



# EEB

European  
Environmental  
Bureau

THE EEB'S

# MEMORANDUM

## TO THE ROMANIAN PRESIDENCY OF THE EUROPEAN UNION



Including the Ten Green Tests

JANUARY - JUNE 2019

*Prepared in cooperation with Seas At Risk*



EUROPE'S LARGEST NETWORK  
OF ENVIRONMENTAL CITIZENS'  
ORGANISATIONS



Prepared in cooperation with Seas At Risk



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# INTRODUCTION

The Romanian Presidency is the first of a new Presidency Trio that will run from 1 January 2019 to 30 June 2020, with Romania being followed by Finland then Croatia. On 30 November 2018, the Council published the **18-month programme** drawn up by the Presidency Trio. The Presidency Trio programme provides a general framework within which each individual EU Presidency develops its own programme and priorities depending not least on which specific topics require to be dealt with at that time.

From an environmental perspective, the Presidency Trio programme contains a number of promising elements, with positive references to the 2030 Agenda for Sustainable Development, good

governance, democratic values and a number of environmental topics including climate change, circular economy and agriculture. However, in translating the necessary generality of an 18-month programme into something with the specificity appropriate to a six-month term, each individual EU Presidency makes its choice of emphasis – and as in a relay race, the performance of each individual EU Presidency plays an important role in determining the extent to which the priorities of the Trio are delivered on. Thus Romania has a key role to play in maintaining and strengthening the EU's environmental policies and moving the EU towards a sustainable development paradigm – all the more so because of the timing of its Presidency.

## Romania has taken over the Presidency of the European Union at a time when the challenge of strengthening and implementing EU environmental policies is as great as ever.

In the above context, the EEB welcomes that *sustainable development* is given a prominent role in Romania's choice of topics for its **presidency of the EU**. Similarly, we are encouraged by the commitment to support the *reduction of disparities, convergence, employment and social rights* – given the links to inequality in pollution impacts and access to resources, as well as rights, which is linked, inter alia, to right for clean water, clean air, and access to justice, also critically important to Romania's commitment to *a safer Europe*.

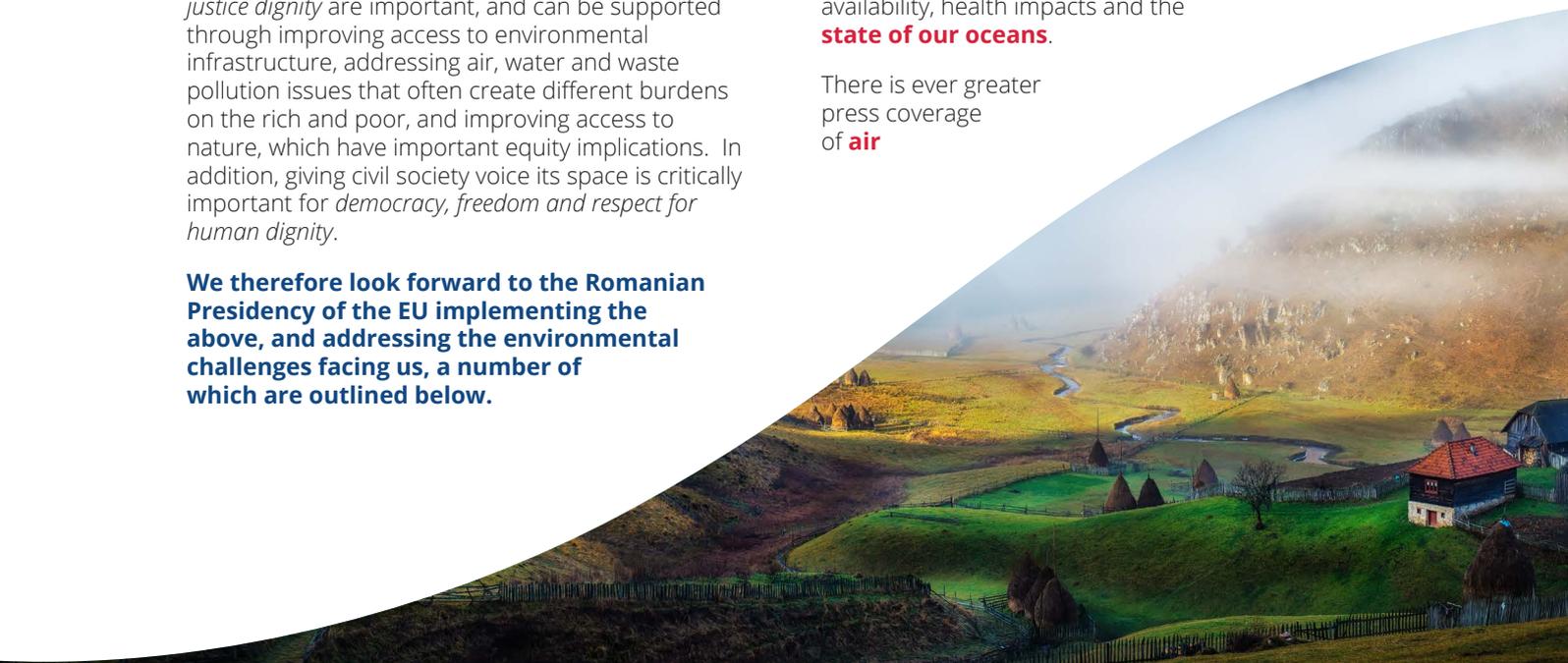
We welcome the reiteration of the need to honour international commitments – that include the Paris Accord, the SDGs, Biodiversity targets and a wide range of other environmental conventions, treaties and protocols. Finally, the ambitions for a *Europe of Common Values*, and associated commitments for *solidarity, cohesion, equal opportunities and social justice dignity* are important, and can be supported through improving access to environmental infrastructure, addressing air, water and waste pollution issues that often create different burdens on the rich and poor, and improving access to nature, which have important equity implications. In addition, giving civil society voice its space is critically important for *democracy, freedom and respect for human dignity*.

**We therefore look forward to the Romanian Presidency of the EU implementing the above, and addressing the environmental challenges facing us, a number of which are outlined below.**

**Climate change** is an undeniable reality, demonstrated by increased forest fires, flooding, destructive storms, and water stress that undermine ecosystems and livelihoods. Without additional efforts, it is ever more likely that the 1.5°C Paris target will not be met, nor even the 2°C target, with dramatic consequences in Europe and abroad, creating pressures for future environmental refugees, water stress and storms, rising sea levels and ocean acidification, which jeopardise the web of life.

The world has also woken up to the dramatic problems of **plastic litter in our oceans** that affect not only marine life but also our health and economic activity: fishing, tourism, shipping. Despite patches of progress, and despite plastic in our foodweb, we are fishing out our seas, raising questions for long term protein availability, health impacts and the **state of our oceans**.

There is ever greater press coverage of **air**



**pollution risks to citizens**, with science demonstrating links to early mortality, early onset dementia, impacts on learning, and reduced lung capacity in children, while national governments act too slowly and too timidly to protect their citizens' health.

**Consumer concerns** are being voiced about hazardous **chemicals** in toys, in jewellery, in the clothes we wear, in drinking water and studies show unacceptable levels of breaches with the law. The press points out the unacceptable infiltration of **pesticides** in the eggs we eat, scientists warn of a growing loss of male fertility in Europe, and research shows that despite progressive laws, harmful chemicals are still prevalent.

Researchers and citizen science point to dramatic **loss of pollinating insects, birds and butterflies** on our lands – an ever more silent spring. We are failing our **biodiversity** and causing the **sixth major extinction event** in global history. The evidence of existing impacts and future risks is undeniable, dramatic and ultimately not only irresponsible and ethically questionable, but self-destructive. We borrow from our future generations who will question the **ethics and environmental justice** of the decisions of this generation.

Even when there is progress following the adoption by the international community of the **2030 Agenda for Sustainable Development** with its 17 Sustainable Development Goals (SDGs), there is far from sufficient implementation and integration of the 2030 Agenda across EU and national policies. This is a major missed opportunity and undermines global governance that the EU and Member States argue so strongly about supporting.

A further major challenge has been the **lack of implementation** of environmental laws that EU Member States signed up to – part of the reason is lack of political will, part lack of resources to ensure implementation by inspectors, prosecutors and judges. **Access to Justice** and confidence in the rule of law are both far weaker than they need to be for the European Project to succeed. The forthcoming discussions in **Sibiu on the European Project** need to reflect what sort of EU we want, creating an opportunity to integrate citizens' vision of an EU where wellbeing, quality environment and

confidence that EU laws protect citizens' health, rights and the environment are guaranteed.

There are, of course, other major and pressing political challenges – defining the future of Europe in light of national and international pressures; Brexit; security, migration, integration and social cohesion; global trade; digitization of the economy and artificial intelligence. These issues are important, but we ignore at our peril the life support system upon which the whole of society and the economy depend: our environment. The cost of inaction or the costs of delayed action will be too high, as we are beginning to see with climate change, with air pollution, with biodiversity loss. It is essential that we learn to live well 'within the limits of our planet'. It is an inconvenient truth that the EU's high-level political discourse shies away from this principle far too often.

There are opportunities for the Romanian EU Presidency to make a difference and help put in place policies and practical actions for a just transition to a one-planet economy. The six months of the Romanian Presidency are an important next step to prove our convictions and agency to safeguard our citizens and planet.

This Memorandum, prepared in cooperation with Seas at Risk, reflects on the issues that the EEB would like to see advanced during the Romanian Presidency. The most important issues are highlighted in the Ten Green Tests. These were adopted by the EEB Board which has representatives from more than 30 countries and several European networks. At the end of June 2019, the Ten Green Tests will be used to evaluate the Presidency's performance over the coming 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, as well as the Council President. However, EU 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 Romanian Government throughout the Presidency and beyond.



Jeremy Wates  
Secretary General

# TEN GREEN TESTS FOR THE ROMANIAN PRESIDENCY

We call upon the Romanian Presidency of the European Union to promote 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. Drive ambitious climate commitments to 1.5 degrees

- **Support ambitious conclusions in the Spring Council** on the follow-up to the **Katowice Climate Change Conference** (UNFCCC COP 24) that deliver the commitments of the **High Ambition Coalition** on increasing EU's Nationally Determined Contributions (NDCs);
- **Secure support for a vision for net-zero GHG emissions in the EU before 2050**, building on the EU Commission's work for an EU Long-Term Climate Strategy;
- **Bring the CO<sub>2</sub> requirements for heavy duty vehicles in line with the Paris Agreement** ensuring significant cuts of CO<sub>2</sub> emissions from transport;
- Complete the negotiations on the **Directive on the internal market in natural gas** considering the need to phase out fossil fuels, avoid fossil fuel lock-ins, and the public scrutiny applied to the geopolitical impact.



## 2. Halt biodiversity loss: Protect our land and oceans

- Step up **implementation of the EU's Nature Directives**;
- **Show global leadership in driving global agreement on New Deal for Nature** similar to Paris Climate Agreement to be adopted under the UN Convention on Biological Diversity in 2020, and ensure ambitious measures taken by the EU to address deforestation and forest degradation;
- Take the necessary measures to fully **implement the regulation on Invasive Alien Species**;
- **Negotiate for sufficient, efficient and effective financing for biodiversity** in the post 2020 EU budget;
- **Drive commitments to healthy seas and oceans and ensure sustainable fisheries**.



## 3. Transform food & farming systems through the Common Agricultural Policy

- **Ensure that there is a comprehensive discussion of the CAP in both the Environment and Agriculture Council** formations that takes account of the need to strengthen the provisions for environment and climate measures in the CAP negotiations;
- **Drive CAP negotiations to strengthen Member States' accountability** and hence confidence that the CAP will deliver on the environment and the climate;
- Mobilise political support for ensuring that **no subsidies harmful to environment and climate are part of the CAP** post 2020.



## 4. Make the EU Budget work for people and planet

- **Drive MFF negotiations to promote an EU budget for sustainability, EU added-value, that implements our Paris, SDGs and biodiversity commitments, and catalyses change towards a one-planet economy.** Aim for minimum 1% budget for Life, ring-fence 15bn EUR for nature protection, 40% climate mainstreaming, and no funding for projects that run counter the Paris Accord or other harmful subsidies;
- Ensure that budget cuts in the future CAP is **rebalanced towards cuts in the first Pillar of the CAP** and make all spending dependent on the **respect for environmental legislation**;
- **Transform the European Maritime and Fisheries Fund into a true ocean conservation fund** by excluding any subsidies that aggravate overfishing. Instead, ring-fence funds for the ecological restoration of our seas;
- **Encourage green finance and environmental fiscal reform**, including carbon pricing, and **ensure transparency** on subsidies in the EU and **encourage the removal of harmful subsidies**;
- **Ensure that the EU budget avoids fossil fuel lock-ins** in key instruments like the Connecting Europe Facility.

## 5. Reduce air pollution to protect human health and the environment

- **Ensure an ambitious contribution to the Ambient Air Quality Directive fitness check**;
- **Ensure that the Commission undertakes a balanced fitness check of the Industrial Emissions Directive**, delivering improved pollution prevention at source and a re-defined scope to promote the ecological transition of industrial activities;
- **Engage in review/revision of the Gothenburg Protocol**;
- **Encourage an ambitious position on agricultural air pollutants in the CAP proposal** which effectively contributes to achieve WHO air quality standards.

## 6. Ensure clean and sufficient water for Europeans

- Work with the European Commission to **perform a balanced fitness check evaluation of the Water Framework Directive** and **focus on improving the implementation of the WFD** rather than amending this ground-breaking piece of legislation;
- **Negotiate for sufficient, efficient and effective financing** for sustainable water management in the post 2020 EU budget;
- **Prepare ambitious Council positions** on the Drinking Water Directive and Water Reuse Regulation.

## 7. Protect the public from hazardous chemicals

- REACH Evaluation: **Deliver Council conclusions on the REACH REFIT** that call on the Commission to commit to speed up and **improve REACH implementation**;
- Non-REACH chemicals legislations fitness check: **Agree Council conclusions on concrete actions for improvement and timelines**;
- Call on the EC to **prepare an ambitious Non-Toxic Environmental Strategy** and promote chemicals substitution;
- **Maintain leadership on the Minamata Convention on Mercury** and ensure implementation in the EU.





## 8. Transition to an innovative, resource efficient, circular economy

- **Advance EU Plastics Strategy measures to reduce plastic pollution and achieve a Plastics Free Ocean:** proactively prepare sound revision of essential requirements for packaging and criteria to modulate EPR fees and drive new focus on textiles and micro-fibres;
- **Actively support the EU-level work on product policy,** notably working towards a future swift implementation of an EU information system to track substances of concern and material contents of products, of the repair scoring system and targeting new sectors beyond energy related products to apply similar push and pull mechanisms as Ecodesign and Energy Labelling schemes;
- **Push the EU to design a new ecolabel strategy** to ensure a more effective roll out across products and effective communication plan.

## 9. Strengthen democratic governance, the rule of law, and environmental justice

- **Support better implementation and build confidence in the rule of law:** debate the EIR communication and ensure Council Conclusions to promote better implementation;
- **Ensure that trade agreements and Brexit do not jeopardize existing or future EU environmental standards;**
- **Maintain pressure on the Commission to take steps to end EU non-compliance with the Aarhus Convention and reopen discussion on a Directive on Access to Justice;**
- **Engage in revision of the European pollutant release and transfer register (E-PRTR)** to deliver compliance promotion and benchmarking towards SDG goals;
- **Ensure that the EU takes a strong position at the upcoming Espoo Convention and Strategic Environmental Assessment Protocol Meetings of the Parties in February,** to fully honour its international environmental commitments.

## 10. Make Sustainable Development Goals drive the Future of Europe

- **Drive thorough and far-reaching strategic discussions on the Future of Europe in Sibiu that establish sustainable development as the overarching framework:** call on the incoming Commission to draw up a strategy for implementation of the 2030 Agenda and the SDGs with clear targets, timelines, objectives and concrete measures to implement the 2030 Agenda in all EU policies as demanded by the Council and the European Parliament in June 2017 and reiterated by the Council in October 2018;
- **Encourage the current Commission to report about its implementation** of the SDGs at the HLPF in New York in July 2019 in a full SDG monitoring report similar to a Voluntary National Review (VNR), that is, covering all policies, internal and external, as well as spill over effects of European domestic policies;
- **Request the incoming Commission to prepare without delay an 8th Environment Action Programme** in order to catalyse a just transition to a one-planet economy;
- **Encourage policy and governance reform so that wellbeing takes a more prominent role** – i.e. in Better Regulation processes and tools and having a Commissioner for Wellbeing and Future Generations.



# 1. EUROPEAN COUNCIL

*Key issues of importance for deliberations in the European Council include: The Global Sustainable Agenda, given its potential transformative impact on the EU if implemented properly, the Future of Europe debate in Sibiu, given the existential questions being explored, and the Better Regulation agenda, given its pervasive impact on policy making. The former two are presented in this section and, to avoid repetition, the Better Regulation issue is presented in Section 5: competitiveness Council.*

## 1.1 Make the Sustainable Development Goals drive the Future of Europe

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. However, despite the EU having played an important role in the development of the 2030 Agenda, and despite significant pressure from Member States in the form of Council Conclusions, the Commission has not yet given its implementation high priority.

The Rome Declaration adopted at the March 2017 summit marking the 60<sup>th</sup> anniversary of the Treaty of Rome made the connection between sustainability and the political debate on the future of Europe. Under the Maltese Presidency, the Council in June 2017 urged the Commission to elaborate, by mid-2018, an implementation strategy for the 2030 Agenda outlining timeline, objectives and concrete measures for all relevant internal and external policies. Moreover, the Council conclusions asked the Commission

to implement the Agenda 2030 in a full, coherent, comprehensive, integrated and effective manner, and to report about it

the UN High Level Political Forum in 2019. The issue was taken up by the Heads of Government in October 2018 through [European Council conclusions](#) which reiterated the EU's full commitment to the 2030 Agenda for Sustainable Development and its implementation, welcomed the intention of the Commission to publish its 'reflection paper' in 2018, and signalled that this should pave the way for a comprehensive implementation strategy in 2019.

The EEB has welcomed these elements and is asking the Commission to follow the Council's conclusions. However, the Commission leadership has so far missed the opportunity to make Agenda 2030 the overarching framework covering all European policies and programmes in order to ensure a sustainable future. The promised reflection paper, already an inadequate form of response to the 2030 Agenda, was until recently scheduled to come out on 19 December 2018 but even this has been delayed and will now fall under the Romanian Presidency.

Finally, there is a growing understanding among scientists and citizens that the current GDP-growth focused paradigm of policy making is not providing what either the citizens nor the planet need. Discussions at the Growth in Transition conference in Vienna and the EP Beyond Growth conference, and the petition by 238 scientists, signed by some 90,000 citizens, argue that Wellbeing should replace GDP growth as the high-level policy target.



## We therefore call upon the Romanian Presidency to:

- **Drive thorough and far-reaching strategic discussions on the Future of Europe in Sibiu: Influence the outcome of the Future of Europe debate** to make sure that the 2030 Agenda and the SDGs become the overarching framework for the vision of the Future of Europe.
- **Request the European Commission to set out an implementation strategy** with clear European targets for all SDGs, timelines, objectives and concrete measures to implement the 2030 Agenda in all EU policies as demanded by the Council in June 2017.
- **Encourage the current Commission to report about its implementation** of the SDGs at the HLPF in New York in July 2019 in a full SDG monitoring report similar to a Voluntary National Review (VNR), that is, covering all policies, internal and external, as well as spill over effects of European domestic policies. The Commission should set up a transparent and participatory system for developing its SDG monitoring reports that includes broad consultation of civil society and the integration of CSOs into its delegation to the HLPF.
- **Encourage the integration of the SDGs into ongoing reflections on the 8 Environmental Action Programme that should help catalyse the just transition to a one-planet economy.**
- **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.
- **SDG-MFF Coherence:** Use available opportunities to ensure that in the negotiations 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 (see also 2.2).
- **Wellbeing, policy and governance:** Encourage policy and governance reform, so that the Growth and Stability Pact becomes a Wellbeing and Stability Pact, that a Commissioner for Wellbeing and Future Generations be assigned, and that Wellbeing plays a more central role in Better Regulation and its toolkit.

### Global governance

- **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.
- Ensure the **active participation of the EU and its Member States in the 4th UN Environment Assembly (UNEA-4)** in Nairobi in March 2019 and to show global leadership of the EU as the driver for innovative environmental regulation and practices.
- 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 2019 and **urge the Commission to present its first report on SDG implementation by the EU during the 2019 HLPF** (in line with the June 2017 Council conclusions).

## 1.2 Managing Brexit

While the concern that the UK referendum result in 2016 that triggered the Brexit process might have a domino effect has for the time being been largely assuaged, not least by the continuing spectacle of the UK political establishment infighting as regards Brexit strategies, the EU needs to remain vigilant against the risk that the Brexit process and eventually a post-Brexit UK could exert a downward pull on environmental laws, policies and standards. The various forecasts that predict that the economic position of the UK could become significantly more difficult post-Brexit, especially under a harder form of Brexit, mean that in such a scenario the UK could end up moving towards becoming a low-regulation zone in order to attract investment, albeit of the wrong kind.

To their credit, the EU-27 represented by the Commission and with the support of the European Parliament have from an early stage been fairly consistent in asserting that there should be no cherry-picking on the UK's part or stealing of a short-term competitive advantage through weaker environmental and health protection and regulation and that, in broad terms, the UK should expect to comply with the EU's laws if it wants access to the EU's markets. This approach has been enshrined both in the Withdrawal Agreement, notably in the 'Irish

backstop', and in the Political Declaration, both of which were adopted on 25 November 2018, with important references to the principle of non-regression on environmental standards and the need to maintain a level playing field (implying a strong link being maintained between level of market access and level of regulatory alignment). The European Council Declaration that accompanied the adoption of the Withdrawal Agreement and Political Declaration gave further emphasis to 'the necessity to maintain ambitious level playing field conditions', making specific reference in this context to the question of alignment with EU environmental standards.

If the Withdrawal Agreement were to be accepted by the UK parliament, all of this would provide a significant measure of reassurance. However, this now seems unlikely, and given the extreme volatility in the UK political situation, the possibility that some of these issues may be revisited, e.g. in the event of a new government being put in place in the UK, cannot be ruled out. Furthermore, if/when negotiations begin in earnest on the future relationship, the risk of the EU-27's remarkable show of unity being fractured is likely to increase. Thus, the importance of the EU maintaining a strong line on this cannot be over-stated.

### We therefore call upon the Romanian Presidency to:

- **Ensure that Brexit does not jeopardize existing or future EU environmental standards:** Future UK access to the EU market should be linked with the UK's adherence to the principles and standards of the EU's environmental acquis ('dynamic alignment'). This requires a non-regression commitment, not only for products traded into the EU market, but also more widely – with commitments to maintain laws on nature protection, industrial emissions, chemical safety and air and water pollution laws to avoid cross-border impacts.



# 2. GENERAL AFFAIRS COUNCIL

## 2.1 Multiannual Financial Framework

In 2015, the President of the European Commission, Jean-Claude Juncker, stated: “We need a budget to achieve our aims. **The budget for us is therefore not an accounting tool, but a means to achieve our political goals**”<sup>1</sup>. The EU budget should therefore be a means to achieving EU commitments – which include the Paris Agreement on climate change, the global agreement on the Sustainable Development Goals (SDGs), the EU’s commitments on biodiversity, and the range of objectives under the EU’s *acquis communautaire* and the commitments under the Treaty. On 2 May 2018, the European Commission released its communication on the Multiannual Financial Framework 2021-2027 (MFF). European Commission President Jean-Claude Juncker described the framework as an ‘*opportunity to shape the future as a new, ambitious Union of 27*’.

However, while there are positive elements in the MFF proposal – notably the promise of being a more climate friendly budget - the current proposal will not drive down GHG emissions, do enough to halt biodiversity loss or water quality degradation. Indeed, there is a

very real risk of continued ongoing pressure on both biodiversity and water quality through the CAP proposals. Furthermore, the MFF does not integrate the globally agreed SDGs in any meaningful way. The EU budget, as proposed, will therefore be a missed opportunity for EU added-value.

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 an ongoing destruction of our natural capital and planet and prove to be a sub-optimal use of taxpayers’ money and hence erode confidence in EU institutions. There remain opportunities to improve Natura 2000 Funding, severely underfunded to date, to drive transformative change by focusing on carbon reduction investments rather than subsidising new lock-ins to emissions, and aim to refocus CAP funding so that it targets biodiversity, other public goods and sustainable food and farming.

<sup>1</sup> Quote from Jean-Claude Juncker, 22 September 2015. See the Reflection Paper on the future of EU finances, page 4.



## We therefore call upon the Romanian Presidency to:

- **Drive MFF negotiations to promote an EU budget for sustainability, EU added-value and catalysing change:** contribute to negotiations on the MFF to ensure that it is coherent with the Treaty Objectives and wider EU commitments - on the Paris Agreement, on the SDGs, on halting biodiversity loss and protecting the oceans; and more specifically, ensure that it allocates sufficient funds to climate and environment and is sustainability- and climate-proofed by due integration and targets. At least 1% of the budget should be allocated to LIFE+ and EUR 15bn per year should be ring-fenced for the implementation of Natura 2000 and other measures that primarily support the implementation of the nature directives on land. The climate mainstreaming goal should be increased from 25% to at least 40% of the whole EU Budget and there should be no spending on projects that run counter the Paris Climate Agreement, such as fossil fuels infrastructure and environmentally harmful subsidies.
- **Ensure that budget cuts in the future CAP is rebalanced towards cuts in the first Pillar of the CAP and make all spending dependent on the respect for environmental legislation.** The CAP budget must be convincingly compatible with climate, biodiversity and other environmental objectives.
- **Transform the European Maritime and Fisheries Fund into a true ocean conservation fund** by excluding any subsidies that aggravate overfishing. Instead, ring-fence funds for the ecological restoration of our seas.
- **Encourage green finance and environmental fiscal reform, including carbon pricing, and ensure transparency on subsidies in the EU and encourage the removal of harmful subsidies** (e.g. in the fisheries sector, agriculture and cohesion funding on transport; support for fossil fuel related infrastructures). Pricing that reflects the user pays and polluter pays principles should be encouraged. There should be systematic use of green public procurement (GPP) where EU funding is concerned and wider uptake of GPP more generally. Progress on green finance to support and integrate sustainability concerns and help meet sustainability objectives should be encouraged. And new discussions should be launched on how to encourage EU-wide use of carbon taxation.



## 2.2 European Semester

In 2010, the European Commission launched the European Semester process to help coordinate economic policies across the EU, providing country-specific recommendations (CSRs) each year. 'Greening the European Semester' is part of this process, aiming to ensure that macro-economic policies are environmentally sustainable. Past CSRs have focused on, for example, improving economic signals through environmental tax reform and reforming environmentally harmful subsidies, as well as recommendations to encourage resource efficiency and a transition to a circular economy. The process has received less political attention in recent years, and this should be rectified.

### We therefore call upon the Romanian Presidency to:

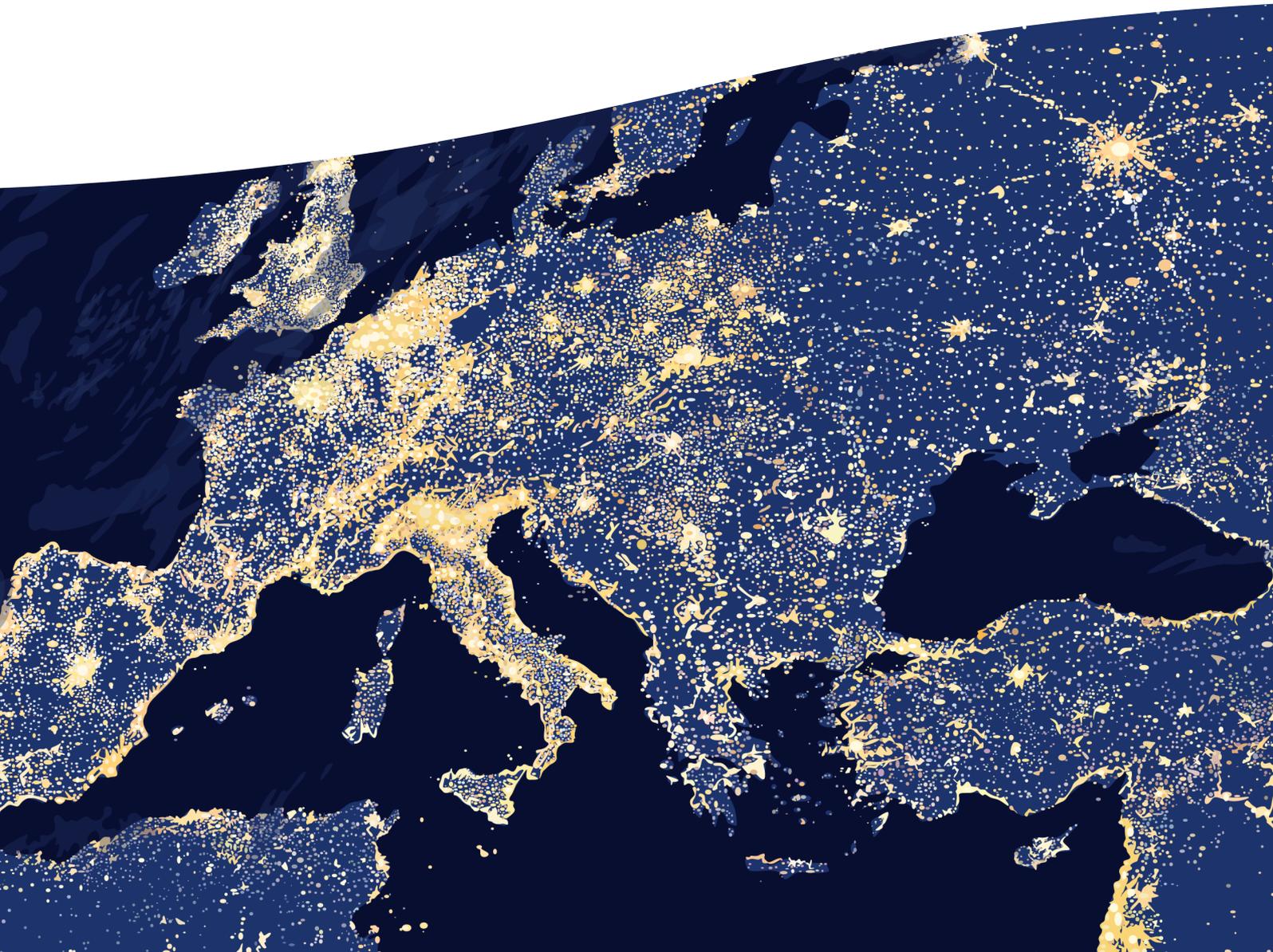
- **Reiterate and increase the political commitment to the Greening of the European Semester process and encourage measures to improve economic signals to enable the transition to a resource efficient, inclusive, circular economy that supports the sustainable development goals.** Positive practice in transparently documenting and reforming environmentally harmful subsidies should be encouraged. Similarly, continued efforts should be made to encourage wider environmental fiscal reform, supporting a move away from labour taxation towards taxation on natural resources, pollution and polluting products. And good practice in green public procurement should be rolled out across the EU. CSRs, peer-to-peer collaboration and capacity building to help support the institutional and stakeholder engagement necessary to achieve change are each needed.
- **Acknowledge the importance of the interactions of the environment with national economic and sectoral policies and priorities.** This supports good governance and facilitates implementation. Targeted country specific recommendations should be made – for example to underline the importance of nature-based solutions for national socio-economic priorities, such as rural viability through agri-ecology, local products and sustainable tourism, employment and ecosystem-based approaches to fisheries management, health benefits from access to Natura 2000 sites and green infrastructure.
- **Encourage that the Semester process builds in public interests and engages with civil society organisations to ensure that citizens' voices are heard.** This is important both for the legitimacy of the process, for identifying priority areas of focus, and developing the buy-in for implementation.

## 2.3 Accession and Neighbourhood policies, including Balkans

The countries in Eastern and South-Eastern Europe that aspire to one day join the European Union will need to bring their environmental policies close to those of the EU. The former Yugoslav Republic of Macedonia, Montenegro, Albania, Serbia and Turkey, the official candidate countries, Bosnia and Herzegovina and Kosovo as potential candidates as well as the countries covered by the European Neighbourhood and Partnership Instrument (ENPI) still need to overcome a wide range of environmental challenges such as air and water pollution, land degradation, waste management and the loss of biodiversity before joining the EU.

**We therefore call upon the Romanian Presidency to:**

- **Ensure that EU environmental rules and standards are fully integrated in discussions and funding** linked to the Balkans, the accession process and cooperation between the EU and the European Neighbourhood and Partnership Instrument (ENPI) countries.



# 3. FOREIGN AFFAIRS COUNCIL

## 3.1 Trade

The European Council will discuss international trade policy during the Romanian Presidency. At a time when US President Donald Trump is escalating trade protectionism to a degree that has led to concerns of an all-out trade war, and clearly for the purpose of stoking nationalist sentiment and placating his 'base' rather than for any higher motive, it may be tempting for the EU to react by simply defending the principle of free trade which has been one of the dominant principles of the world order in recent decades.

However, while the EU must push back against Trump, it would be a mistake to simply reassert the primacy of the principle of free trade without recognising the extent to which, without counterbalancing measures protecting the environment as well as consumer, health, worker and other social rights, it can be at best a mixed blessing and at worst a net loss for society and the environment. Indeed, giving excessive priority to free trade at the expense of the right to regulate in favour of environmental and social protections has led to much of the disenchantment with 'the establishment' not just in the US but also in many European countries. It also under-sells one of the EU's greatest achievements: its impressive framework of laws providing social and environmental safeguards for its citizens.

The EU response should be cognizant of the hazards of subordinating the right of a jurisdiction to protect its citizens to the right of corporations to do business without borders. It should also be mindful of the need to bring European public opinion along

with it. The agreement last summer between Trump and Juncker to seek removal of not only all tariffs but also all non-tariff barriers, while it may have for the time being headed off escalation to a full-blown trade war, raises questions as to how this could be achieved without jeopardizing the EU's framework of laws protecting the environment, public health etc, and in particular, its scope for further developing that framework. In other words, it will resurrect the TTIP controversy as if nothing had been learned through that.

It is not difficult to imagine that the tariffs dispute will continue/resume, and in that case, the EU response should be used to exert some policy leverage to challenge Trump's anti-environmental, anti-sustainability agenda. As the EU would be more or less obliged to retaliate with tariffs in one form or another, these could, and as far as possible, should at least be environmentally-based. Indeed, there was already a strong case for the EU (and others) to use carbon tariffs against the US given its position on the Paris Agreement, even if the US had not given it the excuse to do so by firing the first shots in a potential trade war.

The Romanian Presidency has rightly identified the need to "take public regulatory concerns into account"<sup>2</sup> in the context of investment provisions in EU agreements. The EEB shares the widespread concerns about the possible inclusion of a number of mechanisms in trade agreements which would drastically reduce the regulatory space of the EU to continue developing public interest policies including environmental policies.

<sup>2</sup> Programme of the Austrian Presidency, section 'Trade' (p.22).

In particular, potential agreements must not include an investor-state dispute settlement (ISDS) mechanism, either in the form of an Investment Court System (ICS) as proposed by the EU under TTIP or as it has now been agreed under CETA with some small differences. Investors should not be empowered to directly challenge sovereign governments over public interest policies, especially not in off-shore private tribunals typically comprised of three private sector attorneys, skirting the well-functioning domestic court systems and robust property rights protections in the US and the EU. The inclusion of such provisions in prior trade and investment deals has enabled powerful interests, from tobacco companies to corporate polluters, to use ISDS resolution to challenge and undermine consumer, public health and environmental protections. Investor-state tribunals have ordered taxpayers to compensate foreign corporations

with billions of dollars for the domestic, non-discriminatory enforcement of such protections. The last 10 years, in particular, have seen the number of such cases increase significantly. Seventy claims were launched in 2015 alone, the highest number ever in one year. At least 37% of those were against European governments. By the end of 2014, total payouts pay-outs to foreign investors by EU member states had reached at least €3.5 billion. If such an ISDS mechanism were to be included in a major bilateral trade agreement, there would be risks of major negative implications for the ability of the governments concerned to act in the public interest. Pursuing this in the face of the public backlash in Europe against globalization, the EU and open societies and economies in general would be reckless and irresponsible at best.

## We therefore call upon the Romanian Presidency to:

- **Ensure that trade agreements do not jeopardize existing or future EU environmental standards** but secure better social and environmental standards.
- **Ensure that trade agreements do not include investment arbitration procedures that create risks of deregulation or “regulatory chill”.**
- **Demand trade agreements that include clauses on the Paris Agreement, environmental non-regression and ‘do not harm’ in a Trade and Sustainable Development chapter** with an enforcement mechanism with teeth.
- **Push for national parliaments to have a vote** on any final trade or investment deal.
- **Support an alternative trade mandate based on extensive civil society consultations.**

# 4. ECONOMIC AND FINANCIAL AFFAIRS COUNCIL

## 4.1 Taxation and environmental fiscal reform

There are increasing calls for a system of fair and efficient taxation in the EU – at the EU presidency levels as underlined during the Austrian presidency, at the national level as seen by the calls for progressive taxation by the *Gilets Jaunes* demonstrators in France, and by the research community that underline the need for ecological tax reform to put more burdens on resources and pollution and less on labour.

Too often, a struggling economy has been used as a reason not to address environmental sustainability, and even if this is misguided and ignores the fact that the longer-term health of the economy will be helped by strong environmental policies, it is at least important to use a period when the economy is by conventional standards considered to be doing well to make progress with measures that serve longer-term objectives. But it is important that the concept of making the economy more sustainable is understood not just in the sense of making it more resilient but also in the more fundamental sense of becoming an economy that will deliver sustainable development in the true sense.

A fair and efficient taxation system is one where, inter alia, there are no harmful subsidies and where pricing reflects, inter alia, environmental externalities (such as climate change, air pollution, marine litter polluting the oceans) as well as resource costs (such as water, materials) and service provision (e.g.

waste management costs), while also taking into account affordability and distributional issues. This requires the implementation of carbon taxation and ambitious emissions trading scheme to tackle climate emissions. Pollution taxation and liability rules are needed to ensure pricing reflects commitments to the polluter pays principle. Water pricing under the WFD and waste fees are important incentives for behaviour and address the user pays principle. Furthermore, product taxes are needed to minimise the use of polluting products and encourage a transition to a circular economy. Finally, there is a need for subsidy reform to avoid perverse incentives and poor use of public funds – as are the case in transport and coal, for example - and hence support a transition to a low-carbon economy. There is also a need to shift the taxation burden away from labour towards resources and pollution to help address unemployment and other social concerns, while at the same time improving the environment and health.

In addition, a strong euro area requires that the European Semester process, launched in 2010 to help coordinate economic policies across the EU and providing country-specific recommendations (CSRs) each year, is effective not only a tool for stabilizing economies in the short term but also for effecting the steady transformation of economies to achieve long-term stability and sustainability.

## We therefore call upon the Romanian Presidency to:

- **Promote environmental fiscal reform as a central plank of economic policy** – fully reflecting economic and social concerns in policy design. Encourage a shift towards qualified majority voting (QMV) on carbon taxation and other environmental pricing instruments.
- **Encourage green finance and environmental fiscal reform: ensure transparency on subsidies** in the EU subsidy reform and encourage the removal of harmful subsidies (e.g. in the fisheries sector, agriculture and cohesion funding on transport). Pricing that reflects the user pays and polluter pays principles should be encouraged. There should be systematic use of green public procurement (GPP) in the use of EU funding and wider uptake of GPP more generally. Progress on green finance to support and integrate sustainability concerns and help meet sustainability objectives should be encouraged.
- **Encourage MFF negotiations to ensure that there are no harmful subsidies at the heart of the MFF** and that fiscal incentives are targeted at transformative change towards sustainability.
- **Ensure discussion of the design of the new financial measure for non-recycled plastic packaging waste proposed for the MFF: The MFF proposal is for a fee levied on non-recycled plastic packaging** - i.e. a down-stream tax focusing on end-of-life plastic. Negotiations should push for an **upstream tax on all virgin plastic** (ideally modulated on grounds of hazardous or chemicals content) as it is likely to have greater transformative effects on encouraging a circular economy. The downstream tax will mainly make laggard countries pay, only focuses on packaging waste (not the only source of plastic pollution) and miss the opportunity to go beyond simply encouraging plastic recycling which, while helpful, is not enough to address marine litter.
- **Support strategic reflections on just and sustainable economic transitions:** encourage EU-wide debate on what type of economy is coherent with planetary boundaries and social needs and where growth and degrowth strategies could be constructively targeted and promote progressive metrics for decision-making.

For recommendations on the MFF, please see section 2.2 above.



# 5. COMPETITIVENESS COUNCIL

## 5.1 Better Regulation

The principle of better regulation has become one of the cornerstones of EU governance, but while the notion of finding better and more efficient ways to regulate can hardly be objected to, the concept has too often been hijacked by those with a deregulatory agenda. The sensible objective of removing unnecessary administrative burdens has been conflated with the more partisan goal of alleviating regulatory burdens borne by business, even if those regulatory burdens are a necessary part of protecting essential rights: e.g. rights to health, to a clean environment, to decent working conditions. Too often the better regulation agenda has focused unduly on the burdens on certain businesses that would arise from a certain regulatory action, without looking at the benefits to society at large. In other words, the assessment of costs and benefits is often incomplete and therefore distorted as it artificially weighs out different value systems.

Furthermore, setting a target to reduce the burden of regulation does not help attain overarching objectives. 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 regulatory costs elsewhere, irrespective of the benefits arising, would seriously hamper these efforts.

Governmental bodies, including the EU institutions, need to act with the widest possible public interest in mind, not only the interest of business. The risk of failing to do so is that we jeopardize what is perhaps the EU's greatest achievement: an impressive framework of laws and policies that reflect and protect our fundamental values. Increasingly there is a need to regulate at the supra-national level, to ensure effective corporate accountability and prevent irresponsible companies simply moving to jurisdictions where the laws are weakest and thereby externalizing their costs (e.g. to the environment, to future generations, to other countries).

We therefore hope that the Romanian Presidency will take a more balanced approach to much needed efforts to improve the EU regulatory system; most crucially, by promoting legislation to protect EU citizens 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 Romanian Presidency to:

- **Avert deregulatory threats to EU environmental legislation and policy:** Ensure that the health and environmental benefits of regulation are included in discussions on better regulation at the General Affairs, Competitiveness and Environmental Councils, so as to **accelerate and implement regulation to protect citizens.**
- **Encourage reflection of the reform of the tools and process of Better Regulation:** to ensure that to process and tools integrate fully environmental and social considerations, including longer term implications of choices, that non-linearities and tipping points are integrated to reflect non-linear risks of climate change and biodiversity loss, and put a greater emphasis on wellbeing rather than GDP growth.
- **Call for corporate accountability:** call on the Commission to support binding regulation on harmful cross-border business practices, including sanctions. Due diligence rules for negative environmental and human rights impacts should come through a new UN Treaty on Business and Human Rights.
- **Recognise the need to maintain and further develop strong laws that protect people and their environment** and to prevent these being undermined through deregulatory pressures.



# 6. TRANSPORT, TELECOMMUNICATIONS AND ENERGY COUNCIL

## 6.1 Towards energy policies that drive climate action

The role of energy in climate action is essential and with the groundwork of the Commission carried out on the long-term climate strategy, the Romania's Presidency has a key role in enabling a constructive discussion. In this context the Energy Working party needs to actively engage in the discussion on how the energy sector can provide the building blocks for the EU's Long-term Strategy to achieve a net-zero economy by 2040.

This will be crucial for the preparation of the Council in Sibiu to ensure a positive outcome and a high level of consensus on the impact and importance of the Long-Term Strategy (LTS) and the means and opportunities to move to a net-zero economy in Europe by 2040. As shown in the Commission's work, achieving the EU's climate commitments requires an all-hands-on-deck-approach fully combining the efforts on energy efficiency and renewable energy with the circular economy agenda and fully recognizing the CO<sub>2</sub> savings potential linked to saving on material resources and the embedded CO<sub>2</sub>.

With the publication of the "Clean Energy for all Europeans" package, the European Commission has started a comprehensive revision of EU energy legislation. Under the Estonian, Bulgarian and Austrian Presidencies, political agreements have been found for all elements of the package including the Energy Performance of Buildings Directive, the revision of the Energy Efficiency Directive, the recast of the Renewable Energy Directive and the new Governance Regulation, as well as the elements of the Electricity Market Design Regulation and Directive and the ACER-Regulation and the Risk-Preparedness Regulation. Despite

improvements in energy efficiency, renewable energy and long-term climate planning, the outcome of the package does not ensure the immediate action to phase out fossil fuels and falls short of putting the EU on track to meeting its international climate commitments.

Building on the political agreements, the Romanian Presidency needs to ensure a timely confirmation by the Council to enable the whole package including the Electricity Market Design Regulation and the Directive entering into force as soon as possible and give Member states sufficient time to implement the legislation by the end of 2020.

With the progress of the 2030 energy framework, the issue of energy infrastructures and the financial and regulatory framework becomes more and more pressing. The key elements under discussion in this area are the Connecting Europe Facility, which is part of the Multiannual-Financial Framework but is also being discussed as part of the Energy Council, and the Directive on Internal market in natural gas: pipelines to and from third countries.

The Commission proposal of the Connecting Europe Facility still allows public money to be spent on fossil fuel projects which, being the main reasons for the risk of catastrophic climate change, need to be phased out as quickly as possible. Respecting the climate commitments requires avoiding any continued lock-in into fossil fuel infrastructure and to ensure that no more EU public money is wasted in unsustainable projects.

A publicly very heated issue in this realm is the regulation of existing and construction of new gas pipelines. In the context of reducing

gas demand in Europe and the dominance of few gas suppliers for strategic supply routes, the Commission has put forward a proposal concerning the Internal market in natural gas: pipelines to and from third countries. It will be important to progress on this file and achieve a general approach as soon as possible to ensure full regulatory certainty.

Ecodesign and Energy Labelling measures are essential elements of the Energy legislation and need to be reinforced to allow the policy to deliver in a timely way on its full potential. The so called 'package' approach adopted by the Commission has not proven effective and deserves being improved. The consultation process has not been improved as needed and the measures were delayed without clear reasons, leading to ineffective use of public money to collect new data and missed savings

for citizens. The package approach failed to address issues related to media reception and deregulatory criticism as those issues are linked to entry into force of measures and not their adoption by EU regulators. The package approach missed the point as there was no optimization/coordination of entry into force dates, thus the risk of anti-EU bashing was not mitigated at all. EU citizens and progressive industry suffered from the package approach, as well as climate and the environment, without it creating any added value. It is clearly contradicting the declared objectives of the better regulation agenda.

## We therefore call upon the Romanian Presidency to:

- **Be ambitious as regards the closing of the Clean Energy for all Europeans Package, ensure a constructive discussion of the Long-Term Climate Strategy and support ambitious climate commitments to limiting warming to 1.5°C**, and specifically to:
- **Ensure a ensure a constructive contribution on the Long-Term Climate Strategy that builds on the Commission's work and takes the findings of the IPCC special report on 1.5 degrees and the requirements of the Paris Agreement into full account:** the Long-Term Strategy constitutes an essential piece of the Paris Agreement and is key to ensure stability and continue constructive international climate negotiations.
- **Ensure the formal conclusion of the Clean Energy for all Europeans Package to enable a timely entry into force.**
- **Ensure that the negotiations on the Multiannual-Financial Framework and the Gas Directive take full account of the requirements of the Paris Agreement:** the financial framework constitutes an essential enabler of the Clean Energy for all European package and any final outcomes must be designed to avoid fossil fuel lock-ins and ensure full alignment with the international climate requirements.
- **Investigate the decision making process with regards Ecodesign and Energy Labelling measures so as to reinforce its effectiveness and help make the policy deliver in a timely manner its full potential:** Support the recommendations of the European Parliament in their own initiative report on Ecodesign implementation (May 2018).

# 7. AGRICULTURE AND FISHERIES COUNCIL

## 7.1 Agriculture

Facing a failure of the greening and criticism from civil society that the CAP is broken, the Commission's proposal for the Future CAP propose a "new delivery model". The first round of discussions was completed under the Austrian Presidency; hence the Romanian Presidency might have the opportunity to finalise the Council position.

Unfortunately, the proposed new CAP delivery model, which provides flexibility to Member States to design their own CAP strategic plans, would not require from Member States to report their actual environmental nor socio-economic performances and so far Council's discussions focused on simplification rather than improving the means to deliver higher environmental ambitions. This means EU governments would have no incentive to make their farm payments linked to environmental protection as doing so could put farmers in their country at a competitive disadvantage.

In order for the next policy to be worth a high share of the EU budget through its EU added value and truly deliver on sustainable farming, it needs to have the right budget ring fencing of funds supporting the environmental and climate objectives, the right environmental safeguards, the right consultation and partnership mechanism and above all the right accountability and monitoring tools. This would require a strong involvement of environmental authorities and environmental society in the debate of the future CAP.

It is disappointing that until now environmental NGOs have not been invited to informal meeting of Agricultural Ministers to express their views on the future of the Policy and sustainable farming. Equally the environment ministers have not been asked to contribute sufficiently to the discussions on the CAP and the environment. The European Parliament formally recognised that both agricultural and environmental competences are needed to address increasing challenges linked with the decline of natural resources. Hence, it is of paramount importance to have the proper level of involvement of environmental authorities and stakeholders in the process.





## We therefore call upon the Romanian Presidency to:

- **Ensure that there is a comprehensive discussion of the CAP in both the Environment and Agriculture Council formations** that takes account of the need to **strengthen the provisions for environment and climate** measures in the CAP negotiations: At least 50% of the total CAP budget should be ring-fenced for dedicated financing of actions related to climate, environment and nature conservation.
- **Drive CAP negotiations to strengthen Member States' accountability and hence confidence that the CAP will deliver on the environment and the climate:** The aim should be to complement the progressive results-based philosophy with improved monitoring, accountability and sanction mechanisms to ensure a level-playing field among Member States and encourage higher environmental and climate ambition across the EU, taking into account the various recommendations made by the European Court of Auditors.
- **Mobilise political support for ensuring that no harmful subsidies to the environment and climate are part of the CAP post 2020:** Improved coherence among all the objectives of the CAP and real safeguards against environmentally and/or climate harmful spending are needed
- **Provide platforms** (both formal and informal) **for an inclusive debate on the future of the CAP** (food policy), in particular by involving environmental authorities and environmental NGOs to reflect better the outcome of the public consultation showing the increasing societal interest in the CAP.
- **Initiate extensive discussion on how to address soil degradation** issues in a legally binding framework at the EU level and urge the Commission to propose such a framework as soon as possible.

## 7.2 Fisheries

The main aim of the Common Fisheries Policy (CFP) is to ensure that fishing and aquaculture are sustainable. With the CFP, the EU made a long-needed commitment to end overfishing by 2015, at the latest in 2020. This was strengthened in 2008, with the adoption of the Marine Strategy Framework Directive, as Member States committed to achieve 'Good Environmental Status' of EU seas by 2020, which includes having healthy populations of commercial fish and shellfish.

Yet, Member States are failing to reach either of these objectives. A recent assessment of the EU fish stocks shows that out of the 115 assessed fish stocks only 15 are sustainably fished<sup>4</sup>. There is also a significant geographical inconsistency in this trend, with almost 90% of stocks in the Mediterranean overfished. Alarmingly, recently approved fishing allowances on the EU fish stocks have shown to be a largely insufficient step towards reaching the CFP goals.

In addition, fisheries can have significant negative impacts on the broader marine environment. An ecosystem-based management approach to fisheries is desirable to minimize the impact that fisheries have on marine ecosystems. Specifically, it would help

mitigate undesirable interactions between fisheries and marine ecosystem, by selecting less damaging gears and implementing no take zones and various fisheries closures.

At the moment, Member States are significantly failing to:

- Adhere to the 2015 deadline to follow scientifically-defined sustainable fishing limits for many harvested species and setting the TACs at levels not exceeding exploitation rates expected to deliver the maximum sustainable yield.
- Promote and invest the use of new more selective gear, in particular minimizing the impact on the substrate and minimizing bycatch
- Establish a coherent and well-managed network of Marine Protected Areas, including through the implementation of the marine Natura 2000 network
- Establish management rules for human activities that have a detrimental impact on the marine environment, including on seabirds, marine mammals, sea turtles and the seabed.

### We therefore call upon the Romanian Presidency to:

- **Scale up the implementation of the CFP** by encouraging Member States to sustainably manage all harvested species and minimize the fishing impacts on the marine environment. This includes ensuring that:
- **Any additional TACs and quotas for 2019-2020 are set below scientifically-defined sustainable limits (Fmsy)** for all fish stocks at the Fisheries Councils.
- **Unwanted catches of fish are minimised, data on discards recorded and bycatch of protected seabirds, marine mammals and reptiles minimised** through the Multi-Annual Plans and Technical Measures Regulation.
- **Ensure that the revision of the EU Fisheries Control System leads to the adoption of strengthened rules.** In addition, ensure that the next European Maritime and Fisheries Fund supports the achievement of the CFP objectives instead of re-introducing harmful subsidies.

<sup>3</sup>Fernandes, P. G., Ralph, G. M., Nieto, A., García Criado, M., Vasilakopoulos, P., Maravelias, C. D., et al. (2017). Coherent assessments of Europe's marine fishes show regional divergence and megafauna loss. *Nat. Ecol. Evol.* 1:01070. doi: 10.1038/s41559-017-0170

# 8. ENVIRONMENT COUNCIL

## 8.1 Implementing and promoting the 2030 Sustainable Development Agenda

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. While the European Council should take the lead role in relation to the implementation and follow up of the 2030 sustainable development agenda, 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 has disregarded these conclusions in its recent country-specific recommendations. The Romanian 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.

As regards the global implementation of the 2030 Agenda, the Environment Council as well as individual environment ministers and other relevant ministers (e.g. those responsible 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.

With the 2030 Sustainable Development Agenda having been adopted more than three years ago, 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 Romanian Presidency to:

- **Highlight the Environment Council's support for a new EU Sustainable Development Strategy (SDS) as the overarching strategic framework guiding Europe's future**, combined with a concrete plan of action, 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.
- **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.
- **Ensure that the EU promotes strong and active multi-stakeholder participation in international processes** in line with Agenda 21 including in the Commission's SDG monitoring and reporting.
- **Assess the indicator system and first two monitoring reports presented by EuroStat on the EU's performance in SDG implementation** 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, and support and seek exchange with the Multi Stakeholder Platform on the Implementation of the SDGs.
- **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.

## 8.2 Towards a strong long-term climate policy

The follow-up to the COP24 climate conference and the finish of the 2030 energy and climate package in the EU policy cycle and the groundwork of the long-term climate strategy are at the heart of Romania's Presidency.

The Romanian Presidency has a special responsibility as it needs to ensure political consistency and stability and maintain leadership towards our international partners for ambitious climate action during the interregnum of the elections of the European Parliament and the new EU Commission.

In this context the Environment Working party has the leading role to construct the building blocks for the political agenda for the work on the EU's Long-term Strategy, while giving all relevant Council formations including energy, transport, agriculture, competition the opportunity to contribute to the discussion.

This will be crucial for the preparation of the Council in Sibiu to ensure a positive outcome and a high level of consensus on the impact and importance of the Long-Term Strategy (LTS) and the means and opportunities to move to a net-zero economy in Europe by 2040. As shown in the Commission's work achieving the EU's climate commitments requires an all-hands-on-deck-approach fully combining the efforts on energy efficiency and renewable energy with the circular economy agenda and fully recognizing the CO<sub>2</sub> savings potential linked to saving on material resources and the embedded CO<sub>2</sub>.

The follow-up of the UNFCCC climate conference COP24 in Katowice and the EU's

leadership in the High Ambition Coalition means the Romanian Presidency has the responsibility to give its full support to the European Commission in the submission of the revised NDC and the LTS. As the main provisions of the Paris Agreement Work Programme have been achieved in Katowice, and the open issues have been significantly narrowed down e.g. voluntary market mechanisms, the key element is now ambition.

European climate and energy policies need to be based on greenhouse gas emission reductions of at least 60% by 2030 and need to go to net-zero by 2040, enabling net-negative emissions thereafter. An increase of the energy efficiency target to at least 40% with at least 45% of energy sourced from sustainable renewable energy by 2030 are essential elements of this and should be done well before the foreseen revision of the Clean Energy for All Europeans Package in 2023.

The political negotiations on the Clean Mobility Package have made significant progress under the Austrian Presidency and Romania will be in the position to formally close the legislative process. The highest urgency concerns the new rules for CO<sub>2</sub> emission standards for passenger cars and light commercial vehicles (vans) for the period after 2020 to enable a formal agreement before the upcoming EU elections, following the political agreement achieved towards the end of 2018. Of similar urgency are the new rules concerning the CO<sub>2</sub> emission performance standards for new heavy-duty vehicles where the political agreement remains in the hands of the Romanian Presidency.



## We therefore call upon the Romanian Presidency to:

- **Be ambitious as regards the closing of the Clean Energy for all Europeans Package and to secure support from all Heads of Government for net zero GHG emissions in the EU before 2050 and preferably by 2040, and help limit warming to 1.5°C**, and specifically to:
- **Ensure a positive outcome and a high level of consensus on the Long-Term Climate Strategy that builds on the Commission's work and takes the findings of the IPCC special report on 1.5 degrees and the requirements of the Paris Agreement into full account:** the Long-Term Strategy constitutes an essential piece of the Paris Agreement and is key to ensure stability and continue constructive international climate negotiations.
- **Ensure a comprehensive follow-up of the COP24 climate negotiations:** the EU's leadership in the High Ambition Coalition means the Romanian Presidency has the responsibility to give its full support to the European Commission in the submission of the revised NDC and the LTS.
- **Ensure an ambitious outcome of the Clean Mobility Package in line with the Paris Agreement:** Cutting CO<sub>2</sub> emissions from transport and boosting the shift towards zero emission vehicles is critical to meet the European Union's climate goals, to improve cities' air quality and to boost creation of high-tech jobs in the EU.

## 8.3 Regulation on CO<sub>2</sub> standards for heavy-duty vehicles

Trucks and buses account for almost a quarter of road transport CO<sub>2</sub> emissions in Europe. Their share is expected to increase rapidly driven by growing demand for road freight and continued rise in consumption and resource use. This problem has been recognised by key players in the value chain and a coalition of more than 40 major companies and haulier associations, including Carrefour, IKEA, Heineken, Unilever, Nestlé and many more, support a 20% CO<sub>2</sub> emissions reduction from trucks by 2025 and a mandate for zero and low emission vehicles (ZLEV). Effective targets and clear incentives for zero and low emission trucks help logistics companies saving fuel and money and are essential to meet the EU's 2030 non-ETS targets.

Setting the right regulation for heavy-duty vehicles (HDVs) is a matter of political priorities, as the European Commission's own impact assessment found that a 20% target is technologically achievable. As the urgency of climate change increases day after day and the joint effort to limit global temperature rise to 1.5 °C demands action from all sectors, HDVs must also become clean and fully decarbonised.

### We therefore call upon the Romanian Presidency to:

- **Ensure CO<sub>2</sub> standards for heavy-duty vehicles that ensure significant cuts from CO<sub>2</sub> emissions from transport and boost the shift towards zero emission vehicles by:**
- **Support a 2025 CO<sub>2</sub> reduction target of 20% and an increased 2030 target of 35%:** According to the Commission, the 'at least 30% in 2030 (EC proposal)' means that the target during the 2022 review could also be lower than 30%. This should be avoided. We therefore encourage you to push for legal wording and guarantees that the 2030 target during the review cannot be lower than 35%.
- **Set a ZLEV sales target for trucks instead of using supercredits:** The proposed supercredit system by the European Commission will not increase the offer of ZLEV trucks by 2025. The experience of cars and vans shows that supercredits do not increase the sales of zero and low emission vehicles but only undermine the CO<sub>2</sub> standards. **Introduce the sales target in 2025** to push truck makers to reach a certain level of ZLEV sales before getting rewarded. The level of the target should be at least 5% in 2025 and at least 25% in 2030.
- **Ensure EU supply of ZEV buses:** A 2016 survey of more than 90 EU cities and 40 leading suppliers shows that demand for ZE urban buses will exceed 40% in 2025. The demand is high, but supply is very limited or mainly coming from China. Therefore, the Council should ask for a ZEV mandate for urban buses or alternatively ask the Commission to come forward with a proposal for a sales mandate for ZE urban buses no later than 31.12.20.

## 8.4 Fighting air pollution

Air pollution causes around 400,000 premature deaths each year in the EU and contributes to cardio-vascular disease, impaired prenatal and early childhood development, mental health problems, obesity and childhood leukaemia. Air pollution also impacts Europe's nature and biodiversity through eutrophication. Agricultural yields and natural vegetation are also damaged through ozone formation. The EEA estimates that more than half of Europeans were exposed to concentrations exceeding the WHO air quality guidelines in 2013-2016. 74-85 % of the population was exposed to concentrations exceeding the WHO guidelines for PM2.5, particles which are most harmful to health.

The EU and its Member States have the obligation to ensure that EU laws are fully and rapidly implemented at national level, including the Ambient Air Quality Directives, the National Emission Ceilings Directive and all the relevant source policies. The Common Agricultural

Policy post 2020 also has an important role to play in reducing air pollution from the sector; especially ammonia, a PM precursor and which levels have raised by 3% in the last three years, and methane, a precursor of ground-level ozone and a powerful GHG.

Specific source control legislation, such as the IED, aim to regulate large scale industrial activities and requires the operators to meet environmental performance benchmarks based on Best Available Techniques (BAT) reference documents – so called BREFs. Air pollution emission trends from point sources are reducing<sup>5</sup> thanks to stricter pollution limits. However, the EU's largest industrial facilities still led to damage cost of up to 1053 billion € (for the 2008-2012 period). A review of the IED policy framework is foreseen as from 2019. This provides a chance to improve the multi-stakeholder review process in defining BAT and to correct flaws within the framework which reward the laggards in the sector.



## We therefore call upon the Romanian Presidency to:

- **Support the rapid implementation of existing EU air pollution laws**, while improving transparency and information provision on the level of actions taken by Member States.
- **Ensure an ambitious contribution to the Ambient Air Quality Directives fitness check.**
- **Raise the political profile on the need to address harmful sources of air pollution** from, inter alia, domestic heating, intensive farming and transport, including shipping.
- **Encourage Member States to promote effective public participation** in the mandatory public consultations on their draft **National Air Pollution Control Programmes** that have to be organised at national level and to **include ambitious objectives in the Programmes** which go beyond the minimum requirements established by the Directive (such as a reduction target for methane emissions).
- **Promote the adoption of the amended version of the Gothenburg Protocol** (so it can enter into force), in the framework of the UNECE Convention on Long-range Transboundary Air Pollution and its review/revision so black carbon and methane can be included.
- **Ensure an ambitious CAP post 2020 which includes coherent, clear and measurable air quality objectives that effectively contributes to achieve WHO standards**, so to reduce the sector's impact on air quality (ammonia and methane emissions in particular, but also primary PM through agricultural burning).
- **Ensure for a balanced IED Evaluation and set criteria on the determination of BAT benchmarks, with improved links to promotion of compliance with Environmental Quality Standards and with an outcome-oriented focus** (BAT Conclusions set to achieve best environmental and human health protection goals, based on integrated approach).
- **Address shortcomings in IED implementation** e.g. BAT derogation procedure, extension and update of EU safety net, policy coherence (implementation of EU-ETS/BAT standards), improved databases on industrial activities allowing transparent benchmarking and effective involvement of the public in decision-making.



## 8.5 Protect the public from hazardous chemicals

REACH Regulation of industrial chemicals was subject to a REFIT evaluation. REACH was found worthwhile in terms of benefits to health and the environment. However, the evaluation also highlighted the urgency to improve REACH's implementation, enforcement and compliance, including its most basic principles.

One of the pillars of REACH is the registration procedure consisting into generating information on the chemicals to be placed on the EU market. Although the registration procedure is associated with the "no data, no market" principle, the REACH REFIT evaluation concluded that the very high levels of non-compliance of the information submitted by companies is actually one of REACH's biggest shortcomings of the Regulation, hampering the authorities' capacity to sufficiently protect health and the environment.

A Fitness Check of all chemicals-related legislations (excluding REACH, except its annex XIII) should be published by the first quarter of 2019. This may have significant consequences on a wide number of chemicals regulations being evaluated.

In the 2013 Inter-Institutional 7th Environment Action Programme to 2020, the Council, the Commission and the Parliament had committed to have a new Strategy to deliver a non-toxic environment by 2018 as one priority objective. Although this commitment will not be met in time, as 7th EAP is set to 2020, it must become a first concern to the Romanian Presidency in order to set an overarching horizontal framework that sets priorities supporting innovation to safer substitutes, including non-chemical solutions; minimising exposure to hazardous chemicals in the environment and in products; addressing combination effects of chemicals and promoting non-toxic material cycles.

### We therefore call upon the Romanian Presidency to:

- **Deliver Council conclusions of the REACH REFIT that calls on the Commission and commit to speed up and improve REACH implementation** to achieve its main goals; for that purpose, follow the recommendations of the REACH REFIT evaluation and further address implementation of core principles of the such as:
  - **The "no data, no market" principle:** support measures effectively impeding or revoking the access to the market of those substances that do not comply with the registration procedure's requirements.
  - **The substitution to safer alternatives principle:** speed-up identification of substances of very high concern (SVHCs) and truly stimulate their substitution by rejecting the applications for authorisation that do not meet the authorisation's requirements established by REACH.
- **Increased transparency and independent evaluation.**
- **The citizen's "right to know":** urge enforcement measures by Member States.
- **Guaranteeing implementation of the precautionary principle.**
- **Deliver Council conclusions on the non-REACH fitness check** by the Commission, ensuring that the chemicals legislations are protective and coherent.
- **Call on the European Commission to deliver the 7th Environment Action Programme to 2020 commitment to adopt a non-toxic environment strategy** setting priorities to support innovation to safer substitutes, especially non-chemical solutions; minimising exposure to hazardous chemicals in the environment and in products; addressing combination effects of chemicals and detoxifying the material cycles.

## 8.6 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 'travels' globally, bioaccumulates up through the food chain, especially in certain predatory fish, and presents a human exposure risk.

The Minamata Convention entered into force on 16 August 2017. It has 128 signatories and 101 ratifications including the EU and 22 Member states (Nov 2018). The EU has been a frontrunner in terms of mercury legislation, yet in some areas it was falling short. The revised EU mercury regulation, adopted in May 2017, put in place, and in some areas went beyond, requirements of the Treaty that were not already covered by existing EU law.

Following the entering into force of the Convention, two Conferences of the Parties (COP) took place in Geneva, in September 2017 and November 2018. These meetings took decisions on structural issues, which are important in determining the future impact of the Convention, resulting in measurable and substantial reductions in global mercury use, trade and emissions.

A key priority is to ensure that countries ratify and implement the Convention as fast as possible. At the same time, enabling mercury reduction activities are needed, e.g. targeting mercury trade and supply, phasing out mercury use from products and processes, emissions' reduction, and the development and implementation of Artisanal and Small Scale Gold-Mining (ASGM) Action Plans.

### We therefore call upon the Romanian Presidency to:

- **Ensure rapid ratification of the Minamata Convention** from remaining Member States.
  - **Implement the EU Mercury Regulation and other relevant legislation**, including by raising awareness and enforcing the partial ban on dental that entered into force on 1st July 2018.
  - **Maintain EU leadership in relation to the Minamata Convention on Mercury** by working towards strengthening of relevant Treaty provisions
- (e.g. review of Annex A), and in preparation for COP 3.
  - **Ensure that the EU supports both financially and technically** the existing international work on areas such as ASGM and phasing mercury added products.





## 8.7 Circular economy and waste policy

The Circular Economy is an acknowledged strategic agenda for Europe. It drives new job creation with environmental savings and reduced dependency on material and fuel imports. Furthermore, as recognised now in the EU long term strategy to decarbonize our economy, it contributes to meeting climate change commitments, creating the opportunities for complementing the CO<sub>2</sub> savings expected by a decarbonised energy system through more efficient use of materials and resources embedding massive CO<sub>2</sub> emissions linked to extraction and manufacturing stages. It also helps frame sustainable bio-economy strategies at European and national levels by incorporating the key vision of resources productivity in the development of bio-based materials and products. The Romanian Presidency comes at a time where it will be crucial to ensure that the EU institutions build on the work performed under the CE action plan of December 2015 to prepare a swift decision taking and implementation of the investigated actions by the next Commission.

Among the numerous initiatives on Circular Economy, we would like to draw the attention of the Presidency to a few priorities: the EU Plastics Strategy, the EU Product Policy, and the setting of a new strategy for Ecolabel.

Plastic pollution and overuse of plastic materials, too frequently disposable and/or associated with toxic substances or other additives, are the clear symbols and legacy of a linear, unsustainable economy. It is time to re-orient plastic consumption around absolute usage reduction of virgin materials. Instruments such as essential requirements for packaging, modulation of extended producer responsibility fees (EPR) can be pro-actively considered for restricting not reusable and recyclable plastics and reward toxic-free, recycled materials. As a major part of micro-plastics pollution is linked to micro-fibres, it should also be given a new drive to textiles sector to promote durable and detoxified textile materials and defining measures to stop leakages of micro fibres.

Products placed on the EU market are at a decisive point in the materials chain. Allowing to put on the market poorly designed products with no information with regard to their chemical contents, critical material contents, or repair or recycle potentials is just hampering circularity and related benefits. We need more systematic eco-design of products, we need to reward producers making the efforts to offer more resource-efficient and sustainable products and we need to ensure that consumers as well as value chain economic actors are informed about the possible

life extension, repair, reuse and recycling potentials of products they handle. For the EEE sector, unleashing the potentials of product policy is also a unique lever to mitigate the growing amount of e-waste generation and their impacts.

A renewed EU Ecolabel strategy on an extended range of products and services is needed to untap the full potential of the scheme to support the transition to a circular economy. However, the future strategy should go beyond the mere selection of candidates' sectors for the label. We need to optimise synergies with other policies, notably by increasing its role in public procurement and as a benchmark for environmental excellence inspiring other policies such as Ecodesign. Additionally, building on existing and regional/national Ecolabels, and improving consistency with those, can allow deploying the EU scheme across the single market on more sectors in a cost-effective manner. Last but not least, increased resources for communication are urgently needed at all levels. Full cooperation of Member States and the Commission to increase its public recognition is crucial.

We would like to emphasize the fact that placing products on the market with related information on hazardous and material contents, as well as minimum requirements and possible labelling of their performances is a key lever to progress towards Romanian Presidency priorities: sustainable development, reducing disparities and creating jobs. In fact, placing sustainable products on the market is the starting point of sustainable reverse value chain and material cycles, offering products with minimum performances requirements and information schemes is among the best way to reduce inequalities and disparities among EU citizens. Finally, sustainable products policy can create jobs notably through repair and recycling. In addition, setting an EU information system on products contents and performances is a clear way to trigger innovation through digitalization features.

Delivering on circular economy is also the way to respect our international commitments with regards climate and SDGs and addressing micro-fibres of textiles is a key contribution to marine litter reduction goal.

## We therefore call upon the Romanian Presidency to:

- **Progress EU Plastics Strategy measures to reduce plastic pollution and achieve a Plastics Free Ocean:** proactively prepare sound revision of essential requirements for packaging and criteria to modulate EPR fees and drive new focus on textiles and micro-fibres.
- **Actively support the EU level work on product policy:** notably working towards a future swift implementation of an EU information system to track substances of concern and material contents of products, of the repair scoring system and targeting new sectors beyond energy related products to apply similar push and pull mechanisms as Ecodesign and Energy Labelling schemes.
- **Push the EU to design a new ecolabel strategy:** ensure a more effective roll out across products and services and effective communication plan.

## 8.8 Protecting and restoring biodiversity and ecosystems

The Romanian Presidency needs to make biodiversity and ecosystem protection and restoration a top priority during the 6 months of its Presidency. The EU is not on track to meet the 2020 biodiversity targets and biodiversity loss and the degradation of ecosystem services have continued in the EU and globally, driven by habitat loss, pollution, over-exploitation, invasive alien species and climate change.

Much of the failure to halt biodiversity loss to-date stems from inadequate implementation of the existing EU nature, water and marine legislation and lack of proper integration of environmental objectives into the EU sectoral policies and budgets on agriculture, energy or transport. The EU needs to redouble efforts to deliver against previously agreed targets and commitments by 2020 in order to maintain and enhance the natural life support systems on which our livelihood and economy all depend.

In addition, the recent Conference of the Parties under the UN Convention on Biological Diversity has

created a momentum to develop a new post 2020 biodiversity framework in the EU and globally and adopt a New Deal for Nature in 2020 that would put society and economy on a pathway to restoring nature and “bending the curve” of biodiversity loss. The post 2020 biodiversity framework should include ambitious targets that drive action and allow progress to be tracked effectively. Such framework needs to be ambitious and comprehensive yet credible and achievable. It should focus on ways to avoid further degradation and loss of biodiversity and restore ecosystems, building on improved integration of biodiversity in policies primarily responsible for biodiversity loss and improved implementation and stringent enforcement of existing EU legislation.

This is particularly relevant as the Romanian Presidency continues to lead negotiations on how the Common Agricultural Policy (CAP)



needs to be reformed and what priorities the EU budget 2021-2027 should fund. It is of the utmost importance that harmful incentives and subsidies are removed, or reformed, and budgetary resources are substantially increased and made available for biodiversity and sustainable management of natural resources. Harmful subsidies must also be removed in the fisheries sector. If the EU is serious about halting biodiversity loss, the funding allocated to nature must further increase significantly and funding that undermines biodiversity must be ruled out. The

longer the detrimental impacts of such harmful incentives and subsidies on biodiversity and ecosystems remain unaddressed, the more resources will be needed to halt the loss of biodiversity and ecosystem services and restore our life-support system.

In December 2018, the European Commission published the long-awaited plans towards stepping up EU action on deforestation and forest degradation.

## We therefore call upon the Romanian Presidency to:

- **Step up implementation of the EU's Nature Directives:** Fast-track measures to realise a step change in the quality of implementation of the Nature Directives, ranging from swift completion of the Natura 2000 designation to making sure that all sites have specific conservation objectives and management plans in place including secured financing for measures.
- **Show global leadership in driving EU and global agreement on New Deal for Nature** similar to Paris Climate Agreement to be adopted under the UN Convention on Biological Diversity in 2020 and ensure ambitious measures taken by the EU to address deforestation and forest degradation.
- Seize the opportunity to tackle drivers of biodiversity loss by taking the necessary measures to **fully implement the regulation on Invasive Alien Species** on the basis of the priority list drawn up at European level.
- **Negotiate for sufficient, efficient and effective financing for biodiversity in the post 2020 EU budget:** This must include **a reformed Common Agricultural Policy** which should ring-fence at least 15 billion EUR per annum for the implementation of the Nature Directives, as well as a significant increase in the LIFE fund to 1% of the EU budget.
- **Drive commitment to Healthy Seas and Oceans:** Adopt conclusions at the Environmental Council recognising that achieving Good Environmental Status of EU seas by 2020, as required by the Marine Directive, is unlikely and asking Member States to adopt much more ambitious and urgent measures to reduce pressures from human activities on marine biodiversity. In addition, in light of the outcomes of the CBD COP14, the Romanian Presidency should call for the systematic establishment of management plans and the implementation of effective conservation measures, in particular for fisheries, in marine Natura 2000 sites, inter alia, in order to achieve Aichi Target 11. (See also section 7.2)



## 8.9 Ensure clean and sufficient water for all Europeans

Romania will be at the helm of the EU Council during crucial 6 months for the EU water policy as the EU's flagship Water Framework Directive (WFD) and its daughter directives, such as on groundwater, and Urban Wastewater Treatment Directives undergo a fitness check evaluation and the Environment Council is expected to negotiate with the European Parliament on the recast of the Drinking Water Directive and adoption of the Regulation on Water Reuse.

The EEB considers that the Water Framework Directive is fit for purpose, its ambitious objectives are justified, and the focus should be on improving its implementation and achieving coherence and integration with other EU sectoral policies such as industrial emissions, agriculture and energy. Any current shortcomings in its implementation would be better addressed through increased focus on enforcement and proper application of its provisions rather than on amending this ground-breaking piece of legislation, which could undermine nature conservation, the health of sensitive ecosystems and sustainable water management efforts for years to come, as well as create a significant level of uncertainty for businesses.

In addition, the Romanian Presidency will continue the negotiations on how the Common Agricultural Policy needs to be reformed and what priorities the EU budget 2021-2027 should fund. It is of utmost importance that harmful incentives and subsidies are removed, and budgetary resources are substantially

increased and made available for biodiversity and sustainable water management, including funding for targeted measures through the Common Agricultural Policy and nature-based and green infrastructure solutions through regional and cohesion funds.

The Romanian Presidency will also continue to negotiate on the recast of the Drinking Water Directive. It is crucial that the Council position maintains the minimum requirements (including for endocrine disruptors and PFAS - Per- and Polyfluoroalkyl Substances). It should also enshrine human rights obligations regarding access to safe drinking water, which must be available, physically accessible, affordable and acceptable. Moreover, it should improve the provisions for transparency as regards the communication to the general public of adequate and up-to-date information on drinking water.

Progress is also expected on new rules to stimulate and facilitate water reuse in the EU for agricultural irrigation (Regulation on Water Reuse). We hope that the Environmental Council will at least maintain the level of ambition on the minimum requirements for quality of reclaimed water and monitoring set in the Commission proposal as well as add an additional layer of protection on top of the minimum requirements, i.e. the identification of any additional hazard that needs to be addressed for water reuse to be safe as well as making sure that using wastewater for irrigation does not harm depleted rivers.

### We therefore call upon the Romanian Presidency to:

- **Work with the European Commission to perform a balanced fitness check evaluation of the Water Framework Directive** and focus on improving implementing the WFD rather than amending this ground-breaking piece of legislation.
- **Negotiate for sufficient, efficient and effective financing for sustainable water management in the post 2020 EU budget:** This must include a reformed Common Agricultural Policy that can fund targeted measures in the River Basin Management Plans as well as a significant increase in the LIFE fund to at least 1% of the EU budget.
- **Prepare an ambitious Council position on the Drinking Water Directive and Water Reuse Regulation:** The Council position should maintain stringent quality standards in the legislation as well as strengthen the provisions for transparency.

## 8.10 Improve implementation, enforcement and integration

Despite the high number of laws in the EU, as well as those stemming from international commitments, the environmental benefits from these often remain unseen given disparate and poor levels of implementation in the Member States. Poor implementation links both to lack of political prioritisation and in turn to the weak enforcement of laws, which in part reflects the lack of resources allocated to environmental monitoring and enforcement by national authorities. Moreover, Environmental Impact Assessments, including transboundary ones, are a key tool in ensuring integration of environmental matters in decision-making.

To help Member States implement EU laws, the European Commission put in place the Environmental Implementation Review (EIR) in 2016. The EIR is intended to foster better implementation through discussion aimed at solving systemic problems across the EU Member States, as well as offering a Peer-to-Peer tool to support capacity building and good practice dissemination. Following the country reports of the first cycle in the EIR in 2017, the Commission will publish the second cycle country reports in April 2019.

While the EIR can help Member States ensure that EU laws are well-functioning - by also allowing for high-level discussions in the Council and exchanging information with other Member States and the Commission to address systemic and sectoral hurdles - these dialogues should not replace the Commission's prerogative to take enforcement action against Member States when there is a clear case of non-compliance and breach with the Treaties.

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 would lead to a better

society and environment. The scandal of 'Dieselgate' shows the contrary as it badly damaged the confidence of citizens in the ability of governments to effectively regulate the corporate sector. It underlined the need to increase inspection and enforcement capacities at EU and Member State levels, strengthen the oversight role of the public through enhancing transparency and access to justice, and ensure that the regulated community does not exercise undue influence on the regulatory authorities.

Moreover, the EEB regrets the general slowdown in presenting new laws and the tendency to replace binding law by communications or recommendations and guidelines. However, this slow-down in developing new laws is yet another reason to increase efforts to fully implement existing legislation, improve enforcement and ensure that the EU takes leadership in honouring international environmental obligations. Laxity in the handling of breaches of EU law, which includes the EU's international commitments, 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.





## We therefore call upon the Romanian Presidency to:

- **To support better implementation and build confidence in the rule of law,** and specifically to:
  - Remind the Romanian Presidency of the Council, Commission and Parliament joint commitment to **give top priority to improving implementation of the EU environment *acquis*** at Member State level.
  - **Fully engage with the Environmental Implementation Review (EIR) process** and contribute actively to solve systemic problems as well as Member State level implementation problems in cooperation with the Commission and stakeholders.
  - **Emphasize the need for engaging appropriate bodies and structures at EU level** to improve the application of EU environmental law, through networks such as IMPEL, EJTN, ENPE, and identify
- needs and explore ways forward to address gaps in implementation and enforcement.
- **Encourage a review of Member State fees, fines and criminal sanctions to determine effective dissuasive measures, as well as recommendation for improving liability regimes** (such as through the implementation of the Environmental Liability Directive) and the application of the polluter pays principle.
- **To ensure that the EU takes a critical position towards nuclear issues,** in particular life time extensions of nuclear plants, and a consistent approach to dealing with non-compliance issues, especially in recurring cases, at the upcoming intermediary sessions of the Meetings of the Parties to **Espoo Convention and SEA Protocol.**



## 8.11

### Application of the Aarhus Convention to the EU institutions

The Aarhus Convention's provisions establish international legal obligations that aim to ensure the transparency and accountability of public authorities, including the EU institutions, in relation to environmental matters. The fact that not only all EU Member States but also the EU itself are Parties to the Aarhus Convention is relevant as the European Union adopted Regulation 1367/2006 on the application of the provisions of the Aarhus Convention to the EU institutions (known as the Aarhus Regulation).

In June 2012, there were two rulings of the EU General Court which found 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. However, in early January 2015, the General Court rulings were overturned by the Court of Justice of the European Union (CJEU). The CJEU considered that the relevant provision of the Aarhus Convention (Article 9(3)) was not sufficiently precise or unconditional to preclude the limitation to 'measures of individual

scope'. 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, 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 controversial CJEU ruling of January 2015 enabled the Committee to bring its

longstanding deliberations on the 2008 case to a conclusion: on 17 March 2017 the **Committee concluded** that the EU is not in compliance with the Convention. This finding was unfortunately not accepted by the EU, which succeeded in blocking its endorsement by the Meeting of the Parties (MoP) in Montenegro in September 2017 – the first time ever that a finding of non-compliance was not endorsed by the MoP.

Following the MoP, the Estonian Presidency convened an ‘informal Aarhus workshop’ of the Council Working Party on International Environmental Issues in late November 2017 to look at lessons from the MoP in relation to the finding of non-compliance against the EU, review the current situation and then kick off discussions on next steps. Discussions continued under the Bulgarian Presidency and culminated in the adoption on 18 June 2018 of a **Council Decision** invoking Article 241 of the Treaty on the Functioning of the European Union (TFEU) 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.

While the content of the Council Decision could have been stronger, for the Council to resort to Article 241 in an environmental matter was unprecedented and underlined the depth of frustration at the Commission’s resistance to addressing the problem of non-compliance. The Commission subsequently engaged consultants from Milieu to conduct a study on the options for addressing the non-compliance. Regrettably, the mandate of the study is so broad that it also requires to look into options that the Compliance Committee rejected as viable solutions. The long time-frame of the study and its broad scope has raised concerns among NGOs as these are unnecessary to address what had already been identified as the solution to the non-compliance: amending the Aarhus Regulation. The study, together with a Commission Staff Working Document on the matter, are expected to be published in May 2019. The following month, the EU will be expected to report to the 23rd meeting of the Working Group of the Parties to the Aarhus Convention (26-28 June 2019) on the progress made towards restoring compliance with the Convention. It will therefore fall on the Romanian Presidency to coordinate a Council reaction to the results of the study so that swift action can be taken for the revision of the Regulation.

## We therefore call upon the Romanian Presidency to:

- Maintain pressure on the Commission to initiate the **preparation of a legislative proposal for revision of the Aarhus Regulation as soon as possible**, so as to guarantee access to justice and bring the EU back into compliance with the Convention in advance of Aarhus MoP-7.
- Specifically, **coordinate the Member States’ reaction to the Commission’s analysis of options for restoring compliance** due to be published in May 2019.



## 8.12 Re-launch discussions on an access to justice directive

Whereas the EU has implemented the information and participation pillars of the Aarhus Convention at Member State level through the adoption of directives, no such directive exists in relation to the access to justice pillar of the Convention, despite an initial proposal by the Commission for such a directive. The draft Directive on Access to Justice that was published by the Commission in 2003 aimed to set certain minimum standards for access to justice in environmental matters. 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 2014 the proposal was eventually withdrawn, and in 2017 the Commission published interpretative guidelines in a Communication instead.

Hence, over the years, 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 as well as various academic studies. A number of cases have been brought by civil society organisations before the Compliance Committee of the Aarhus Convention as well as the Court of Justice of the European Union.

The EEB welcomes the interpretative guidance as an interim measure pending the issuing of a legislative proposal on access to justice 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.

### We therefore call upon the Romanian Presidency to:

- Push for measures to **apply and monitor the application of the Commission's interpretative guidance on access to justice** in environmental matters so as to help Member States to more fully implement their commitments under the Aarhus Convention.
- Call on the Commission to publish as soon as possible **a new proposal for a directive on access to justice**, based on the guidelines in the Commission Communication and ensuring that it reflects and incorporates the case law of the Court of Justice of the European Union.



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The EEB and its members welcome continued engagement and cooperation with the Romanian Presidency.

We also develop a paper before each Trio Presidency. The 2019-2020 paper, addressed to the Romanian, Finnish and Croatian Presidencies, can be read [here](#).

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