a unique opportunity to take a systematic approach to minimise and where possible eliminate the environmental impacts of fisheries. However, the Council General Approach on the revision of the Technical Measures Regulation fails to establish an

EU framework that enables the implementation of rules to manage fisheries. In particular: it fails to set the maximum amount (i.e. quantitative target) that the EU can harvest of juveniles (i.e. species below minimum reference size); deletes all management baselines for incidental catches of seabirds signifying that management measures at regional level (i.e. the regionalisation process) cannot be applied to manage incidental catches of seabirds; weakens the requirements that can be set for applying regional measures on previously prohibited fisheries; and fails to establish an independent scientific assessment (i.e. an assessment by STECF) for fisheries management measures that will be regionally proposed (i.e. joint recommendations).

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure that the final agreed Technical Measures Regulation is a framework for managing fisheries that is set to achieve the objectives of environmental legislation, in particular: the Birds Directive, the Habitats Directive and the Marine Strategy Framework Directive;
- Ensure that the Technical Measures Regulation establishes baseline management measures in all sea basins for all its objectives, including to: 1) restore and maintain populations of fish stocks above biomass levels capable of producing Maximum Sustainable Yield (MSY); 2) avoid or at least minimise unwanted catches including through tactical selectivity measures; and 3) minimise and, where possible, eliminate the impact of fishing on the ecosystem, in particular incidental catches of seabirds, marine mammals, and sea turtles;
- Ensure that the Technical Measures Regulation does not weaken requirements that can be set for applying regional measures on previously prohibited fisheries, including any new innovative gear;
- Ensure that the Technical Measures Regulation is rooted in best available science and that any process to delineate from baseline management measures undergoes an independent scientific assessment (i.e. an assessment by STECF).

5.3 Fishing opportunities 2018

A key objective of the Common Fisheries Policy (CFP) is to restore and maintain populations of fish stocks above biomass levels capable of producing Maximum Sustainable Yield (MSY). This objective is in line with the EU commitments made in Johannesburg (2002),³ and Rio (2012)⁴ and contributes towards achieving Good Environmental Status (GES) for European seas under the Marine Strategy Framework Directive (MSFD).⁵ Moreover it was reaffirmed in September 2015 in the UN Sustainable Development Goals.⁶

In its proposals for fixing fishing opportunities in recent years, the Commission states: “The ultimate objective is to bring and maintain the stocks to levels that can deliver MSY”. The Commission disappointingly falls short of the CFP objective to restore and maintain stocks *above* biomass levels that can deliver MSY. This failure to adhere to one of the fundamental objectives of the CFP, as set out by the co-legislators during the reform, calls into question the Commission’s intent to fully implement the CFP.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure that the fishing opportunities for 2018 are set below the exploitation rate that corresponds with Fmsy in order to achieve the main CFP objective to restore and maintain stocks above biomass levels that can deliver Maximum Sustainable Yield.

³ Johannesburg Declaration, WSSD, 2002.

⁴ Rio+20 Outcome document. The future we want. United Nations General Assembly A/RES/66/288

⁵ Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).

⁶ UN Sustainable Development Goals: Goal 14 available at <http://www.un.org/sustainabledevelopment/oceans/>

6. ENVIRONMENT COUNCIL

6.1 DEFEND AND DEVELOP EU ENVIRONMENTAL POLICIES

The outcome of the UK Referendum, coupled with the US elections which brought a climate denier into power, has brought a new urgency to discussions on the future direction of the European Union. These started off with an informal summit in September 2016 in Bratislava and continued with two further summits during the Maltese Presidency in Valletta and in Rome, and will lead to the adoption of Council Conclusions on the future of the EU27 in December 2017. The adoption of Council Conclusions in the June 2017 General Affairs Council on an EU Agenda 2030 to implement the SDGs was an important step in the right direction but the connection between the 2030 Agenda and Future of Europe discussions, namely that the former should provide the overarching framework for the latter, has not been sufficiently recognised.

It is important for Environment Ministers to be involved in the process leading up to the adoption of the December Council Conclusions. Just as important as getting these Council Conclusions right will be to ensure the political continuity in the EU's environmental agenda by initiating an early discussion on a review of the 7th Environmental Action Programme (EAP) and the timely preparation of an 8th EAP.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure timely input by the Environment Ministers to the December Council conclusions on the future of the EU27 and initiate a debate on how to ensure political continuity in the EU's environmental agenda.

6.2 Developing a new EU Sustainable Development Strategy

In sections 1.1 and 1.2, we put forward proposals for the development of an EU SDS as a regional response to the global 2030 ASD and stressed the need to ensure that this agenda is adequately

reflected in the debate on the Future of Europe with 27 Member States. The EEB considers it essential that the Environment Council plays an active role in debates with the Commission on these issues and in the evaluation of national reform programmes as well as in discussions regarding the budget stabilisation programme. We also believe that the Environment Council should take a lead in promoting the establishment of National Sustainable Development Councils, as already agreed in the Johannesburg Plan of Implementation (Rio+10).

We welcome the efforts of the Environment Council over the past couple of years to green the Semester. Unfortunately the Commission flagrantly disregarded these conclusions in its recent country-specific recommendations. The Estonian Presidency should nonetheless keep this issue on the agenda and maintain the pressure on the Commission to use the Semester as a tool to promote more sustainable economic development.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Highlight the Environment Council's support for a new EU Sustainable Development Strategy as the overarching strategic framework guiding Europe's future, combined with a concrete plan of actions, and ensure that the Environment Council's view plays a central role in the 'Future of Europe' debate;
- Ensure that the new Multi-Stakeholder Platform on sustainable development allows for meaningful multi-sectoral civil society participation in the follow up and implementation of the new SDS and that its membership is equally balanced between the three dimensions of sustainable development – environmental, social and economic;
- Ensure that the European Semester remains on the agenda of the Environment Council with a view to positively influencing the preparation of the next Annual Growth Survey.

6.3 TOWARDS A STRONGER CLIMATE POLICY

The 2016 COP in Marrakech has fully confirmed the importance of the achievements of the Paris Agreement. The pace of international action to ratify the Paris Agreement needs to be matched with the objectives of the Paris Agreement. Only if the EU successfully demonstrates how to deliver on the commitments and promises made will Europe be able to hold international partners responsible for their commitments and promises. This requires a comprehensive global transformation with deep emission cuts enabling a zero carbon society by 2050, or shortly thereafter, in line with the [Earth Statement](#). If the EU wants to be a global leader in this endeavour, EU net emissions should reach zero by 2040.

Crucial legislative files on climate change that should be closed during the Estonian Presidency are the Effort Sharing Regulation and the Regulation on emissions and removals in land use, land use change and forestry (LULUCF) which are core pieces of legislation to determine the EU's true level of ambition in climate change mitigation. While the proposals supposedly aim for 40% GHG reductions by 2030 compared to 1990, which is already inadequate, numerous loopholes undermining the actual reductions in emissions as they affect the atmosphere threaten to lower the real level of ambition.

Having the shortcoming of the current 2030 target in mind, the Estonian Presidency needs to consider the Commission proposal as the minimum level of ambition and continue exploring options to increase ambition. As a minimum the Estonian Presidency needs to ensure consistency between these proposals and the ETS, and safeguard the environmental integrity of the 2030 greenhouse gas reduction target by closing the loopholes present in the Commission proposal.

It should also initiate a debate on the need to reform the Energy Taxation Directive, implement earlier decisions on phasing out environmentally harmful subsidies, and develop mechanisms allowing like-minded Member States or the Union itself to carry out an environmental tax reform, including amending rules for state aid preventing implementation of the polluter pays principle.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Recognise that the EU's climate policy commitments prior to Paris, being based on the goal of limiting warming to 2°C, now need significantly strengthening in the light of the new commitment to pursue efforts to limit warming to 1.5°C requiring also the strengthening the capacity of ecosystems like forests to store carbon;
- Continue to explore options to increase ambition to be consistent with climate science and the Paris Agreement by including a trajectory for the EU to achieve net zero emissions by 2040 supported by, at a minimum, 45% reductions in the non-traded sectors by 2030;
- Safeguard the environmental integrity of the Commission proposal for the Effort Sharing Regulation through the following measures:
 - * Start counting from the right point, either on the basis of the actual 2020 emissions, or the 2020 targets, whichever is lower;
 - * Close loopholes that undermine the low-carbon transition and bring the risk of not achieving the 2030 target in the ESR sectors as follows:
 - ◇ Reject the use of forestry offsets that undermine climate actions in other sectors and ensure that all sectors, including the agriculture sector, contribute their fair share;
 - ◇ Promote carbon removals from forests in addition to, not instead of, the efforts to cut emissions;
 - ◇ Do not allow surplus ETS allowances to stall the transition of the non-traded sectors;
 - * Include five-yearly review and ratchet mechanisms;
 - * Strengthen compliance by continuing annual compliance checks;
- Raise ambition in the LULUCF sector by:
 - * going beyond the 'no-debit' rule so that the EU at least maintains or actively increases its sinks in

line with the implications of the pathway towards limiting global warming to 1.5°C;

- * Support robust accounting rules for forests that are transparent, simple, comparable and are based on historic data and management intensity before the year 2009;
 - * Include safeguards to ensure that all LULUCF activities, especially afforestation, have a positive impact on nature and biodiversity;
 - * Make wetlands a mandatory accounting category for all Member States, ban their exploitation and incentivise their restoration and conservation, taking into account that peatlands and wetlands have high conservation value and are large carbon stores;
- Fix the Emissions Trading System by:
 - * Supporting a higher Linear Reduction Factor (LRF) of at least 2.8% and a lower starting point for Phase IV that is set at the average 2017-2019 emissions;
 - * The Modernization Fund shall be used to support investments in the use of electricity from renewable sources and the improvement of energy efficiency and ensure that all projects are fully in line with the long-term decarbonisation objective under the guidance of the European Investment Bank (EIB);
 - * Support the Parliament proposal of a 450gCO₂/kWh eligibility criterion to prevent any ETS funding from going into coal infrastructure;
 - * Establish a correction system that adjusts the EU-wide auctioning of allowances by discounting national permanent actions (i.e. cancellation);
 - * Improve the Market Stability Reserve (MSR) by increasing the feeding rate;
 - * Introduce a Just Transition Fund after 2020 as proposed by the Parliament.

6.4 PROTECT THE PUBLIC FROM HAZARDOUS CHEMICALS

The third priority objective of the EU's 7EAP aims "to safeguard the Union's citizens from environment-related pressures and risks to health and well-being" by developing by 2018 a strategy for a non-toxic environment that is conducive to innovation and the development of sustainable substitutes, including non-chemical solutions, building on horizontal measures that were to be undertaken by 2015 to ensure:

- the safety of nanomaterials and materials with similar properties;
- the minimisation of exposure to endocrine disruptors;
- appropriate regulatory approaches to address the combination effects of chemicals and;
- the minimisation of exposure to chemicals in products, including, inter alia, imported products, with a view to promoting non-toxic material cycles and reducing indoor exposure to harmful substances.

Unfortunately, the European Commission has invested very little resources in this important goal and already missed the 2015 deadline.

The EU chemicals legislation, including REACH, has great potential to provide high levels of protection and achieve relevant aspects of the Sustainable Developments Goals and a non-toxic environment goal; however its success depends largely on how well it is implemented.

Despite the entry into force of REACH, there are still important information gaps on the chemicals in use in the EU - in particular on their properties, uses, exposure and monitoring - and a large number of registration dossiers still have substantial deficiencies. Another key information gap is the lack of information on the presence of hazardous chemicals in products, waste and recycled materials. Communication along the supply chain is very poor, and notification on substances of very high concern (SVHCs) to the European Chemicals Agency (ECHA) is almost non-existent.

The European Commission, in line with its ambition to make the substitution of SVHCs a reality, committed in 2010 to place, by 2020, all relevant SVHCs on the REACH candidate list. However, the pace of inclusion is slowing down every year from 67 SVHCs added in 2012 to only one in 2016. On the other hand, the main tools of REACH to phase out the substances of most concern, namely the restriction and authorisation

processes are not effective enough and restrictions are still too burdensome for authorities while authorisations are too easily granted to companies placing on the market substances of very high concern.

Action without delay is critical with regard to the information gap on (hazardous) chemicals in the market, the proper application of EU environmental policy principles such as the precautionary principle, the effective phase out of the most concerning chemicals and promotion of substitution.

The European Commission is also delaying its work on the endocrine disrupting chemicals' (EDCs) package (strategy, criteria and REACH review). After three years delay, the Commission's revised proposal on EDC criteria presented by the end of 2016 fails to protect health and environment. The burden of proof to identify EDCs is still too high, it includes an exemption that allows widespread use of endocrine disrupting pesticides, lacks multiple categories to rank chemicals according to scientific evidence and discriminates against independent studies. It is key that work on this package is accelerated, instead of being further delayed, and that its outcome will support the 7EAP's goals of minimising exposure to EDCs by 2018 and protecting not only the environment but also the health and quality of life of Europe's citizens, especially the most vulnerable ones, such as women and children.

Since commercial applications began in the early 2000s, nanotechnology has expanded exponentially in different industrial sectors such as pharmaceuticals, electronics, food, cosmetics and chemicals - between 500 and 3,000 different nanomaterials (NMs) are now estimated to be on the European market. The number of citizens exposed to nanomaterials has therefore risen sharply in recent years, raising health and environmental concerns. However, very little is still known about the NMs used and produced in the EU. In fact, nanomaterials are virtually unregulated in Europe. In spite of calls for almost 10 years from the European Parliament and a substantial number of Member States, together with environmental, worker and consumer organisations for the public availability of information about the nature, quantity and uses of nanomaterials, and the products containing them, the Commission has persistently delayed any action with regard to NMs, including amendment of the REACH Regulation annexes. Moreover, the Commission's proposal to replace the highly demanded EU wide nano register by a mere observatory that will **only compile and repackage** existing information, will only waste time and resources from the European public. No transparency on the use of nanomaterials in the EU is foreseen in the medium term.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Encourage the Commission to step up its work towards achieving the 7EAP's goals in relation to chemicals by developing new EU tools to achieve the goals of a non-toxic environment and non-toxic material cycles. This means, for example, closing the knowledge gap on chemicals in products, waste and recycled materials, rejecting toxic recycling in the circular economy package and ensuring delivering concrete measures to promote the substitution of hazardous chemicals by safer solutions such as inter-authorities' cooperation, capacity building and support to the key actors and creating economic incentives.
- Ensure that the Commission's criteria to identify EDCs will be protective enough so that it catches all EDCs to which the public and the environment are exposed. To this end, the Commission should develop scientific and horizontal criteria for the identification of EDCs that are consistent with the EU identification system of CMRs, and ensure that classification in the case of uncertainty is based on the precautionary principle.
- Call on the Commission, the European Chemicals Agency (ECHA) and Member States to address the obstacles in the implementation of the REACH regulation, and in particular to develop effective measures to ensure the compliance, quality and reliability of the registration information; ensure proper application, implementation and enforcement of REACH article 33 (the right to know on SVHCs); and ensure effective restriction and phase out of substances of most concern through restriction and authorisation processes and creating a comprehensive Candidate List;
- Encourage the development of a nanomaterials framework regulation to govern human health and environmental protection for

all potential uses of nanomaterials in a harmonised way and to call on the European Commission to develop proposals to ensure that all nano-containing products placed on the market (after having undergone assessment procedures) are registered for identification and traceability purposes and included in an EU-wide public inventory;

- Urge the Commission to stop delaying action on hazardous chemicals, for example in relation to its obligations referred in REACH article 138 and cosmetics Regulation, the assessment of chemical mixtures, the horizontal measures for non toxic environment or the REACH annexes on nanomaterials among others.

6.5 GLOBAL MERCURY TREATY AND EU STRATEGY

Mercury and its compounds are highly toxic, can damage the central nervous system and are particularly harmful to foetal development. Mercury bioaccumulates up through the food chain, especially in certain predatory fish, and presents a human exposure risk. This neurotoxin is widely diffused through the atmosphere and has contaminated global food supplies at levels which pose a major risk to human health, wildlife and the environment.

At the EU level, a Regulation for an EU mercury export ban and the storage of surplus mercury (mainly from decommissioned chlor-alkali plants) was adopted in October 2008. In April 2011, a sales ban on mercury fever thermometers and on other mercury-containing measuring devices for consumers entered into force. Further restrictions on these devices for industrial and professional uses have been applied since April 2014. In November 2013, the Council approved the revised Batteries Directive, which included a ban on cadmium from cordless power tools by the end of 2016 and on mercury from button cell batteries by 1 October 2015, although this review was initially intended only for cadmium in cordless power tools.

In May 2017 the EU adopted the revised Regulation on Mercury, putting in place additional provisions in view of complying with the requirements of the Minamata Convention (see below). The

EEB welcomed the text since it improves the Commission's initial proposal, strengthens the EU mercury regulation and on a number of issues goes beyond the requirements of the Minamata Convention: the regulation is based only on article 192 of the TFEU, allowing Member States to adopt more stringent measures; it widens the scope of the export ban including three additional compounds; it aligns partly the export of mercury added products with those allowed in the EU market; phases out the use of mercury in industry, though allowing generous time to a few industries for the switch; improves the management of mercury waste and demands that liquid mercury waste is converted to a solid form before its final disposal in underground salt mines or in dedicated above ground facilities (with an additional solidification step). Mercury use in artisanal and small scale gold-mining will be prohibited. Reporting obligations have also been generally improved also concerning the traceability of mercury waste. The decision to end dental amalgam use in children under 15 years and pregnant and breastfeeding women is a positive step in the right direction, but it is disappointing that a general phase out was not agreed. The failure to end the export of all mercury-added products already prohibited in the EU and mercury use in some processes sooner rather than later also suggests that financial interests still prevailed over health and nature protection for certain issues.

At the global level, the Minamata Treaty on Mercury had already been signed by 128 countries and ratified by 57 by mid June 2017.

The treaty is a mixture of mandatory and voluntary elements. While an important step in the right direction, in the EEB's view the treaty is not far-reaching enough, nor will it move fast enough to address the spiralling human health risks from mercury exposure. For instance, new facilities will not be required to have mercury pollution controls for five years after the treaty enters into force, with existing facilities given 10 years before they need to introduce control measures. Yet there are bright spots in the treaty. These include provisions to reduce trade in mercury, prohibit the primary mining of mercury, and phase out mercury in most products such as thermometers, measuring devices and batteries. Some of these steps were unthinkable just a few years ago. Now, alternatives exist for most products containing mercury. The treaty sends the right market signal and will eventually lead to less exposure worldwide.

The Treaty will enter into force on 16 August 2017. The first Conference of the Parties will take place the third week of September 2017, in Geneva. It is now important that the Presidency takes every measure to ensure that the remaining Member States rapidly ratify the Minamata Convention.

These and other developments have reduced the use of mercury in Europe as well as the supply to the global market, thereby strengthening the position of the EU vis-a-vis the international debate. On the other hand, delays in ratification and Convention implementation have been having an adverse effect on the global mercury supply and trade situation. Primary mercury mining has increased in Mexico, total mercury production increased in China, and mercury export hot spots have shifted to Asia, closer to countries carrying out artisanal and small-scale gold mining.

With the Mercury Strategy as its flagship, the EU has so far played an important role, pressing for global legally binding solutions to achieve adequate control and reduce the use, supply and demand of mercury. It is therefore imperative that the EU continues to implement the EU Strategy and the Minamata Convention towards reducing mercury supply, use, emissions and exposure.

With ongoing international action being a top priority for the EU in the coming years, the most effective way that the EU can participate in the global discussions is by continuing its leadership concerning mercury policies and proceeding rapidly with the ratification and effective and meaningful implementation of the treaty requirements. The EU should be looking into possibilities for providing assistance in all forms to help developing countries and regions rapidly ratify the treaty and focusing on work that leads to direct reductions in mercury use and emissions in those countries.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure that the North Sea Multi Annual Plan supports the objectives of the reformed Common Fisheries Policy (CFP) and, in particular, that fishing rates are set below the maximum rate of fishing mortality F_{msy} in order to provide at least a chance to restore and maintain fish stocks above levels capable of producing the maximum sustainable yield.
- Ensure that management of the North Sea fisheries enables measures to be implemented to minimize and, where possible, eliminate impacts on the wider marine environment, including for the incidental catches of seabirds, marine mammals, and marine reptiles.

6.6 CIRCULAR ECONOMY AND WASTE POLICY

The circular economy (CE) package that was published on 2 December 2015 contains a series of policy proposals and other initiatives that are meant to deliver on the political objectives set out in the Resource Efficiency Flagship Initiative and Roadmap as well as in the EU's 7th Environmental Action Programme until 2020. It also aims at creating a sound regulatory and economic framework able to boost investments and job creation linked to material-efficient business models and activities. The proper implementation of this action plan should be a priority for Europe as it has the potential to unleash both economic and environmental benefits as documented in numerous reports on CE by European, national institutions and independent consultancy groups and think tanks. Amongst all the actions referred to in this action plan, the Presidency should ensure that the following actions will be given proper attention:

- Finalisation of the legal revision of the waste policy, with clear prevention targets and measures, ambitious recycling targets, harmonized requirements for extended producer responsibility (EPR) schemes, harmonized methodologies to assess food waste and calculate recycling achievements, and the revision of ecodesign policy and essential requirements to leverage waste avoidance and minimisation in products and packaging placed on the market;
- Better enforcement of existing guarantees on tangible products, accompanied by a reflection on improvements concerning extending minimum legal warranty periods to better reflect the expected life time of goods;
- Development of quality standards for secondary raw materials, notably plastics;
- Setting of specific actions to reduce marine litter and develop a common methodology and indicators to measure food waste;
- Development of core indicators for the assessment of the lifecycle environmental performance of a building,
- Definition of an ambitious plastics strategy, drastically reducing leakages in the environment and plastic related pollution, enhancing plastic materials prevention and recycling and prioritizing bio-based applications substituting for fossil fuels according to the principles of cascading of use and circular economy to avoid an excessive pressure on biomass; and
- Examination options and actions for a more coherent policy framework of the different

strands of work of EU product policy in their contribution to the CE.

All of these actions could fit well within the eco-innovation strategy announced by the Estonian Presidency.

As part of the definition of a monitoring framework for the CE, the EEB believes it is crucial to set at least a European resource productivity target for 2030 as a headline figure able to orient investments and the development of eventual policies at national and sector levels. With material costs representing almost 60% of total EU manufacturing costs and only 18.5% related to labour costs, a resource productivity target for 2030 will no doubt result in significant economic benefits. Whether or not it will also deliver environmental benefits through an absolute decoupling between material consumption and growth is however less certain. The EEB believes that such an economy-wide target needs to be based on Raw Material Consumption indicator, if not a Total Material Consumption indicator, to also reflect the impacts of our consumption outside the European boundaries. It also needs to be integrated in a revised Europe 2020 strategy as well as in the EU framework for the implementation of the UN Sustainable Development Goals until 2030. In addition, a set of quantitative indicators such as total material consumption, CO₂, water and land use footprints should be included in the monitoring framework of the circular economy that the Commission has now announced for 2017.

The EEB also calls for unleashing the potential of the EU's existing product policy to help reduce Europe's overconsumption of natural resources, thereby supporting waste prevention and recycling practices. In particular, the Ecodesign Directive has been highly effective in putting new products on the market that deliver the same services while consuming less energy and causing fewer carbon emissions. It is essential that this success is now replicated so that products will become more durable, and easy to repair and to recycle including through the elimination of hazardous chemicals. This is all the more a momentum as the European Commission made clear calls in that direction through its Communication on the Ecodesign work plan 2016/2019 in November 2016 and the European Environmental Agency released a report 'Circular by design' (June 2017) calling for a proper integration of eco-designed products into a broad supporting circular eco-system. The setting up of a European product database as part of the reform of the Energy Labelling framework law should be considered a stepping stone in the establishment of a wider system to collect harmonized information on products and materials placed on the European market, enabling better value chain integration, a better circulation of data on products and materials, and potentially simplifying reporting for companies.

It should also be considered to extend such an approach beyond energy-related products. The Presidency, through its eco-innovation strategy could evaluate for which product groups, other than energy-related ones, it would be possible to take better into account resource efficiency at the design stage in future regulatory and economic measures. This could be implemented through calling for an extension of the scope of the current Ecodesign Directive or by fostering a comparable product policy framework for non-energy-related products, helping to implement a more coherent product policy framework. In that perspective, an alignment of product policy instruments according to a set of common criteria and performance scales could be promoted. Eco-design requirements, extended producer responsibility schemes, green public procurement and Ecolabel could all be sharing common performance criteria differentiating themselves through a scale of performances based on these criteria. Relevant criteria would be defined per product group or economic sector. Such an approach could be associated with binding targets for green public procurement and an enhanced promotion and recognition of the Ecolabel as a benchmark of excellence pulling up the whole market and acting as mainstreaming product innovation.

As regards waste policy, discussions within the Council should lead to support for waste prevention and recycling targets, going beyond municipal solid waste. New prevention and recycling targets for commercial and industrial waste should be set as they exist for municipal solid waste. In that perspective of designing waste out of our economic system and fostering the use of recycled materials prior to virgin resources, it is particularly important to address the risk of overcapacity in incineration. If not, that could freeze progress towards prevention and recycling, while creating a detrimental competition among existing waste to energy installations at European level. The use of existing facilities should be prioritised over building new ones that would compete with existing non-saturated ones, lead to a race towards the lowest possible prices and eventually make it harder to meet the highest standards for emission reductions and monitoring.

As regards ecodesign policy, the Presidency should urge again the Commission to deliver as promised and release long stalled implementing measures on electronic displays, white goods, lamps, commercial refrigeration, motors, fans, windows, taps and shower heads with relevant provisions on resource conservation.

Avoiding re-injecting hazardous substances into the economy through recycling is another issue which should be addressed during the discussion on the interfaces between chemicals, product and

waste policies, as planned in the CE action plan. The recycling of materials containing hazardous substances seems rather marginal compared to the huge potential for recycling of non-hazardous products. The difficulty of anticipating multiple uses of materials in a circular economy also creates more risks of further untraceable spreading of hazardous substances. As a minimum an information scheme would need to be developed to make sure that all materials (whether they are recycled or not) containing hazardous materials can be easily identified and sorted, and not endlessly re-injected into the market economy.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Make sure that its strategy for eco-innovation encompasses key actions identified in the CE action plans, and does not lead to a dilution of the efforts by the EU institutions;
- Unleash further the potential benefits of product policy to deliver on the circular economy by pressing for proper implementation of related actions in the CE action plan, by calling for a consistent set of criteria among the different product policy instruments differentiating along a scale of performances, and by promoting the new product database for energy labelled products as a baseline for a wider harmonized product and materials information system;
- Finalise the revision of EU waste policy, encompassing the setting of quantitative and qualitative waste prevention targets and measures with associated methodologies before 2020, the alignment with the preparation for reuse and recycling targets set by the the Parliament, the harmonized minimum requirements for establishing extended producer responsibility schemes, the setting of targets for commercial and industrial waste and the revision of ecodesign policy and essential packaging requirements to leverage waste minimization through product and material design;
- Reduce the legislative loophole in the obligation for separate collection of different waste streams by introducing an obligation to

thoroughly justify in case separate collection is not going to take place;

- Secure access of recognized preparation for reuse operators (i.e. charities and repair actors) to separately collected waste streams and oblige authorities to set reporting rules;
- Specify in more detail what backfilling operations may encompass, excluding hazardous waste, and set a specific recycling rate for construction and demolition waste distinct from backfilling;
- Limit the landfill rate and prohibit incineration of untreated waste, as is the case already for landfilling;
- Pressure the Commission to release draft ecodesign and energy labeling measures notably on electronic displays, white goods, commercial refrigeration, motors, fans, taps and shower heads, presenting clear potentials for resource conservation;
- Reinforce the proper monitoring and treatment of hazardous waste, which should be prevented from being re-injected in the economy and dealt with by specific installations which are not conventional municipal solid waste incineration plants or conventional landfills;
- Push for more mandatory targets on green public procurement at national level and create economic incentives for uptake of Ecolabelled products;
- Ensure that the revision of Directive 2000/59/EC on Port Reception Facilities includes an EU-wide harmonised fee system to de-incentivize waste dumping by ships;
- Set a headline objective to monitor progress towards a resource-efficient circular economy, and encourage the use of European-wide indicators such as total material consumption, water and CO2 footprinting, and land use.

6.7 BIODIVERSITY POLICY

The EU Biodiversity Strategy is a landmark in European conservation and commits the European Commission, the European Parliament and the EU Member States to take action on all key drivers of biodiversity loss. In 2015 the Commission issued its assessment of the EU's progress in implementing the Strategy. In its mid-term review of the EU Biodiversity Strategy to 2020, the European Commission found that with the exception of one target we are not on track to achieve the headline target of the Strategy. A significant stepping up of progress is needed with regard to all targets. These conclusions are underpinned by the EU State of the Environment report which 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.

From 2014 to 2016, the Commission carried out an extensive evaluation of the Birds and Habitats Directives as part of the Fitness check process. The study supporting the Fitness Check of the Nature Directives came to the conclusion that the legislation is still fit for purpose and delivers results when fully implemented and enforced. This was confirmed by the College of Commissioners in late 2016. To follow up on the findings of the Fitness Check the Commission adopted in April 2017 an *EU Action Plan for Nature, People and the Economy* which comprises 15 actions to support the full implementation of the Nature Directives to be carried out between now and 2019.

In addition to fully implementing the Nature Directives, the Commission's Mid-Term Review of the Biodiversity Strategy and findings of the Fitness Check underline that some sectoral policies need to change to meet the Strategy's headline target to halt the loss of biodiversity and the degradation of ecosystem services. The longer that the detrimental impacts of such 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 national and EU policies that lead to detrimental impacts on biodiversity.

At EU level, looking into how to address adverse impacts from the new Common Agricultural Policy, Common Fisheries Policy and energy policy is critical since the frameworks currently in place for these sectors continue to be major sources of pressures on the EU's terrestrial, freshwater and marine biodiversity. More specifically:

- It is becoming increasingly clear that the CAP greening has failed and that under the current CAP, farming intensification continues at the expense of biodiversity. A thorough assessment of the impacts of the new CAP on biodiversity is needed as a first necessary step towards 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. It is of crucial importance to break with such bad habits and more generally to take an ecosystem-based approach to fisheries management in order to minimise impacts on the natural environment and in particular ecosystems in marine protected areas.
- 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 the EU's regional policy, while there are positive examples of helpful projects in the area of green infrastructure and nature-based solutions, overall synergies remain largely under-exploited and trade-offs at the expense of biodiversity are still ubiquitous.

A true greening of the EU budget therefore still needs to take place in order to ensure that 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 considered responsible for 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 and more effective solutions to channel sufficient levels of financing found.

Furthermore, a full and ambitious implementation of the EU environmental *acquis* could make an important contribution to reducing existing pressures on biodiversity. Especially the appropriate use of environmental impact assessment at project, programme and strategic levels as well as an ambitious approach to implementing policies such as EU's Water Framework Directive, the Marine Strategy Framework Directive and the National Emission Ceilings Directive could yield important positive results.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Use the EU Action Plan for Nature, People and the Economy as an opportunity for scaling up efforts towards full and effective implementation of the Directives and related policies, and take all measures needed to keep up momentum throughout and beyond its Presidency;
- Support any additional fast-track measures proposed by the Commission to meet the Biodiversity Strategy's headline target, such as an EU initiative on pollinators;
- Engage in CAP reform discussions keeping in mind the necessity to align the future CAP with nature conservation objectives; and push for securing predictable, adequate, regular and targeted EU financing for biodiversity and Natura 2000 in the next multiannual financial framework (MFF);
- Ensure commitments made by the EU at CBD-COP13 in Mexico, notably in the Cancun Declaration on mainstreaming biodiversity, translate into a renewed effort and concrete action to meet the Aichi biodiversity targets domestically, in particular through further action to mainstream biodiversity in other sectors, and in particular agriculture, and on removing subsidies and incentives harmful to biodiversity by 2020 as committed under the CBD since 2010.

6.8 SOIL POLICY

Soil provides an array of services, such as water purification, waste decomposition and climate mitigation and as such it should be regarded as a natural resource of strategic importance for the EU. Yet quantitative and qualitative degradation of soil in Europe is accelerating and threatens greatly our food security and our ability to tackle climate change and prevent the loss of biodiversity. It is critical therefore that progress on adopting a binding legal framework at the EU level affording soil the deserved level of protection is achieved

swiftly. Although the Commission has withdrawn the 2006 Soil Framework Directive proposal, the EU still has a commitment through the 7EAP to 'reflect as soon as possible on how soil quality issues could be addressed using a targeted and proportionate risk-based approach within a binding legal framework'.⁷ The UN Sustainable Development Agenda also calls for protection of soil and a growing number of civil organizations united in a People4Soil Initiative, including the EEB, are calling for the EU to start protecting its soils.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Follow up on the 7EAP commitment in line with the UN Sustainable Development Agenda and initiate an extensive discussion on a political level on how to address soil degradation issues in a binding legal framework at the EU level and ensure that a clear message on the need to propose such a framework as soon as possible is sent to the Commission.

6.9 APPLICATION OF THE AARHUS CONVENTION TO THE EU INSTITUTIONS

When the European Union became a Party to the Aarhus Convention, it adopted Regulation 1367/2006 on the application of the provisions of the Aarhus Convention to the EU institutions (known as the Aarhus Regulation). From an early stage, NGOs had concerns about whether the Regulation was fully in line with the Convention, and some of these concerns were vindicated in June 2012 by two rulings of the EU General Court which found, in two similar cases, that the limitation of the type of measures which could be challenged under the access to justice provisions to 'measure[s] of individual scope' was not compatible with the Convention. The Advocate General reached a similar conclusion on this point. However, in early January 2015, the General Court rulings were overturned by the European Court of Justice (ECJ) following appeals by the Commission, Council and Parliament. The ECJ considered that the relevant provision of the Aarhus Convention (Article 9(3)) was not sufficiently precise or unconditional to preclude the limitation to

⁷ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', Annex, paragraph 25.

'measures of individual scope'.

The ECJ judgment was highly damaging to the democratic image and credentials of the EU. The ruling suggests that only a very limited range of decisions may be challenged under the Regulation, e.g. decisions on permits for placing on the market of genetically modified organisms and chemical products under the REACH regulation on chemicals. By severely restricting access by NGOs and the public to the EU courts, the ruling reinforced the already widespread impression of EU institutions which are insufficiently accountable to the public. This is particularly damaging at a time when many Europeans are lacking in confidence in the EU institutions, as reflected in the outcome of the UK referendum on EU membership. It prolongs the manifestly unfair situation whereby private companies whose activities have a destructive impact on the environment have easy access to the EU courts to defend their commercial interests whereas public interest organisations have very limited access to argue on behalf of the environment and the wider public interest.

The very restricted conditions under which NGOs can have access to justice at the level of the EU institutions was the subject of a complaint ('communication') to the Aarhus Convention Compliance Committee by the NGO ClientEarth as long ago as 2008. The surprising and controversial ECJ ruling of January 2015 enabled the Committee to bring its longstanding deliberations on the 2008 case to a conclusion: on 17 March 2017, having taken into account the comments of the parties concerned on draft findings issued in June 2016, the Committee concluded that the EU is not in compliance with the Convention.

It is important to emphasise that the decision by the EU institutions (through the wording of the Aarhus Regulation) to limit the types of acts that may be challenged to 'measures of individual scope' was a political decision, not based on any legal imperative. There was nothing in the Aarhus Convention that required this limitation; rather it reflected the reluctance of the EU institutions to render their decisions open to public scrutiny and challenge. Now, the Committee's findings confirm that there is also nothing in the Convention that permits such a limitation, and that by including it in the Aarhus Regulation the EU is in breach of international law.

The Committee's findings and recommendations will now be submitted for endorsement by the Meeting of the Parties (MoP) at its sixth session which will take place in Montenegro in September 2017. Since the establishment of the compliance mechanism in 2002, the main findings of the Committee have always been endorsed by the MoP, with the support of the EU and its Member States. It is of crucial importance that the EU and its Member States

support the endorsement of the findings of the Committee in Montenegro and are already able to report to the other Parties on the steps that are planned to rectify the situation. Failure to support the Committee's findings simply because the EU is the subject of those findings would set a dangerous precedent and send a stark message to its citizens, other non-EU Parties to the Convention and the rest of the world that the EU has a highly selective approach when it comes to the rule of law.

Now that the Aarhus Convention Compliance Committee has reached a finding of non-compliance, it would be important for the EU to move swiftly to correct the situation by starting the process of revising the Aarhus Regulation forthwith. Strengthening the democratic accountability of the EU institutions, including its judicial component, is a crucial element in maintaining public confidence in the EU. Even before the Compliance Committee's finding of non-compliance, there was a strong case for the EU to adopt a set of strengthening amendments to the Aarhus Regulation, not only to remove the limitation of the administrative acts that may be challenged to 'measures of individual scope under environmental law' but also to address problems in relation to the information provisions of the Aarhus Regulation. These could have been corrected in the recast of the Access to Documents Regulation (Regulation 1049/2001, which is cross-referred to in Regulation 1367/2006) but are now unlikely to be.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure that the EU and its Member States play a progressive and constructive role at the forthcoming sessions of the Meetings of the Parties to the Aarhus Convention and its Protocol (Montenegro, 11-15 September), not least by endorsing the findings of the Convention's Compliance Committee, including the finding of non-compliance by the EU;
- Lead the Council in calling on the Commission to prepare a proposal for the revision of Regulation 1367/2006 to remove the limitation of the administrative acts that may be challenged to 'measures of individual scope under environmental law' and address the potential incompatibility of the information provisions of the Regulation with the Aarhus Convention.

6.10 RE-LAUNCH DISCUSSIONS ON AN ACCESS TO JUSTICE DIRECTIVE

On 28 April 2017, the Commission issued a Communication setting out interpretative guidance on access to justice in environmental matters aimed at helping Member States to provide access to justice in more consistent way.

The EEB welcomes the interpretative guidance and considers that it may make a useful contribution to Member States' efforts to implement the third pillar of the Aarhus Convention. However, we remain convinced of the ultimate need to re-launch negotiations on an EU Directive on Access to Justice. Only through a legally binding instrument can the EU ensure that its Member States respect their obligations under this pillar of the Convention.

The necessity for a Directive on access to justice has been repeatedly stressed not only by civil society organisations in the EU Member States but also by judges and other experts in the legal professions. A number of cases have been brought by civil society organisations before the Compliance Committee of the Aarhus Convention concerning failures of EU Member States to properly apply the access to justice pillar of the Convention.

The draft Directive on Access to Justice that was published by the European Commission in 2003 aimed to set certain minimum standards for access to justice in environmental matters. It was intended to implement the 'third pillar' of the Aarhus Convention in EU Member States, which would help to improve opportunities for the public and environmental citizens' organisations to insist on respect for environmental law. For many years, the Council declined to discuss the proposal, due to the resistance of a number of Member States that do not view this issue as an EU responsibility.

In 2006, the Commission launched a study of the practices on access to justice in environmental matters in the (then) 25 Member States. The results showed a clear deficit in at least 15 of the 25 Member States, with only Denmark fulfilling all the expectations laid down in the Aarhus Convention. This confirms the view that adoption of a Directive on this topic is important to set minimum standards for the implementation of the right to access to justice in environmental matters as the Aarhus Convention requires.

The jurisprudence of the Court of Justice of the European Union, notably a ruling in a case concerning Slovakia (C-240/09) issued in March 2011, provides a further reason why it is important

to revive discussions on a directive. The Court found on the one hand that access to justice in environmental matters in the sense of Article 9(3) of the Aarhus Convention falls within the scope of EU law, and on the other that Article 9(3) needed a uniform interpretation within the EU in order to "forestall different interpretations" by Member States (paras. 40 and 42).

In March 2012, the Commission published a Communication on improving the implementation and enforcement of environmental law. Clearly one of the more effective means of achieving better implementation is by empowering citizens to challenge perceived violations of the law. The Communication identified the need to provide greater certainty for national courts and economic and environmental interests in respect of access to justice, mentioning the option of defining at EU level the conditions for efficient and effective access to national courts in respect of all areas of EU environmental law.

The idea was then taken up in the 7EAP, which refers to the need for access to justice in environmental matters in line with the Aarhus Convention and developments brought about by the entry into force of the Lisbon Treaty and recent case law of the European Court of Justice. It commits to 'ensuring that national provisions on access to justice reflect the case law of the Court of Justice of the European Union', implying a legally binding approach.

The role of access to justice in promoting better implementation of existing legislation and thus promoting the rule of law is an important consideration which is not only recognized in the 7EAP but is also in line with the Juncker Commission's support for 'full respect for fundamental rights and the rule of law' (Political Guidelines, Priority 7), as is the positive impact on the functioning of the internal market of an instrument that promotes a more level playing field for business.

An EU directive strengthening access to justice at the national level would also be in line with the principle of subsidiarity, enabling matters to be more often resolved through national procedures without the Commission being unnecessarily burdened with complaints.

In 2013, the Irish Presidency hosted a discussion on access to justice at the Working Party level at which the Commission was able to present the findings of its latest studies on the issue and its plans to come forward with a new proposal and obtain feedback from Member States. DG Environment is understood to have used this feedback in taking the first steps in the preparation of a new legislative proposal.

Progress towards reviving the negotiations on an

access to justice directive suffered a setback in early October 2013 when the 2003 proposal was formally withdrawn by the Commission under REFIT, the Regulatory Fitness and Performance Communication, without any firm commitment to replace it with a new legislative proposal though with an informal understanding by the then Environment Commissioner and DG Environment that this was the intention. The EEB would have been happy to see negotiations proceed on the basis of the Commission's 2003 proposal. However, taking into account the number of Member States that have joined the EU since then and the increased experience with the implementation of the third pillar of the Convention, we would also find it acceptable to proceed on the basis of a new proposal provided this does not lack any of the positive elements of the 2003 proposal. The latter approach would also provide the opportunity to prepare a more ambitious proposal that takes account of the positive amendments to the 2003 proposal made by the Parliament as well as the many problems encountered by members of the public seeking access to justice in recent years.

Following the REFIT Communication, the then Environment Commissioner and DG ENV remained adamant that the decision-making process leading towards a new legislative proposal was at an advanced stage. However, no proposal was issued under the Barroso II mandate, leaving it in the hands of the new Commission.

While the Juncker Commission has in general shown reluctance to come forward with any new environmental initiatives not foreseen by the previous Commission, its Work Programme for 2016 included a commitment to "take forward work to clarify access to justice in environmental matters". In its 2017 Work Programme, the Commission indicated its intention to "step up its efforts on the application, implementation and enforcement of EU law", including through "measures to facilitate access to justice and support environmental compliance assurance in Member States". This has resulted in the issuing of the aforementioned interpretative Communication in April. Such non-binding guidance clearly does not deliver the required legal certainty of a directive but can be useful in the short-term as an interim measure pending the issuing of a legislative proposal on access to justice.

One new element that provides an additional reason for taking a robust approach on this issue is the 'dieselgate' fallout. This has badly damaged the confidence of citizens in the ability of governments to effectively regulate the corporate sector. While strengthening inspection and enforcement capacities at EU and Member State levels and ensuring that the regulated community does not exercise undue influence on the regulatory

authorities should be part of a response to 'dieselgate', strengthening the oversight role of the public through enhancing access to justice should be another part.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Urge Member States to use the Commission's interpretative guidance on access to justice in environmental matters to improve access to justice by members of the public and ensure full compliance with the third pillar of the Aarhus Convention;
- Call on the Commission to publish as soon as possible a new proposal for a directive on access to justice, building on and strengthening the Commission's 2003 proposal, with a view to delivering on the 7EAP commitment to ensure that national provisions on access to justice reflect the case law of the Court of Justice of the European Union.

6.11 IMPROVE IMPLEMENTATION AND ENFORCEMENT

EU politicians repeatedly claim that better implementation and enforcement is a top priority but at the same time oppose (or fail to support) the very measures which can deliver better implementation and enforcement. By not pursuing the non-respect of EU law in a more efficient way, the EU loses credibility for its inability to uphold the rule of law and fails to prevent often irreversible damage to the environment and harm to citizens' health. It also misses an opportunity to reduce costs and create jobs. Finally, it fails to regain the trust of European citizens and get them again more interested in and supportive of the EU.

In its 2007 Communication on the application of EU law, the European Commission stated that "Laws do not serve their full purpose unless they are properly applied and enforced"⁸. Striving for better enforcement should embrace both improving enforcement of the EU *acquis* by the competent authorities and creating the right conditions for citizens to play an active part in supporting

⁸ A Europe of Results - Applying Community Law, COM (2007) 502 final, Brussels, 5.09.2007.

enforcement efforts. The EEB gave the Commission's Communication on implementing European Community Environmental Law COM(2008) 773/4 a cautious welcome⁹, outlining several aspects it considered as shortcomings.

These earlier Communications were followed up by the publication in March 2012 of a new Communication on the better implementation of EU environmental measures.¹⁰ The Commission referred in the related press release to an estimated €50 billion per year in health and environmental costs at a time of economic crisis due to the failure to implement environmental legislation and mentioned that in the waste sector alone, full implementation would generate an additional 400,000 jobs. These were just two examples of the costs of failure to take action and of the fact that environmental protection can create jobs.

Several elements from the 2012 Communication were then taken up in the 7EAP, adopted in November 2013, which noted the high number of infringements, complaints and petitions in the area of the environment and committed to giving 'top priority' to 'improving the implementation of the Union environment *acquis* at Member State level'. Specifically, the 7EAP states that efforts in the period up to 2020 will focus on delivering improvements in four key areas, which may be summarised as follows:¹¹

- Improving the way that knowledge about implementation is collected and disseminated;
- Extending requirements relating to inspections and surveillance to the wider body of Union environmental law, and further developing inspection support capacity at Union level;
- Improving where necessary the way in which complaints about the implementation of Union environmental law are handled and remedied at national level;
- Ensuring effective access to justice in environmental matters and effective legal protection for EU citizens.

As the 7EAP is a binding document that has been agreed between the three institutions, these are important commitments and it is essential that they are honoured by all the institutions, featuring where

9 EEB Comments on the Commission Communication on implementing European Community Environmental Law COM(2008) 773/4.

10 Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (COM(2012)95).

11 Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (paras. 58-62).

relevant in documents such as the Commission's annual work programmes. The second and fourth elements clearly lend support to the tabling of legislative proposals on environmental inspections and access to justice. The Presidency in particular should play a key role in ensuring that the 7EAP is respected and in encouraging the Commission to come forward with appropriate proposals. The fact that First Vice-President Timmermans has responsibility both for sustainability and for the rule of law should in theory mean that his 'filtering' role is not an obstacle to new proposals which will improve the implementation of environmental law, despite the overall deregulatory approach of the current Commission.

The fact that Member States face difficulties in implementing EU laws has sometimes too hastily been used to argue that there are too many EU laws, without first considering whether the absence of those laws, even if poorly complied with, would lead to a better society and environment. The EEB regrets the general slowdown in presenting new laws and the tendency to replace binding law by communications or recommendations and guidelines (see also section 1.1). However, this slowdown in presenting new laws is yet another reason to increase efforts to improve enforcement. Laxity in the handling of breaches of EU law sends the wrong signals. The EEB considers that in the long run only a solid harmonised environmental *acquis* and its full application can provide the conditions for a healthy sustainable economy.

The Commission has recently launched the Environmental Implementation Review (EIR)¹² and will publish European and country-specific reports every two years focusing on essential topics in the area of environmental legislation. The EIR provides a good opportunity to initiate high level discussions in the Council on significant implementation gaps common to several Member States as well as specific actions at Member State level to improve the implementation of the EU environmental *acquis*.

In conclusion, the EU cannot afford to continue not taking seriously the enforcement of environmental law. It has an impressive environmental *acquis* jointly adopted with the Member States and Parliament and it is time to fully implement it to derive all of the benefits.

12 http://ec.europa.eu/environment/eir/index_en.htm

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Remind the Council, Commission and Parliament of their joint commitment under the 7EAP to give top priority to improving implementation of the EU environmental acquis at Member State level and call on the Commission to come forward with legislative proposals to deliver on that commitment, drawing on elements of the 2012 Communication as appropriate;
- Encourage and support Commission initiatives to deal with its enforcement obligations in a transparent and timely manner, and to increase transparency in relation to the implementation performance of Member States;
- Increase public involvement through improved access to documents, including in relation to the infringements process, and access to justice as required by the Aarhus Convention and confirmed by ECJ rulings;
- Encourage Member States to use modern information technology to make information easily and quickly available, with limited costs, recognising that doing it in a harmonised way will in the end also result in administrative burden reductions;
- Support the Commission's proposals to improve national complaint handling;
- Emphasise in its discussions with Member States the need for appropriate bodies and structures at EU level to improve the transposition and application of EU law, such as an EU agency coordinating environmental inspections, and seek Member States' support for such an agency;
- Call on the Commission to ensure that any legislative proposal is in line with Aarhus requirements and takes account of recent case law, in order

to facilitate correct implementation, contribute to reducing the number of complaints and thus save work (resources) in other sectors;

- Oppose any attempts within the framework of REFIT that are aimed at the reduction of administrative burdens being misused to weaken environmental law or putting the level of environmental standards at risk;
- Continue the political dialogue on the rule of law launched under the Luxembourg Presidency rather than leaving it to the technical level to deal with it;
- Use the Environmental Implementation Review process to launch high level discussions in the Council on significant implementation gaps common to several Member States as well as to initiate specific actions at Member State level to improve the implementation of the EU environmental acquis.

6.12 ENVIRONMENTAL INSPECTIONS

The divergence in the quality of national inspection and enforcement regimes across Member States is evident and has been acknowledged in many official EU documents. The Barroso II Commission was at an advanced stage in the preparation of a legislative proposal on environmental inspections which would have addressed this problem, but unfortunately it failed to issue the proposal before the expiry of its mandate. Regrettably, though perhaps not surprisingly in light of its overall priorities and determination to give a message of discontinuity, the Juncker Commission has also thus far failed to issue any legislative proposal on the issue, despite the 'dieseltgate' scandal which should have given a new impetus to work in this area, as well as to the strengthening of inspection and enforcement powers and capacities at EU level.

In the past, Member States opposed the European Parliament's efforts to have an EU directive on environmental inspections with the result that the only progress that was made horizontally was the adoption of the non-binding 2001 recommendation on minimum criteria for environmental inspections. Thereafter, inspection requirements of a binding

nature have been included in some sectoral laws. The EEB believes, however, that an EU law establishing minimum standards for environmental inspections horizontally, without in any way hampering or weakening existing environmental inspection provisions in sectoral law, would be more efficient and lead to a more harmonised application of EU environmental law and requirements. Such a law should also be fully in line with the Aarhus Convention, as participation of a well-informed public will improve the efficient application of a new inspections law. This would help to uphold the rule of law, be positive for the environment and would also contribute to more harmonised business conditions. The EEB welcomes Commission intentions to improve compliance assurance, but underlines that mere recommendations and best practice information exchanges will never deliver the results of an environmental inspections law.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Give its full support to an EU legal instrument establishing minimum standards for environmental inspections, as a way to deliver on the 7EAP commitment to extend requirements relating to inspections and surveillance to the wider body of Union environment law;
- Encourage the Commission to make quick progress with the preparation of the legislative proposal and table the draft as early as possible;
- Until the new legislation is in place, ensure that provisions for environmental inspections are included in specific sectoral laws.

6.13 2030 Sustainable Development Agenda

While the European Council should take the lead role in relation to the implementation and follow up of the 2030 sustainable development agenda (see section 1.2 above), the Environment Council as well as individual environment ministers and other relevant ministers (e.g. those for international cooperation, agriculture, internal and social affairs) also have a crucial role to play. The active engagement of environment ministers is particularly important at the international level where the

environmental dimension tends to be eclipsed by the development agenda.

After the adoption of the 2030 Sustainable Development Agenda it is crucial to put in place the right indicators, reporting and review mechanisms and to ensure that the environmental dimension is still at the core of the debates in the HLPF. The same importance needs to be given to guaranteeing access to information and participation of Major Groups and other Stakeholders in the HLPF process, according to the HLPF resolution A/RES/67/290.

WE THEREFORE CALL UPON THE ESTONIAN PRESIDENCY TO:

- Ensure that the EU promotes strong and active multi-stakeholder participation in international processes in line with Agenda 21, and, in particular, plays a constructive role towards an eventual agreement on an improved stakeholder engagement policy following the disappointing outcome on this topic at UNEA-2;
- Assess the indicator system presented by EuroStat and identify its gaps, follow up and review mechanisms and reporting as the next step in the 2030 Sustainable Development Agenda;
- In Europe, ensure an active process and institutionalisation of a structure for civil society participation at EU level with all relevant stakeholders to prepare in consultation with the Commission those concrete implementation and review mechanisms, with capacity building actions and funding possibilities;
- Continue the tradition of organising “jumbo” meetings at Council level, both for coordinating the EU position at UN meetings, but also to coordinate and promote coherence of the internal implementation of the 2030 Sustainable Development Agenda.



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