

To: Environment Ministers of EU Member States
Cc: European Commissioners for Environment, Climate, Agriculture and Health and Consumer Policy, and the Chair of the European Parliament Environment Committee

Concerning: Input to the EU Environment Council Meeting, Brussels, 13 October 2017

Brussels, 6 October 2017

Dear Minister,

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

1. Effort Sharing Regulation

Your negotiations on the Effort Sharing Regulation (ESR) are taken again to Ministerial level after a summer of unprecedented floods, hurricanes, droughts and wild fires across the globe. Already today we are experiencing 400 extreme weather events every year, four times as many as in 1970. This now must serve as a wake-up call and lead to a recalibration of the ongoing negotiations in terms of overall levels of ambition and the use of flexibility mechanisms.

The EEB therefore calls upon the Environment Council to:

- *Strengthen the ESR and oppose any weakening, having in mind that in order to set the EU on a path to meet the Paris Agreement goals, a target of at least a 47% reduction in greenhouse gas emissions by 2030 for the ESR Sectors is needed;*
- *Oppose in particular loopholes, such as inappropriate starting points for setting the target and creation of an ESR Safety Reserve, and close the forestry loophole;*
- *Include a review clause which allows for ambition to be raised over time;*
- *Set a stronger governance system building on yearly compliance checks, financial penalties in case of non-compliance and a review clause that will ensure a regular increase of ambition for its 2030 targets.*

See Annex 1 for more detailed comments.

2. LULUCF

The integrity of the rules for the LULUCF sector are key to delivering effective climate action, avoiding misleading incentives and ensuring the full contribution of our forests and wetlands to tackling climate change. Adopting flawed legislation that allows emissions to be concealed, incentivizes deforestation or drives the reduction in forest sinks can set a bad precedent at the international UNFCCC level and endanger the implementation of the Paris Agreement. The LULUCF rules must set appropriate forest management reference levels, robust and accurate accounting rules and strong environmental safeguards.

The EEB therefore calls upon the Environment Council to:

- *Raise the level of ambition by ensuring that the EU's carbon sinks are actively increased and avoid this being used to lower ambition in other sectors;*
- *Support robust, transparent accounting rules, including a mandatory category for wetlands, and in particular a correct forest management reference level comparing future emissions to historical trends;*
- *Include safeguards to ensure that all LULUCF activities have a positive impact, or at least no adverse impact, on nature and biodiversity.*

See Annex 2 for more detailed comments.

3. Council conclusions on the Paris Agreement and preparations for the UNFCCC meetings in Bonn

The EEB welcomes the opportunity provided by the UNFCCC meeting in Bonn to debate the ways in which parties to the Paris Agreement can now start to align their domestic goals to what is needed to honour their commitments and avoid the catastrophic impacts of a climate that is already changing.

The EEB therefore calls upon the Environment Council to:

- *Respond to the worries of EU citizens and put in place the process to deliver the long-term goals of the Paris Agreement;*
- *Give full support for a clear roadmap for the 2018 Facilitative dialogue;*
- *Embrace the need for all sectors to deliver and ensure that shipping and aviation do their part;*
- *Support a review clause to adjust the EU targets to the scientific findings of the upcoming IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways.*

See Annex 3 for more detailed comments.

4. Matters arising from the sixth session of the Meeting of the Parties to the Aarhus Convention

The EU's reaction to a finding of non-compliance under the Aarhus Convention, as played out last month at the sixth session Meeting of the Parties to the Convention (MoP), has been deeply damaging to the EU's credibility as a promoter of democracy, accountability and the rule of law. By seeking to end the longstanding practice whereby the Compliance Committee's findings of non-compliance are routinely endorsed by the MoP, the EU risked weakening the entire compliance mechanism and therefore the implementation of the Convention itself – a scenario that was only avoided due to the solid opposition of all other Parties and stakeholders present. The EU now needs to evaluate the lessons from the Budva meeting and move swiftly to address the problems underlying the finding of non-compliance.

The EEB therefore calls upon the Environment Council to:

- *Insist that the Commission initiates without delay steps to bring the EU back into compliance with the Convention, including by preparing a legislative proposal to revise the Aarhus Regulation.*

See Annex 4 for more detailed comments.

Thank you in advance for your consideration of these points.

Yours sincerely,



Jeremy Wates
Secretary General

ANNEX 1

EEB comments to the Environment Council of 13 October 2017 on: Effort Sharing Regulation

The world has endured a summer of unprecedented floods, hurricanes, droughts and wild fires across the globe. We are experiencing 400 extreme weather events every year, four times as many as in 1970. The signs of our changing global climate are as clear as they can be. To tackle this major threat, governments have come together and adopted the Paris Agreement.

The ongoing negotiations on the Effort Sharing Regulation (ESR) are a litmus test determining if Europe is able to translate the leadership shown at the COP21 in Paris into concrete action at home. The current level of ambition put on the table by the European Union falls short of our responsibility. The United Nations Environment Programme (UNEP) emissions gap report has been pointing out that all countries, including those of the EU, need to further reduce their projected 2030 emissions by an additional 25% only to achieve the 2°C limit. To keep the door open for staying within a 1.5°C increase, efforts must be massively accelerated beyond this.

The EEB underlines therefore the urgent need to deliver on the EU's commitments under the Paris Agreement through effective and ambitious legislation implemented and translated into domestic action to pursue efforts to limit global warming to 1.5°C above pre-industrial levels.

The Commission's proposal for the ESR at its current design would lower the already insufficient -30% target for the non-industry sectors to a mere -23%. We call on you as Environment and Climate ministers to support a provision which would align the starting point with real emission levels and ensure that no loopholes would threaten real emission reductions efforts to be taken. Furthermore, we reiterate our warning that any provisions that contradict the environmental integrity will undermine the credibility of the ESR as a whole.

The EEB therefore calls upon the Environment Council to:

- *Support a higher 2030 climate target and an ambitious 2050 objective. The ESR must set Europe on a path to meet the Paris Agreement goals. To do so, while we believe that more stringent targets will eventually be needed, the legislation must as a minimum set out a trajectory to reach at least a 95% cut in greenhouse gas emissions from 1990 levels by 2050 supported by, as a minimum, a 47% reduction in the ESR sectors by 2030;*
- *A starting point that reflects actual emissions and does not reward countries for underachieving – specifically, move the starting point forward to 2017 or at least 2018 (as asked by the European Parliament) linear emissions, capped by 2020 targets, to reduce the amount of hot air that is introduced in the ESR;*
- *Oppose the weakening of the 2030 framework resulting from creating an ESR Safety Reserve;*
- *Close the forestry loophole that allows countries to use non-permanent forestry credits to allow more greenhouse gas emissions elsewhere;*
- *Remove the emissions trading system (ETS) loophole that allows countries to exploit the ETS surplus to undermine climate action in the non-traded sectors;*
- *A better governance system which includes yearly compliance checks and financial penalties in the case of non-compliance;*
- *A review clause which allows for ambition to be raised over time, as the EU submits a new 2030 climate target to the United Nations Framework Convention on Climate Change.*

ANNEX 2

EEB comments to the Environment Council of 13 October 2017 on: LULUCF

Finding an effective approach to land and forests must be an integral part of EU climate policy. The European Council's vote on the regulation for the land use, land use change and forestry (LULUCF) sector will shape the architecture of our long-term ability to ensure healthy forests and deliver on our climate commitments.

Forests are uniquely linked to climate change, as intensive logging and deforestation have seriously negative climate impacts and limit the ability of forests to provide ecosystem services and cooling. The climate impact of past changes in land use and land cover is currently estimated to have caused 40% of all warming between 1850 and 2010.

The average forest harvesting level of the annual forest growth in the EU is 75%, but the presidency proposal would give free allowances to countries that have a higher than average harvesting level such as Sweden and Austria. This is not justifiable.

To ensure the integrity of the climate accounting framework, forest reference levels for the Member States should be set on scientifically objective grounds and should incentivise climate change mitigation as outlined by the report by the European Academies Science Advisory Council (EASAC)¹ and a recent letter by 193 scientists².

The EEB therefore calls upon the Environment Council to:

- *On LULUCF, support a forest management reference level that compares future emissions to an evolution of forest management practice and harvesting as documented between 1990-2009 to ensure that emissions from increased bioenergy use are accounted for;*
- *Raise ambition so that the EU not only maintains its carbon sink but actively increases it in order to put the EU on a pathway to limit warming to below 1.5°C;*
- *Do not allow carbon sequestration from forestry to decrease the level of ambition in other sectors;*
- *Support robust accounting rules that are transparent, simple and comparable;*
- *Include safeguards to ensure that all LULUCF activities have a positive impact, or at least no adverse impact, on nature and biodiversity;*
- *Make managed wetlands a mandatory accounting category for all Member States. Peatlands and wetlands have high conservation value and are large carbon stores; their restoration and conservation should be incentivized;*
- *Ensure policy coherence in relation to the Birds and Habitats Directives especially when it comes to reforestation and restoration of degraded forest lands;*
- *Mandate the Commission to make a proposal on how the ambition level of the LULUCF sector can be increased post-2030. The Commission needs to assess what the role of land and forests is in the EU's fair share of the target to limit global warming to 1.5°C.*

¹ http://www.easac.eu/fileadmin/PDF_s/reports_statements/Forests/EASAC_Forests_web_complete.pdf

² <http://www.euractiv.com/section/energy/opinion/need-for-a-scientific-basis-of-eu-climate-policy-on-forests/>

ANNEX 3

EEB comments to the Environment Council of 13 October 2017 on: Council conclusions on the Paris Agreement and preparations for the UNFCCC meetings in Bonn

In addition to the domestic action as part of the 2030 framework, the EU needs to continue its efforts on the international level driving increased cooperation and consistence in view of the urgent action needed. The Council Conclusions for the UNFCCC COP 23 in Bonn are a key moment to shape Europe's contribution to the intergovernmental process and promote a common understanding on how to operationalise the long-term goals of the Paris Agreement.

To be ready for the launch of the Facilitative Dialogue 2018 in Bonn, the Council Conclusions must set out a clear commitment and mandate that this process includes an assessment of latest science and action currently taken. The evidence is clear that the EU needs to increase its efforts and strengthen its capabilities to reduce emissions rapidly and ensure that all sectors, including shipping and aviation, play their part. The EU must demonstrate its leadership in order to help ensure that all countries fulfill their commitments and put forward more ambitious 2030 climate targets by 2020.

Building on this, it is of paramount importance that the legislation currently being prepared will include review clauses which allow for the level of the targets to be ramped up once the EU has submitted its new NDC to the Paris Agreement.

The Eurobarometer³ report on climate change in September shows that nine out of ten EU citizens see climate change as a serious problem and are increasingly worried about the multiple threats to their future posed by climate change. A strong majority (79%) of EU citizens have understood that fighting climate change and using energy more efficiently can boost the economy and jobs in the EU. Many EU citizens are personally involved in the fight to combat climate change, with nine out of ten reporting to have personally taken action.

The EEB therefore calls upon the Environment Council to:

- *Respond to the concerns of EU citizens and put in place the process to deliver the long-term goals of the Paris Agreement;*
- *Give full support for a clear roadmap for the 2018 Facilitative dialogue;*
- *Embrace the need for all sectors to deliver and ensure that the shipping and aviation sectors play their part;*
- *Support a review clause to adjust the EU targets to the scientific findings of the upcoming IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways.*

³ https://ec.europa.eu/clima/sites/clima/files/support/docs/report_2017_en.pdf

ANNEX 4

EEB comments to the Environment Council of 13 October 2017 on: Matters arising from the sixth session of the Meeting of the Parties to the Aarhus Convention

The sixth session of the Meeting of the Parties (MoP) to the Aarhus Convention, the third session of the Meeting of the Parties to the Convention's Protocol on Pollutant Release and Transfer Registers and a joint high-level segment took place in Budva, Montenegro, from 11 to 15 September 2017. While there were various outcomes to these meetings, by far the most significant concerned the EU's reaction to a finding by the Convention's Compliance Committee that the EU was in breach of the Convention due to the lack of sufficient opportunities for access to justice at the EU level. Whereas all previous findings of non-compliance by the Committee had been endorsed by the MoP, the EU position was that the MoP should, in this particular case concerning the EU's non-compliance, only 'take note' of the finding. This position had been adopted through a Council Decision, affording limited negotiating flexibility. During the discussions in Budva, the EU clarified that its negotiating flexibility was effectively zero.

The position taken by the EU, had it been adopted, could have significantly and permanently undermined the authority of the Committee, and thereby weakened the effectiveness of the Convention itself throughout the entire region covered by the Aarhus Parties. While Member States deserve some credit for unanimously rejecting a Commission proposal to actually reject the findings, the resulting compromise position would arguably have been more detrimental to the promotion of environmental democracy in the wider region than any other decision adopted by the MoP since the adoption of the Convention in 1998. The fact that the EU advanced this position without any willingness to negotiate coupled with the lack of credible legal argumentation reinforced the impression that the EU does not see itself as bound by the same rules that bind other Parties, i.e. that it considers itself above the rule of law. Fortunately not a single Party or stakeholder supported the EU's position, and most of those that spoke on the matter were strongly critical of the EU position, leading to a standoff and eventually a decision to return to the issue at the next session of the MoP in four years.

This was a dark moment in the history of the EU's relationship with democracy. The [statement](#) delivered at the close of the high-level segment by the European ECO Forum, a coalition bringing together NGOs from throughout the wider European region, effectively summarises the concerns of civil society.

Meanwhile, the problem that underlies the finding of non-compliance is a very real one. Apart from in access to documents cases, environmental NGOs and the wider public have virtually no possibility to challenge the decisions of bodies such as the European Commission before the courts. In contrast, businesses do have access to the courts to defend their commercial interests, creating an obvious imbalance. There is also a discrepancy and even double standards in the fact that the Commission and Court of Justice of the EU resist access to justice in relation to themselves while supporting and even imposing it in relation to the Member State level.

The EEB therefore calls upon the Environment Council to:

- *Insist that the Commission initiates without delay steps to bring the EU back into compliance with the Convention, including by preparing a legislative proposal to revise the Aarhus Regulation.*