



The EEB's assessment of the
environmental impact of the

BULGARIAN PRESIDENCY OF THE EU



January - June 2018

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



EUROPE'S LARGEST NETWORK
OF ENVIRONMENTAL CITIZENS'
ORGANISATIONS



European Environmental Bureau (EEB)

Boulevard de Waterloo 34 | B-1000 Brussels | Belgium
Tel.: +32 (0)2 289 1090 | E-mail: eeb@eeb.org

Website:

www.eeb.org

Publication date: 2/7/2018

An International non-profit Association
Association Internationale sans but lucratif
The EEB is a member of Accountable Now
EC register for interest representatives: Identification
number 06798511314-27



Photo: Dennis Jarvis



With the support of
the LIFE Programme
of the European Union

This communication reflects the authors' views and does not commit the donors.




















THE EEB'S ASSESSMENT OF THE ENVIRONMENTAL IMPACT OF THE BULGARIAN PRESIDENCY OF THE EU

January - June 2018

Based on the EEB's Ten Green Tests for the Bulgarian Presidency released in December 2017

"Good on circular economy, chemicals and energy, poor on Aarhus, biodiversity and fisheries"

Summary of the EEB's verdict on the ten green tests

	Effort	Outcome
1 - Make sustainable development central to the future of Europe		
2 - From better regulation to better governance		
3 - Fight Climate Change		
4 - Reform energy policy		
5 - Restore ecosystems and biodiversity		
6 - Transform agricultural policy		
7 - Support circular economy and waste minimisation		
8 - Protect the public from hazardous chemicals and pollution		
9 - Safeguard sustainable fisheries		
10 - Strengthen democratic governance		

INTRODUCTION

This is an assessment of the Bulgarian Presidency of the European Union by the European Environmental Bureau (EEB), the largest federation of environmental citizens' organisations in Europe, prepared in cooperation with BirdLife Europe and Seas at Risk.

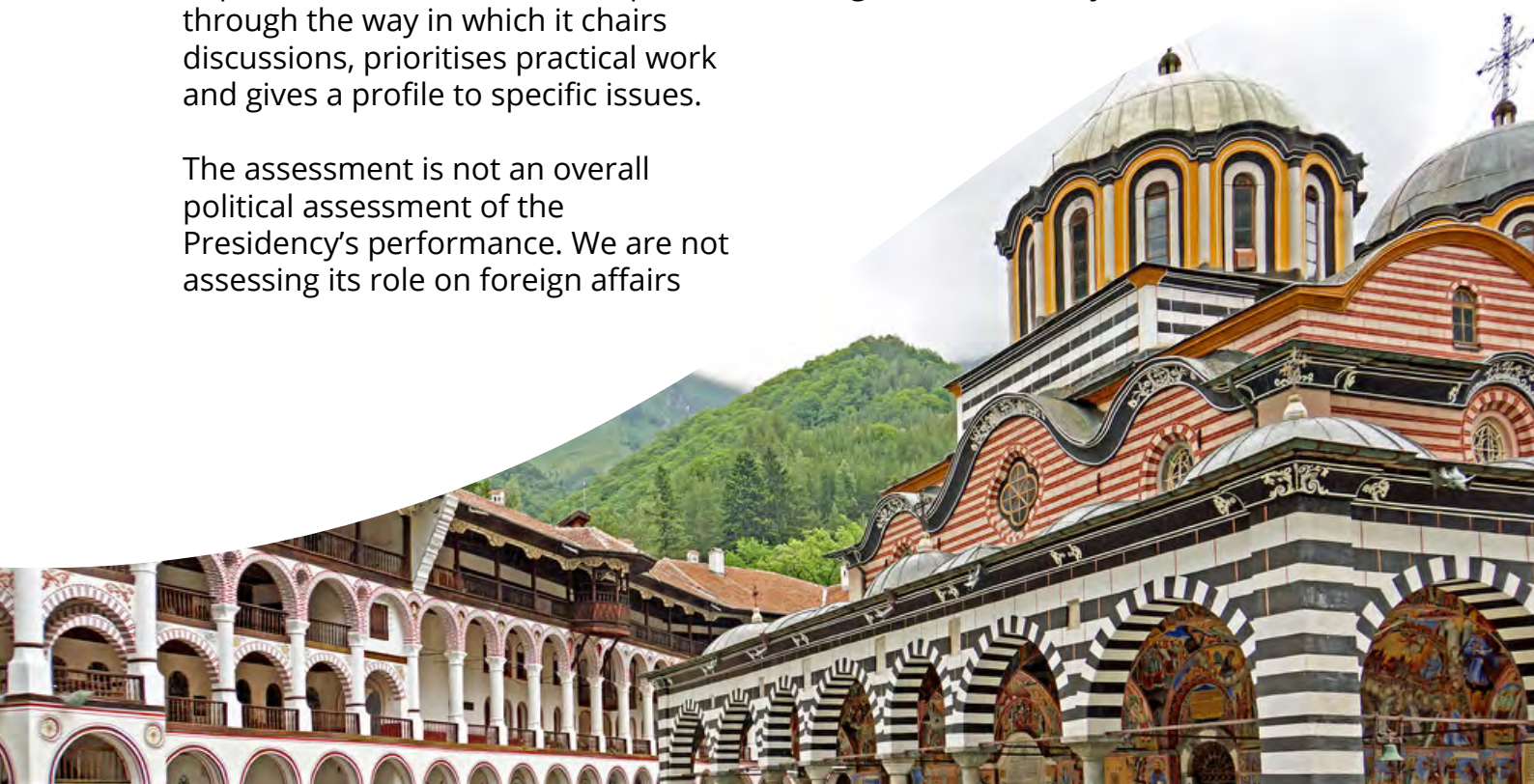
Our mandate encompasses all environment-related issues, a broad agenda comprising 'traditional' environmental issues as well as sectoral and horizontal policies with a direct or potential environmental impact, sustainable development and participatory democracy.

We view the six-month EU Presidencies as convenient periods over which progress on the EU's environment-related policies and legislation can be measured. We appreciate that a Presidency cannot make decisions on its own; it needs the cooperation of the European Commission, European Parliament and other Member States. But the Presidency can still have considerable impact and influence, for example through the way in which it chairs discussions, prioritises practical work and gives a profile to specific issues.

The assessment is not an overall political assessment of the Presidency's performance. We are not assessing its role on foreign affairs

issues, internal security matters or migration policies, for example, except insofar as such issues have a bearing on the environment. On the other hand, nor is the assessment limited to the activities and outcomes of the Environment Council; it covers all Council configurations to the extent that they deal with topics that affect the environment. Our assessment is based on the Ten Green Tests we presented in December 2017 to the Bulgarian Government in advance of the start of its Presidency on 1 January 2018.

At the outset, we would like to acknowledge and express our appreciation for the open and cooperative approach adopted by the Bulgarian Presidency.





OVERVIEW

The Bulgarian Presidency pushed hard to complete the negotiations on legislative files in three important areas in particular – **climate, energy and circular economy** - and for the most part succeeded, though with the content of the climate-energy deals being insufficient to meet the Paris commitments and do enough to halt climate change.

Bulgaria made good use of its Presidency to conclude new renewables and energy efficiency targets and a new governance regulation combining climate and energy objectives while progressing the negotiations on emissions reductions in the transport sector. On the former, it is noteworthy that the Bulgarian Presidency managed to move significantly above the general approach despite strong resistance from many Member States and put in place new starting conditions for overall higher climate action in Europe. On the latter, the outcome is yet to be seen. In both cases, this is progress, though only a small step towards a wider decarbonisation of the economy and the transition to a post-fossil-fuel world.

On **chemicals**, we welcome the fact that the conclusions of the Council strongly highlight the importance of establishing non-toxic material cycles and the request for the Commission to urgently conclude the non-REACH fitness check and develop an overarching ambitious strategy for a non-toxic environment.

On **air pollution**, although to its credit the Bulgarian Presidency did give the issue political prominence by putting it on the agenda of the Informal Meeting of Environment Ministers, the government's failure to withdraw its court case against revised EU pollution standards which would force approximately 3000 of the EU's largest industrial air polluters (large combustion plants) to significantly cut their air pollution was regrettable.

On the **circular economy**, the Council conclusions of 25 June 2018 support the EU Plastics Strategy, welcome the recent initiative on Single Use Plastics to reduce marine pollution and call for more actions on macro and micro plastics – all positive developments. The Council conclusions also support the ambitious goal of only reusable or recyclable

plastic packaging by 2030 and refer to several instruments, notably Ecodesign/ Essential Requirements, Producer Responsibility and quality standards for recycling to transform plastics materials placed on the market. Additionally, the conclusions press for systematic traceability for substances of concern in materials by 2030, which should be particularly relevant for plastic materials streams.

Ecosystem restoration and biodiversity protection have not been given the priority they deserve in the work programme of the Bulgarian Presidency. As a result, the Presidency does not seem to have undertaken sufficient efforts to ensure scaling up of the efforts towards full and effective implementation of the Nature Directives or fast-tracking measures needed to achieve the targets of the EU Biodiversity Strategy against the backdrop of new evidence highlighting the loss of biodiversity and degradation of ecosystem services across the EU.

On **Aarhus**, the performance of the Bulgarian Presidency is mixed. It addressed the issue of the EU's non-compliance with the Aarhus Convention by presiding over the adoption of a Council Decision to request a study on options for addressing the non-compliance and, if appropriate, a legislative proposal for revising the Aarhus Regulation to be issued by September 2020. However, the content of the Decision was disappointing and the indications are that a more supportive approach from the Presidency could have produced a better result.

Finally, the EU Member States have thus far continued to provide a united front in the context of the **Brexit** negotiations, standing behind the Chief Negotiator Michel Barnier, who has stated his commitment to not allow Brexit to lead to a regulatory roll-back on environmental regulation.

TEST BY TEST

1. MAKE SUSTAINABLE DEVELOPMENT CENTRAL TO THE FUTURE OF EUROPE

The test

- Take opportunities to promote a people-centred agenda of transformational change in the EU based on the global 2030 Agenda for Sustainable Development;
- Seek to ensure that the Reflection Paper 'Towards a Sustainable Europe by 2030' on the follow-up to the UN Sustainable Development Goals (SDGs), which has been announced in the 2018 Commission Work Programme, will take up the demands voiced in the June 2017 Council conclusions on Agenda 2030 and that concrete steps are taken towards carrying out an in-depth gap analysis and putting in place a solid, transparent, participatory mechanism for implementing the SDGs;
- 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 Paris Agreement on climate change objectives and the need to implement the 2030 Agenda for Sustainable Development, e.g. in the informal discussions among European leaders' on the MFF scheduled to take place in February 2018;
- Press the Commission and encourage representatives of UN Environment and UNEA, including the Chair of UNEA-4, to actively participate in the next UN High Level Political Forum (HLPF) in July 2018 and urge the Commission 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).

The verdict

The current Commission's political priorities focus on issues such as security, borders, terrorism, jobs and growth, without having a clear vision of how to achieve the transformational change needed to make Europe's future sustainable for all citizens within the planetary boundaries. The Council in its conclusions of June 2017 urged the Commission to elaborate, by mid 2018, an implementation strategy for the 2030 Agenda with a timeline, objectives and concrete measures in all relevant internal and external policies and to identify existing gaps by mid-2018 to assess what more needs to be done on policy, legislation, governance structure for horizontal coherence and means of implementation. The fact that, almost three years after the adoption of the 2030 Agenda, the EU still lacks both instruments is a clear reflection of the low priority given to sustainability issues. The environmental pressures created by the EU's current economic model both inside Europe and on other parts of the world were not identified as key challenges to be addressed in the coming years. The problem is not limited to the Commission: the Leaders' Agenda also neglects to refer to the 2030 Agenda or address environmental challenges with the exception of climate.

The Bulgarian Presidency has not made sustainable development one of its priorities, but has chosen a rather narrow focus on a jobs and growth agenda as well as addressing the refugee crisis in particular through security measures. Thus, the Presidency's approach did not reflect the holistic nature of the 2030 Agenda and the Sustainable Development Goals (SDGs), the global framework through which the various challenges faced by humanity are to be tackled in a coherent manner taking into account various interlinkages. Moreover, the Bulgarian Presidency's approach to development, focussing on jobs and growth, prioritised the economic dimension over environmental considerations, while not at all mentioning environmental protection in its top-level priorities.

Negative on effort
Neutral on outcome



The European Union Delegation in New York, jointly with the Bulgarian Presidency and Germany, organised a side event in New York in April on "Investing in Sustainable Development: The EU's Contribution" to take stock of the latest achievements in the implementation of the Addis Ababa Action Agenda from an EU perspective. While the event was welcomed, it seems that it was mainly driven by the Commission.

So far, the Commission has not pledged to present a Voluntary National Review (VNR) at the UN High Level Political Forum (HLPF) on Sustainable Development on the EU's implementation of the SDGs in 2019 (as requested in the June 2017 Council conclusions), nor has it announced that it will provide a new Sustainable Development Strategy including an implementation plan for the 2030 Agenda. The Bulgarian Presidency was not able to add momentum to the high-level political debate around the 2030 Agenda or to reach any new milestone regarding the implementation of the SDGs in and by the EU. It has not taken opportunities to promote a people-centred agenda of transformational change in the EU based on the global 2030 Agenda for Sustainable Development, as set out in the test. It has also not taken any particular steps in order to make sure that the Commission's Reflection Paper will take up the demands voiced in the June 2017 Council Conclusions or that the Commission will report at the HLPF in 2019.

It was appreciated that the Bulgarian Presidency invited selected representatives of the Multi-Stakeholder Platform (MSP) for the Implementation of the SDGs, amongst which the EEB, as well as representatives of SDG Watch Europe to a meeting of the 2030 Agenda Council Working Party in June in order to exchange with Member States on both the work of the MSP regarding the up-coming Commission Reflection Paper and the work of SDG Watch Europe to promote the ambitious implementation of the SDGs by and in Europe.

2. FROM BETTER REGULATION TO BETTER GOVERNANCE

The test

- *Seek to re-build confidence in Europe's regulatory systems by ensuring that the outcome of the environmental implementation review (EIR) is used as the basis for developing effective measures to improve implementation, e.g. new legislative and budgetary proposals aimed at strengthening inspection and enforcement capacities at EU and Member State level;*
- *Seek to avert deregulatory threats to EU environmental legislation and policy, and specifically seek to ensure that the current consensus among the EU-27 that the Brexit process should not be allowed to undermine the EU's environmental acquis and principles and that access to the EU market must be linked with the UK's adherence to the principles and regulatory alignment with the environmental acquis is maintained as Phase 2 of the Brexit negotiations gets under way.*

The verdict

The Greening of the European Semester was discussed in the March Environment Council, which recognised that the environment is part of the solution to the economic and financial recovery and development in Europe, underlining its role in helping productivity and job creation. There was no discussion on the environmental implementation review and how it could be used as the basis for developing effective measures to improve implementation. The June Environment Council Conclusions also did not have EIR and the implementation deficit on the agenda.

On the other hand, the Informal Meeting of Environment Ministers on 10-11 April in Sofia dedicated a session to better implementation, focusing, inter alia, on tools for capacity building including the Peer-to-Peer tool for exchange of good practices among Member States, cross-sectoral cooperation with a focus on the Clean Air Dialogues and the EIR country dialogues. This supported the Commission-led EIR process. The fact that the Presidency initially characterised the session as being about better regulation and yet put the focus entirely on better implementation can be viewed positively

Neutral on effort

Mixed on outcome

in the sense of suggesting a positive direction for the better regulation agenda to travel in. It may also be seen as reflecting the high level of public support for better implementation: more than 75% of European citizens find EU environmental legislation necessary for protecting the environment in their country, and nearly 80% agree that the EU institutions should be able to check that environmental legislation is being applied correctly in their country. The Bulgarian Presidency team also joined and supported the EIR experts meeting in January 2018, which explored measures to improve implementation.

As regards seeking to avert deregulatory threats to EU environmental legislation and policy, in the ongoing Brexit negotiations it has been made clear that there should be no regulatory roll back, with stated commitments by EU chief Brexit negotiator Michel Barnier. However, while helpfully calling for the EU-27 to show unity in the face of Brexit, the Bulgarian Presidency has not been prominent in emphasising the need to defend EU environmental standards in the negotiations.

3. FIGHT CLIMATE CHANGE

The test

- *Ensure an improved implementation of the 2030 climate package in line with 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;*
- *Upgrade the EU long-term objective by setting out a path to net zero emissions by 2040 as part of the EU's obligation to put forward a mid-century, long-term low greenhouse gas emission development strategy.*

The verdict

Neutral on effort

Mixed on outcome

Building on the results of the inter-institutional negotiations during the Estonian Presidency, the Bulgarian Presidency presided over the formal approval of the reform of the EU emissions trading system (ETS) for the period after 2020, the Effort Sharing Regulation on national greenhouse gas emission reduction targets up to 2030 and the Regulation on land use, land use change and forestry (LULUCF) in 2030.

While these formal steps are crucial to kick-start the implementation of the future climate action rules in Member States, the outcomes still fail Europe's commitment to the Paris Agreement and are not a sign of true global leadership on climate action, due both to the lack of ambition in the initial Commission proposals and to the massive resistance from Member States to improve the ambition level.

In addition to the rubber stamping of the 2030 climate package, progress was made on the elements of the clean mobility package. This included the adoption of the regulation on the monitoring and reporting of CO₂ emissions from and fuel consumption of new heavy-duty vehicles in June, which is essential for the progress of the related proposals for the new regulation on CO₂ emission standards for cars and

vans as well as the regulation on CO₂ standards for heavy-duty vehicles. The Bulgarian Presidency ensured a political discussion of the proposal of the CO₂ emission standards for cars and vans at the June Council.

Noteworthy is the strengthened understanding among the highest political leaders on the need to prepare Europe for the long-term low carbon strategies in line with the Paris Agreement. This is reflected in the clear commitment to multilateral climate diplomacy from the February Council Conclusions that emphasised the unprecedented

urgency to step up global efforts to halt and reverse climate change, and gave a clear commitment to the strong scientific body of evidence anticipated in the upcoming Intergovernmental Panel on Climate Change (IPCC) special report on the impacts of global warming of 1.5 °C.

This strengthened understanding also resulted in the request of the European Council in March to the Commission to present by the first quarter of 2019 a proposal for a Strategy for long-term EU greenhouse gas emissions reduction in accordance with the Paris Agreement.

4. REFORM ENERGY POLICY

The test

- *Put Energy Efficiency first in the revision of the Energy Union Governance regulation and the Electricity Market Design regulation and directive, in order to reach our environmental objectives, create local jobs and growth and increase energy security;*
- *Be an honest and ambitious broker to achieve a deal between Council and Parliament for the revision of the Energy Efficiency Directive (EED), 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;*
- *Pressure the highest level of the Commission to stop delaying Ecodesign and Energy labelling implementation measures and allocate the necessary resources to catch up with the backlog this past attitude has generated, so as to help grasp the internationally recognised potential they have for citizens, climate objectives and EU economy;*
- *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;*
- *Ensure during the trilogue on the Renewable Energy Directive that the EU does not return to misguided subsidies for environmentally and socially harmful crop-based biofuels and that provisions are put in place to minimize any negative impacts of bioenergy on forests and other sensitive ecosystems.*

The verdict

Positive on effort
Neutral on outcome



The term of the Bulgarian Presidency started with a strong stance of the European Parliament for more ambition with their votes in the January plenary on the Energy Efficiency Directive, Governance Regulation and the Renewable Energy Directive. This enabled the Bulgarians to start the inter-institutional negotiations in February. The Bulgarian Presidency used the Informal Environment Ministers' meeting in Sofia to advance discussions and dedicated the June Energy Council to striving for political agreement on these three major elements of the Clean Energy Package which was finally reached at the end of the Presidency in June.

Throughout this process the Presidency was faced with diverging expectations between the Member States. Countries like France, Sweden and Luxembourg understood and supported the need for higher ambition in all three files as a result of the Paris Agreement from 2015. Others, notably in the Visegrad group but also beyond, tried to stick as closely as possible to the outdated Council Conclusions of 2014.

In addition to technical links that exist between the files and constitute core elements of the Governance regulation, the Presidency had to deal with the political linkages between all three files. The level of ambition in one file was seen as symmetric to the level of ambition in the other files. This was specifically enforced by the Presidency that put forward packages within the negotiations of both the Energy Efficiency Directive and the Renewable Energy directive proposing trade-offs between the overall target ambition and the quality of the measures — a move that is questionable.

On the Energy Efficiency Directive, the Presidency worked closely with the European Commission but the first trilogues took place without much movement. The negotiations stalled around the fundamental fixes the European Parliament introduced into the Commission proposal and a significant amount of time was spent on creating a joint understanding. Despite the dedicated discussions at the Informal Energy Ministers' meeting in Sofia which brought some movement to the renewable negotiations, the first mandate going beyond the General approach was only reached in early May. While the negotiations continued, movement on Member State level with more ambitious positions by countries like the Netherlands, Denmark and especially Spain and Italy enabled the Presidency to move in early June. Key negotiations took place on 13 June which brought an agreement on the Renewables Directive but failed on the Energy Efficiency Directive. Faced with increased political pressure, the Presidency arranged a final trilogue on 19 June, the same day as the final negotiations for the Governance Regulation that

brought final agreement on both files.

The result of an at least 32.5% target in the Energy Efficiency Directive is way below the cost-effective potential of 40% and not in line with the requirements of the Paris Agreement, but constitutes a major step up in comparison to the Commission proposal of 30%. The key delivery measure of the EED, the annual energy savings obligation of Article 7, is continued beyond 2020 with a perspective until 2050, and is slightly strengthened in comparison to the Commission proposal. While the final results lack national binding targets and lose the qualification of a binding EU target, the newly formulated headline target will be reviewed in 2023 with the perspective of higher ambition.

On the recast of the Renewables Directive, the Bulgarian Presidency arranged the negotiations in parallel to the other trilogues. The final result of an 'at least' 32% target again constitutes a significant improvement in comparison to the Commission proposal, but falls short of accelerating the current speed of renewables deployment. While good results are achieved on the provision for self consumption and the effort to avoid the most harmful biofuels, the broader issue of bioenergy and the lack of provisions ensuring the sustainability of bioenergy remains unfixed. Arguably the Bulgarian Presidency spent too little effort and political capital on solving the issues surrounding bioenergy sustainability. It allowed a minority of member states with special interests to dominate the Council position. The Commission's proposal to limit state support for forest biomass to highly efficient combined heat and power stations only was broken up and ended up as weak efficiency criteria that will allow the conversion of old coal plants to burn biomass on an unprecedented scale. During the trilogue negotiations, the ban on palm oil as a biofuel as proposed by Parliament was instead turned into weak language on "high-risk biofuels" which is unlikely to end deforestation for biofuels.

The newly designed Governance Regulation establishes strong and transparent mechanisms to ensure the collective achievement of the EU 2030 targets for renewable energy sources and energy efficiency. It is also a step forward in the implementation of the Paris Agreement (notably as it anchors the concept of carbon budget) but falls short of ensuring a truly net-zero carbon economy by 2040 or even by 2050 at the latest. More efforts will be needed to revise our energy and climate target upwards to meet the goals of the Paris Agreement.

5. RESTORE ECOSYSTEMS AND BIODIVERSITY

The test

- 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, in particular the development of the EU Pollinators Initiative over the coming months;*
 - *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.*

The verdict

Ecosystem restoration and biodiversity protection have not been given the priority they deserve in the 6-month work programme of the Bulgarian Presidency. As a result, the only achievement that the Presidency lists on its website in this policy area is the fact that it hosted a meeting of the Nature Directors, where progress in implementing the EU Action Plan for Nature, People and the Economy was discussed. The Nature Directors concluded that further strengthening of the efforts was required in order to achieve the objectives and implement the actions included in the Plan by 2020. Unfortunately, the Bulgarian Presidency did not follow up on this conclusion and failed to keep up the momentum needed to scale up efforts towards full and effective implementation of the Nature Directives. On the contrary, while at the helm of the EU Council, the Bulgarian government approved the controversial alternative for the construction of the motorway right through the Kresna Gorge — an area of outstanding importance to European wildlife and ecology and Bulgaria's single richest biodiversity site thus undermining the protection of the site under the Nature Directives. Even if this action was not

Negative on effort

Negative on outcome



carried out by the government in its EU Presidency capacity, a domestic action by the government having the EU Presidency that runs so counter to EU nature protection objectives deserves mention in this context.

The Presidency also failed to fast-track measures proposed by the European Commission to meet the targets of the EU Biodiversity Strategy. The recently adopted EU Pollinators Initiative was presented at the Environment Council meeting in June, however, the Bulgarian Presidency did not ensure commitment from the Member States to work closely with the European Commission and other stakeholders to achieve the longer term objectives and implement the short term actions contained therein and stress the importance of the reform of the Common Agricultural Policy (CAP) in this context.

Moreover, the Bulgarian Presidency does not seem to have undertaken sufficient efforts to ensure a better financing of biodiversity in the MFF post 2020 despite the strategic timing of its Presidency with regard to the elaboration by the European Commission of its proposals for the MFF.

6. TRANSFORM AGRICULTURE POLICY

The test

- Bring the debate on the CAP post 2020 forward by discussing the necessary improvements (notably on accountability and biodiversity and Natura 2000 financing) to the Commission's proposals and help ensure that the MFF proposals contain those improvements and that the future CAP legislative proposals are evidence-based;
- Seek input from environmental NGOs and representatives from the Living Land initiative (80% of the actual respondents to the 2016 CAP consultation) into discussions on the future CAP at the informal Agriculture Ministers' meeting.

The verdict

Neutral on effort

Negative on outcome

The Bulgarian Presidency started its mandate with the aim to generate a debate on the future of the CAP and provide input to the Commission when drafting the respective legislative proposals. To this end, it organised several debates on the future of Europe's post-2020 agricultural policy at Agriculture and Fisheries Council (AGRIFISH) meetings and an Informal Meeting of Agriculture Ministers with a focus on generation renewal.

We welcome the fact that the environment was a formal topic of the February Council. Unfortunately most of the remaining debates focused on direct payments, voluntary coupled support, simplification from the point of view of a reduction of administrative burden and generation renewal. Moreover, the format of the Informal Meeting of Agriculture Ministers did not allow the inclusion of new stakeholders in the debate such as environmental NGOs and so failed

to take into account the views of citizens expressed during the public consultation. Also, requests by the EEB and BirdLife Europe to address the Council Presidency in advance of the February (or other) Council, an opportunity given to the farming lobby COPA COGECA, were rejected, implying a bias towards hearing from economic interests over non-economic ones. Regarding the Communication from the Commission on «The Future of Food and Farming», the Bulgarian Presidency failed to reach an agreement among Member States and therefore was only able to adopt Presidency conclusions.

We were encouraged by the Bulgarian Presidency's announcement that all the Council debates on the CAP would be publicly streamed; however we regret that this commitment was not followed through for all of the Council debates.

7. SUPPORT THE CIRCULAR ECONOMY AND WASTE MINIMISATION

The test

- *Following the publication of the EU Plastics Strategy, the Bulgarian EU Presidency should work towards Council Conclusions supporting legislative measures limiting both macro- and micro-plastic items leaking into the environment, and reinforcing tracking and controlling the use of substances of concern in a circular economy;*
- *Ensure the Commission does not create further delays and delivers on resources savings through Ecodesign and Energy Labelling, and take the*

advantage of the new energy labeling schemes' consultation process and testing to propose wide communication at national levels on the merits of the policy for transforming the market towards more durable and repairable products;

- *Building on the annual report of the European Commission on the implementation of the EU Circular Economy Action Plan, the Informal Environmental Council should reflect on the need for future actions on promoting the transition towards a more circular economy through a more coherent EU Product Policy Framework, Digitization and International Collaboration.*

The verdict

Neutral on effort

Positive on outcome

The Council conclusions of 25 June 2018 released at the end of the Bulgarian Presidency express good support for the EU Plastic Strategy, welcoming the recent initiative on Single Use Plastics to reduce marine pollution and calling for more actions on macro and micro plastics. The Council conclusions also support the ambitious goal of only reusable or recyclable plastic packaging by 2030 and refer to several instruments, notably Ecodesign/Essential Requirements, Producer Responsibility and quality standards for recycling to transform plastic materials placed on the market. Additionally, the conclusions press for systematic traceability for substances of concern in materials by 2030, which should be particularly relevant for the plastic materials stream.

Though there was no specific public pressure by the Bulgarian Presidency to ensure the proper release of Ecodesign and Energy Labelling measures and promote the policy, the Council conclusions clearly identify

ecodesign as providing leverage for a circular economy and call on the Commission to deliver on a coherent framework for product policy, including by broadening ecodesign principles beyond energy-related products. They also stress the need to develop sustainable non chemical alternatives in the design stage of materials. Furthermore, the conclusions encourage actions at national level, as well as international collaboration with other economies.

We regret however that the Bulgarian Presidency did not explore further the role of digitalization for eco-innovation to ensure a better documentation and sharing of product and material properties and unleash further circular practices.

Finally, the revised Waste Package was formally approved under the Bulgarian Presidency. This should trigger a new ambition for waste management and prevention, which will hopefully be reflected in transposition at national level.

8. PROTECT THE PUBLIC FROM HAZARDOUS CHEMICALS AND POLLUTION

The test

- *Bring high-level political attention to the urgent need to improve air quality in the EU and to reach the long-term objectives of achieving levels of air pollution that do not lead to unacceptable harm to human health and the environment;*
- *Remind the Commission of its obligation under the Seventh Environmental Action Programme to develop by 2018 a new strategy for a non-toxic environment and urge that this 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;*
- *Within the context of REACH REFIT, 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 substances of very high concern (SVHCs)); and ensure effective restriction and phase out of substances of most concern through restriction and authorisation processes and creating a comprehensive Candidate List;*
- *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, seeking to ensure swift ratification of the Convention by the remaining EU Member States and enforcement of the EU Mercury regulation and promoting further actions to address mercury pollution in the EU.*

The verdict

Positive on effort

Mixed on outcome



The Environment Council adopted on 25 June 2018 conclusions on “Delivering on the EU Action Plan for the Circular Economy” that included the interface between chemicals, products and waste legislation.

The EEB appreciates the Conclusions of the Council that strongly highlight the importance of establishing non-toxic material cycles and request the Commission to urgently conclude the fitness check of all chemicals legislation except REACH and develop in close collaboration with the Member States an overarching ambitious strategy for a non-toxic environment in line with the 7th EAP and the Better Regulation agenda, building on the main conclusions and findings from the various ongoing chemical processes, in line with our tests.

We also welcome the Council emphasis on the need for information on substances of concern to be available for all actors and to ensure at the latest by 2030 the traceability of substances of concern in materials, through the entire supply chain, including end-of-life operations; the reminder that under the REACH Regulation, suppliers of articles already have the responsibility to provide information on articles containing substances of very high concern (SVHC) and the call on the Commission to develop harmonised tools to track substances of concern throughout the supply chain, including the end-of-life operations, promoting the use of digital information

systems and digital solutions.

Moreover, although the conclusions on the interface between chemicals, products and waste legislation were not included in our test, the EEB values the fact that these conclusions tackle all our demands in the EEB’s pre-Council letters in March and June. In particular, regarding the avoidance of the presence, and improvement of tracking, of chemicals of concern in products throughout their life cycle; the same standards for chemicals of concern being applied to virgin and recycled materials; EU harmonised end-of-waste criteria; rules for classifying waste that are consistent with the rules outlined in the Regulation on the Classification, Labelling and Packaging of substances and mixtures (CLP Regulation); and non-regulatory measures such as assessing a function on the EU level to support substitution and the development of sustainable chemical and non-chemical substitutes.

We understood that the Bulgarian Presidency hosted discussions on the REACH Review report during two Working Party on the Environment meetings and intend to summarise the discussions in one paper, which will be issued by the end of their Presidency as Presidency non-paper. Although we welcome this initiative, the EEB believes a non-paper will be insufficient to ensure that the European Commission, Member States and ECHA address the obstacles in

the implementation of the REACH regulation raised in the staff working document.

Furthermore, the Bulgarian Presidency did not work on the criteria for the identification of endocrine-disrupting chemicals (EDCs).

As regards air pollution, the Bulgarian government was condemned by the European Court of Justice for its failure to properly implement EU air quality legislation in 2017. We therefore expected the Bulgarian government to lead by example and withdraw its court case against revised EU pollution standards which would force approximately 3000 of the EU's largest industrial air polluters (large combustion plants) to significantly cut their air pollution. The Bulgarian government is the only Member State apart from Poland to challenge those revised standards in order to protect its lignite

industry from pollution prevention measures. They challenge the stricter mercury pollution level set at $1\mu\text{g}/\text{Nm}^3$, which is confirmed by the Minamata Convention BAT/BEP guidance. Although three more Member States (BE, LT, UK) did ratify the Minamata Convention under its presidency, to our knowledge, these initiatives were taken without any particular encouragement from the Presidency.

On the positive side, the Bulgarian Presidency did bring high-level political attention to the problem of air pollution by putting the issue on the agenda of the Informal Meeting of Environment Ministers in Sofia in April and preparing useful background documentation for the discussion. This followed the convening of a forum on eco-innovation to tackle air pollution held in Sofia in early February.

9. SAFEGUARD SUSTAINABLE FISHERIES

The test

- *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.*

The verdict

The trilogue on the North Sea Multi Annual Plan concluded in December 2017 and was therefore not under the responsibility of the Bulgarian Presidency. The plan has been severely weakened compared to the CFP requirements and allows among others for setting fishing opportunities above the FMSY reference point and that certain 'bycatch' stocks will only be managed in line with the precautionary approach, and not in line with MSY. It further does not

Negative on effort

Negative on outcome



contain control provisions.

The trilogue on Technical Measures carries on and was not finalised by the end of the Bulgarian Presidency. Nevertheless, we have not seen an effort from the Bulgarian Presidency to ensure that fishing impact on seabirds, sea turtles and marine mammals will be systematically tackled in every sea basin.

10. STRENGTHEN DEMOCRATIC GOVERNANCE

The test

- *Coordinate an effective follow-up by the EU Member States to the sixth session of the Meeting of the Parties to the Aarhus Convention (Montenegro, September 2017), notably by preparing and presiding over the adoption of a Council Decision calling on the European Commission to initiate the preparation of a legislative proposal for 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.*

The verdict

Negative on effort

Mixed on outcome



Following the controversial position taken by the EU in September 2017 at the Aarhus Convention Meeting of the Parties (MoP) in Montenegro in relation to the Compliance Committee's finding of EU non-compliance, the task of coordinating Member States' efforts to ensure an effective follow-up came onto the agenda of the Bulgarian Presidency. The Estonian Presidency had set up the discussion by convening an informal workshop in November 2017. Discussions continued under the Bulgarian Presidency and culminated in the adoption of a Council Decision invoking Article 241 of the Treaty on the Functioning of the European Union to request the Commission to submit a study by September 2019 on the options for addressing the non-compliance finding and, if appropriate in view of the outcomes of the study, a legislative proposal for revising the Aarhus Regulation by September 2020.

This may be seen as a mixed result. Article 241 has rarely been used and reportedly never before in an environmental case. The fact that the Council saw fit to invoke it in this case sends a clear signal of the depth of feeling among Member States and the extent to which they considered that the Commission would not take the necessary action without such a step being taken. On the other hand, the content of the Decision is very weak in two respects: first, because it does not make an unequivocal call on the Commission to start preparing a legislative proposal, even though it has for a long time been abundantly clear that revising the Aarhus Regulation is the only effective way to restore compliance; and second, because of the

lengthy timeline proposed, which fails to ensure that the EU is back in compliance by 2021 when the MoP next convenes.

The Presidency did follow the by now regular practice of inviting the EEB and other NGOs to meet with Member States on the occasion of a meeting of the Council Working Party on International Environmental Issues but does not seem to have taken much account of the input from the NGOs, even though other Member States apparently did. Without being privy to the internal Council processes, the EEB was able to establish through separate canvassing of Member State positions that there very probably would have been support for a much stronger Council Decision, with five Member States feeling sufficiently concerned about this to issue a parallel statement criticising the outcome as too weak. Thus the Bulgarian Presidency appears to have opted for a minimalist response and missed the opportunity to send a stronger message at this crucial moment.

While the Bulgarian Presidency's handling of the Aarhus non-compliance issue should carry by far the greatest weight in assessing its performance, it deserves some credit for putting the issue of better implementation on the agenda of the Informal Environment Council in April, thus putting the spotlight on the problem of poor implementation and some measures to address it, though unfortunately without identifying access to justice as a key tool in this respect.

