



**EEB**  
European  
Environmental  
Bureau

THE EEB'S

# MEMORANDUM

TO THE AUSTRIAN PRESIDENCY OF  
THE EUROPEAN UNION



Including the Ten Green Tests

**JULY - DECEMBER 2018**

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



EUROPE'S LARGEST NETWORK  
OF ENVIRONMENTAL CITIZENS'  
ORGANISATIONS



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**Publication date:** 30/07/2018

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



With the support of  
the LIFE Programme  
of the European Union

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

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# INTRODUCTION

**Austria 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.**

**Climate change** is an undeniable reality, and 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, that jeopardise the web of life.

The world is also waking up to the dramatic problems of **plastic litter in our oceans** that affect not only marine life but also our health and economic activity. 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**.

Ever more **cities** are affected by the **air pollution risks** to their citizens, while national governments act too slowly and too timidly to protect their citizens' health. **Consumer concerns** are being voiced about **chemicals** in toys, in products, in drinking water. The press point out the unacceptable infiltration of **pesticides** in the eggs we eat. Researchers and citizen science point to dramatic loss of **pollinating insects, birds and butterflies** on our lands. We are failing our biodiversity. The evidence of existing impacts and future risks is undeniable.

At the current rate, we will leave Europe, its lands, its soil, its seas, in a worse state than we inherited it. 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 – such as the adoption by the international community of the **2030 Agenda for Sustainable Development** with its 17 Sustainable Development Goals (SDGs) – there is insufficient implementation and integration of the 2030 Agenda across EU and national policies.

There are, of course, other major and pressing political challenges – defining the future of Europe in light of national and international pressures; the Brexit process; 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. 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 Austrian EU Presidency to make a difference. Sustainability principles can be applied and mainstreamed in the EU Budget; negotiations on the Common Agricultural Policy can drive it towards offering genuinely sustainable food and farming policy. Austria can also help drive EU Climate and Biodiversity leadership, stimulate a transition to a resource efficient, circular economy, catalyse progressive biodiversity commitments on the international stage, help push countries to clean up their air and water, and take harmful chemicals off the market, out of our soils and out of the products we and our children use every day.

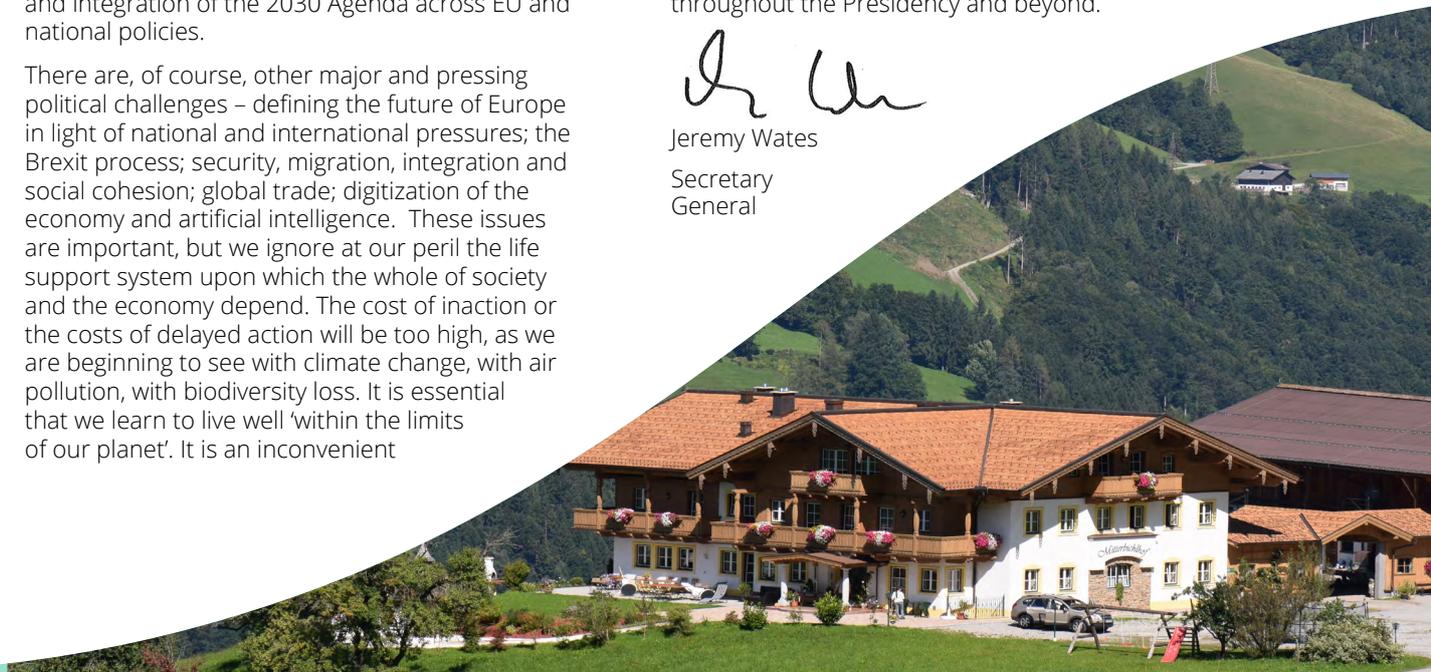
This Memorandum, prepared in cooperation with BirdLife Europe and Seas at Risk, reflects on the issues that the EEB would like to see advanced during the Austrian Presidency. The most important issues are highlighted in the Ten Green Tests. These were adopted by the EEB Board which has representatives from more than 30 countries and several European networks. At the end of December 2018, 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, 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 Austrian Government throughout the Presidency and beyond.



Jeremy Wates

Secretary  
General



# TEN GREEN TESTS FOR THE AUSTRIAN PRESIDENCY

We call upon the Austrian 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

- Drive ambitious climate diplomacy at the Katowice Climate Change Conference (UNFCCC COP 24)
- Contribute to an update of the 2050 long-term strategy in line with the latest available science
- Bring the requirements for passenger and heavy goods vehicles and the Electricity Market legislation and Gas Directive in line with the Paris Agreement



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

- Ensure an ambitious EU contribution to the discussions at the Convention on Biological Diversity (CBD) COP 14, Sharm El-Sheikh Conference, in particular on the post 2020 biodiversity framework
- Negotiate for sufficient, efficient and effective financing for biodiversity in the post 2020 EU budget
- Scale up implementation of the EU's Nature Directives and follow-up on the Pollinators Initiative
- Drive commitments to Healthy Seas and Oceans and ensure sustainable fisheries



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

- Drive CAP negotiations to strengthen the provisions for environment and climate measures and ensure Member States' accountability
- Provide platforms for an inclusive debate on the future of the CAP by involving environmental authorities and NGOs
- Ensure that no subsidies harmful to the environment and climate are part of the CAP post 2020



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

- Promote an EU budget for sustainability, EU added-value and catalysing change: ring-fence at least 50% of the CAP budget for climate, environment and nature conservation, ensure at least 1% of the budget on LIFE+ and EUR 15bn per year for biodiversity
- Improve the design of the proposed financial measure for non-recycled plastic packaging waste
- Encourage green finance, environmental fiscal reform and carbon pricing



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

- Ensure an ambitious contribution to the Ambient Air Quality Directive fitness check
- Address shortcomings in implementation of the Industrial Emissions Directive and set criteria on the determination of best available techniques (BAT) benchmarks with improved links to compliance promotion



## 6. Ensure clean and sufficient water for Europeans

- Ensure that the EC undertakes a balanced fitness check of the Water Framework Directive
- Prepare an ambitious Council position on the Drinking Water Directive and Water Reuse Regulation
- Negotiate for sufficient, efficient and effective financing for sustainable water management



## 7. Protect the public from hazardous chemicals

- REACH review: 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.
- Classification Labelling and Packaging (CLP) Regulation: Call on the EC to follow ECHA's opinion on titanium dioxide as a suspected carcinogen



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

- Progress EU Plastics Strategy measures to reduce plastic pollution and achieve a Plastics Free Ocean
- Promote a more coherent EU Product Policy Framework
- Ensure the adoption of an ambitious Ecodesign and Energy Labelling Package of measures



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

- Maintain pressure on the Commission to take steps to end EU non-compliance with Aarhus - promote access to justice, access to information and public participation
- Ensure that trade agreements and Brexit do not jeopardize existing or future EU environmental standards
- Support better implementation and build confidence in the rule of law
- Encourage measures supporting equity and environmental justice, and corporate accountability



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

- Have Sustainable Development Goals (SDGs) drive EU policies for the future of Europe
- Launch the debate on the need for an ambitious 8th Environmental Action Programme

# TEN GREEN TESTS - THE SPECIFIC ASKS

## 1. Drive ambitious climate commitments to limiting warming to 1.5°C

In view of the potentially catastrophic impacts of climate change, it is important to ensure ambitious climate action through international diplomacy as well as domestic policy negotiations.

**Climate diplomacy at the Katowice Climate Change Conference (UNFCCC COP 24):** Ensure that the conclusions in relation to COP24 coming out of the Environment Council in October drive European leadership on international climate diplomacy.

**Facilitate progress on the Talanoa dialogue:** support the European Commission to ensure that an increase in action can be achieved in the political phase of the Talanoa Dialogue which will take place at COP24 in Poland.

**Contribute to the update of the 2050 long-term strategy:** enable a well-informed debate during the Austrian Presidency corresponding to the conclusions of the March European Council.

**Bring the requirements for passenger and heavy goods vehicles in line with the requirements of the Paris Agreement:** to avoid any further delay contribute to a comprehensive discussion and general approach for the remaining elements of the 2017 clean mobility package and the 2018 third mobility package.

**Ensure the negotiations on the Electricity Market legislation and the Gas Directive take full account of the requirements of the Paris Agreement:** the future market design constitutes an essential piece of the Clean Energy for Europe package and any final outcomes must be fully aligned with the international climate requirements.

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

**Ensure that the October Council conclusions on the COP14 of the Convention on Biological Diversity (CBD) in November** demonstrate and drive European leadership on international biodiversity diplomacy, and contribute to discussions on strategic directions to the 2050 Vision for Biodiversity and preparation of the post-2020 global biodiversity framework.

**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, a Sustainable Ocean Fund of at least 7 billion EUR for nature protection, as well as a significant increase in the LIFE fund to 1% of the EU budget.

**Increase the level of ambition in the EU's Pollinators Initiative:** Introduce additional measures such as restoring and connecting essential pollinators' habitats and address problems of derogations and lack of

transparency on the pesticide use as well as the need to reform the Common Agricultural Policy so that the dramatic decline of pollinators can be reversed.

**Scale up implementation of the EU's Nature Directives:** Use the EU Action Plan for Nature, People and the Economy to fast track measures to achieve significant progress towards halting and reversing biodiversity loss including preparation of the EU Action Plan on Sturgeons.

**Drive commitment to Healthy Seas and Oceans:** Adopt conclusions at the December Environmental Council on the Commission's assessment of Member States' measures under the Marine Strategy Framework Directive, highlighting the need for much more ambitious and urgent action to **achieve Good Environmental Status of EU seas by 2020** by reducing pressures from human activities on marine biodiversity. These include overfishing and other fishing impacts, pollution (chemicals, plastics, nutrients, noise), energy infrastructure development (offshore wind, grid connections and interconnectors, oil and gas), seabed destruction and spatial obstruction. Marine biodiversity should be safeguarded through an ecologically coherent network of well-managed Marine Protected Areas contributing to the implementation of the Nature Directives at sea. Furthermore, the Austrian Presidency should ensure that Council recommendations adopted to manage fishing activities in marine Natura 2000 sites support the achievement of the conservation objectives of those sites.

**Scale up implementation of the Common Fisheries Policy:** In order to reach the objectives of the CFP, Member States with sea areas should be encouraged to sustainably manage all harvested species and minimize the fishing impacts on the marine environment. This includes ensuring that Total Allowable Catches (TACs) and quotas for 2019-2020 are set below scientifically-defined sustainable limits (Fmsy) for all fish stocks at the Fisheries Councils; and unwanted catches of fish are minimized, data on discards recorded and bycatch of protected seabirds, marine mammals and reptiles minimized through the Multi-Annual Plans and Technical Measures Regulation. The revision of the EU Fisheries Control System needs to ensure that all fishing rules are controlled and sanctioned and that a sustainable ocean fund supports the achievement of the CFP instead of re-introducing harmful subsidies.

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

**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, inclu-

ding EUR 15bn per annum for Natura 2000 and other measures primarily supporting implementation of the nature directives. Furthermore, in light of the fact that the new proposed CAP aims for higher environmental and climate ambition, at least 40% of the first pillar should be ring-fenced for the eco-scheme.

**Drive CAP negotiations to strengthen Member States' accountability and hence confidence that the CAP will deliver on the environment and the climate.** 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:** Improve coherence among all the objectives of the CAP and real safeguards against environmentally and/or climate harmful spending. Past experience shows that the misuse of certain tools, like investment support or coupled payments, has reinforced environmentally harmful farming practices. The new regulation must include clear safeguards to prevent CAP money being used for perverse subsidies that will cause environmental, climate and economic damage over the short and long run.

**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.

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

**Drive MFF negotiations to promote an EU budget for sustainability, EU added-value and catalysing change:** contribute to negotiations on the MFF to ensure 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 Ocean; and more specifically, ensure that it allocates sufficient funds to climate and environment and make the budget sustainability and climate proofed by due integration and targets. The CAP budget must be convincingly compatible with climate, biodiversity and other environmental objectives. At least 1% of the budget should be allocated to LIFE+ and EUR 15bn per year should go for the implementation of Natura 2000 and other measures that primarily support the implementation of the nature directives on land.

**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.

**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.

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

**Urgently improve air quality and avoid unacceptable harm to human health and the environment** by ensuring an ambitious **contribution to the Ambient Air Quality Directives fitness check** and improving transparency and information provision on the level of actions taken by Member States, when implementing the Ambient Air Quality Directives and the National Emission Ceilings Directive.

**Setting 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.

## 6. Ensure clean and sufficient water for Europeans

**Encourage the European Commission to undertake a balanced fitness check evaluation of the Water Framework Directive:** The WFD fitness check must take full account of the benefits of full implementation of the legislation, and the European Water Conference should put forward ways how WFD implementation can be made more efficient and effective.

**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 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.

## 7. Protect the public from hazardous chemicals

**REACH review:** Agree Council conclusions on concrete actions for improvement and timelines.

**Maintain EU leadership in relation to the Minamata Convention on Mercury and implement the EU Mercury Regulation,** including the enforcement of the ban on dental mercury for children under 15 and pregnant and breast-feeding woman, entering into force on 1st July 2018.

**Nano-technologies:** promote **transparency, traceability, labelling and provision of consumer information, and research** into health and environmental impacts - improving the evidence base for better policy and risk management.

**Classification Labelling and Packaging (CLP) Regulation:** Call on the European Commission not to disregard science but rather to follow **ECHA's opinion on the classification and labelling of all forms of titanium dioxide as suspected carcinogen.**

**Non-Toxic Environmental Strategy and Substitution:** Seek to ensure that the strategy, as promised in the 7EAP, comes out and is ambitious enough, and that substitution is better promoted, in particular non chemical alternatives.

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

**Progress EU Plastics Strategy measures to reduce plastic pollution and achieve a Plastics Free Ocean:** Limit both macro- and micro-plastic by working towards a final ambitious position of the Council on the proposal on the reduction of the impact of certain plastic products on the environment (including banning single-use plastic products; setting reduction targets as well as labelling and Extended Producer Responsibility (EPR) obligations for products that remain on the market; collecting data for other plastic products most commonly found on European beaches; and developing standards for the prevention at source of all forms of microplastics for relevant sectors).

**Ensure the adoption of an ambitious Ecodesign and Energy Labelling Package of measures:** Make sure that Member States vote on Ecodesign measures and agree on Energy Label schemes to further save on energy and help transform the market towards more durable and repairable products. Also encourage progress on transparent verification of green claims to improve consumer confidence in product labelling.

**Promote a more coherent EU Product Policy Framework, Digitisation and International Collaboration:** Urge the Commission to continue delivering on the Circular Economy Action Plan (CEAP) implementation with clear policy options to make products placed on the EU market more circular and to set the (scoring) repair information system in the context of Ecodesign. Reinforce the EU Ecolabel as a trustworthy information tool for consumers and procurers by increasing awareness and public recognition through Green Public Procurement (GPP) and other national support schemes, including financial incentives. Investigate the use of the product environmental footprint methodology to substantiate green claims.

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

**Maintain pressure on the Commission to take steps to end the EU's non-compliance with Aarhus - promote access to justice, access to information and public participation:** Increase pressure on the European Commission to initiate the preparation of a legislative proposal for revision of the Aarhus Regulation to improve access to justice at the level of the EU institutions and bring the EU back into compliance with the Convention. In addition, push for measures to apply the interpretative guidance on access to justice in environmental matters adopted in April 2017, with a view to eventual preparation of a new legislative proposal on access to justice.

**Support better implementation and build confidence in the rule of law:** Ensure that the Environment Council reiterates the call for better implementation in support of the environmental implementation review (EIR) process and supports development of effective measures to improve implementation - e.g. strengthening inspection and enforcement capacities at EU and Member State level.

**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.**

**Ensure that trade agreements and Brexit do not jeopardize existing or future EU environmental standards:** Check that the investment arbitration procedure does not create risks of deregulation or "regulatory chill", and push for national parliaments to have a vote on any final deal. On **Brexit**, ensure that access to the EU market is linked with the UK's adherence to the principles and standards of the EU's environmental acquis.

**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.

**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 economic metrics for decision-making.

**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.

**Assess and promote measures to support equity and environmental justice:** call on the Commission and agencies to identify and address cases of social injustice from inequitable access to nature, natural resources or from exposure to pollutants – e.g. Roma sites on contaminated land.

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

Take opportunities to promote a people-centred agenda of transformational change in the EU, based on the global 2030 Agenda for Sustainable Development.

**Call on the European Commission to commit in its Work Programme for 2019 to report about the EU's progress towards achieving the SDGs** at the 2019 UN High-Level Political Forum; by influencing the outcomes 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.

**Provide forward-looking input to the Commission's Reflection Paper «Towards a sustainable Europe by 2030»**, which will be adopted later this year, to ensure a paper which clearly identifies the gaps where the EU needs to do more by 2030 in the areas of policy, legislation, governance structures for horizontal coherence and implementation as demanded by the Council already in June 2017.

**Request the European Commission to set out an implementation strategy** with timelines, objectives and concrete measures to implement the 2030 Agenda in all EU policies as demanded by the Council in June 2017.

**Launch the debate on the need for an ambitious 8th Environmental Action Programme:** Ensure early preparation of a comprehensive programme with concrete measures and targets to deliver on the environmental dimension of the 2030 Agenda.

# 1. EUROPEAN COUNCIL

## 1.1 The Future of Europe and the global sustainable development agenda

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

The adoption in September 2015 of the Global 2030 Agenda for Sustainable Development (2030 Agenda) with its 17 Sustainable Development Goals (SDGs) was a major milestone on the path to international recognition of the need for a more sustainable way of living. Whereas developing countries were the primary target of the Millennium Development Goals, the SDGs are universally applicable, reflecting both the fact that developed countries need to change their model of development in order for humanity's environmental footprint to remain within planetary boundaries, and to address the alarming inequalities that the current economic model has created. Despite the EU having played an important role in the development of the 2030 Agenda, the Commission has not given its implementation high priority in nearly three years since then. In November 2016, the Commission came forward with a disappointing Communication, "Next steps for a sustainable European future: European action for sustainability". Given that it came out more than a year after the adoption of the 2030 Agenda, it was very thin on detail about how the implementation would be delivered, and essentially only covered the period up to the 2020, where the existing priorities and actions of the Commission were claimed to be largely adequate.

The correct and logical reaction to the adoption of the 2030 Agenda would have been for the Commission to present a revised set of political priorities to the Parliament and Council reflecting

a new era heralded in by the 2030 Agenda.<sup>1</sup> At European level there is a need for an overarching Sustainable Development Strategy (SDS), with concrete planning of the implementation of all goals, targets and timelines. A central focus should go to multi-sectoral policymaking and guaranteeing policy coherence. Introducing a new SDS could to some extent compensate for and address the deficiencies of the Commission's ten political priorities. Regrettably, the call by many civil society organisations for an overarching strategy mirroring the global 2030 strategy has been ignored. While the Rome Declaration adopted at the March 2017 summit marking the 60th anniversary of the Treaty of Rome made the connection between sustainability and the political debate on the future of Europe, 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. Its achievements in the environmental field, such as they are, have been despite, rather than because of, the Juncker priorities.

Among the positive elements in the Communication are the commitment by the Commission to "explore how EU budgets and future financial programmes can best continue to adequately contribute to the delivery of the 2030 Agenda and support Member States in their efforts; and its recognition of the important role of impact assessments in ensuring mainstreaming of sustainable development in EU policies". However, the Commission's proposal for the new MFF is not fully aligned with the 2030 Agenda and the SDGs.

Under the Maltese Presidency, the Council in June 2017 adopted significant conclusions in reaction to the Commission's November 2016 Communication on action for sustainable development. The Council urged the Commission to elaborate, by mid-2018, an implementation strategy for the Agenda 2030 outlining timeline, objectives and concrete measures for all relevant internal and external policies and to identify existing gaps by mid-2018 in all relevant policy areas in order to assess what more needs to be done on policy, legislation, governance structure for horizontal coherence and means of implementation. Moreover, the Council conclusions asked the Commission to implement the Agenda 2030 in a full, coherent, comprehensive, integrated and effective manner, reflecting civil society's persistent call for policy coherence for sustainable development, and to report about its internal and external implementation of the SDGs at the UN High Level Political Forum in 2019. The EEB has welcomed these elements and is asking the Commission to follow the Council's conclusions.

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

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

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

- Take opportunities to promote a people-centred agenda of transformational change in the EU, based on the global 2030 Agenda for Sustainable Development;
- 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;
- Provide forward-looking input to the Commission's Reflection Paper "Towards a sustainable Europe by 2030", which will be adopted later this year, to ensure a paper which clearly identifies the gaps where the EU needs to do more by 2030 in the areas of policy, legislation, governance structures for horizontal coherence and implementation as demanded by the Council already in June 2017;
- Request the European Commission to set out an implementation strategy with timelines, objectives and concrete measures to implement the 2030 Agenda in all EU policies as demanded by the Council in June 2017;
- Launch the debate on the need for an ambitious 8th Environment Action Programme: Ensure early preparation of a comprehensive programme with concrete measures and targets to deliver on the environmental dimension of the 2030 Agenda;
- Promote the establishment of innovative governance structures for the implementation of the 2030 Sustainable Development Agenda at EU and Member State level that include at EU level intersectoral working groups between the DGs, joint Council 'Jumbo' meetings and civil society engagement policies and structures;
- Seek to guarantee coherence between all European policies and strategies and sustainable development objectives, inter alia by seeking a strengthened role for sustainability considerations in the Commission's internal impact assessment process with a view to ensuring that new policies advance or at least do not compromise environmental protection or social justice;

- Ensure that the European semester is used to give maximum support to the transformation to a green and fair economy, in particular through integrating environmental accounting into the national budgets, socially just environmental fiscal reform and the removal of environmentally harmful subsidies;
- Ensure effective and inclusive modalities for civil society participation in the global (HLPF), pan-European and EU sustainable development processes, in all cases with full respect for the principle of self-organisation;
- 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 commit through its 2019 Work Programme to present its first report on SDG implementation by the EU during the 2019 HLPF (in line with the June 2017 Council conclusions);
- Use available opportunities to ensure that in the preparation of the post-2020 multi-annual financial framework (MFF), the allocation of budgetary resources is fully consistent with the need to implement the 2030 Agenda for Sustainable Development.

## 1.2 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 purely 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: rights to health, to a clean environment, to decent working conditions, to safe products and so on. 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 from taking that action – or the costs to society at large of failing to do so. In other words, the assessment of costs and benefits is often incomplete and therefore distorted. Governmental bodies, including the EU institutions, need to act with the widest possible public interest in mind, including those of business but without giving those a disproportionate weight. 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. (For further details, see section 5.1 under 'Competitiveness Council' below.)

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

- Prevent the better regulation agenda being used as an excuse to promote deregulation;
- Recognise that 'a Europe that protects' implies the need to maintain and further develop strong laws that protect people and their

environment and to prevent these being undermined through deregulatory pressures.

## 2. GENERAL AFFAIRS COUNCIL

### 2.1 Managing Brexit

While the concern that the UK referendum result in 2016 that triggered the Brexit process might have a domino effect has been largely assuaged, not least by the unfolding spectacle of the UK political establishment infighting as regards Brexit strategies, the risk that the Brexit process and eventually a post-Brexit UK could exert a downward pull on environmental laws, policies and standards remains real. On the one side, the EU-27 and the European Parliament have so far been fairly consistent in asserting that there should be no cherry-picking 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. On the other side, the UK's Secretary of State for the Environment Michael Gove has spoken about a 'Green Brexit', presumably seeking to allay fears that the UK will seek to compensate for its loss of access to the EU single market by becoming a Singapore-type low-regulation jurisdiction. While these statements can be cautiously welcomed, it is not unreasonable to suppose that these positions on both sides will come under pressure and that partial access to the EU market in exchange for partial compliance with EU laws will be discussed. Indeed, there already appears to be a right-of-centre alliance between EU and UK parties looking to reduce UK health and environmental standards to facilitate increased UK-US trade, including on chlorine chicken and hormone-fed beef.

This could result in a situation where the UK has weaker environmental standards, and that this exerts a downward pull on EU environmental standards, at least as regards their future evolution. Furthermore, if the UK does eventually leave the EU, many pledges made during this turbulent period may fall by the wayside as the economic reality of Brexit bites, the promise of a Green Brexit being just one.

**We therefore call upon the Austrian 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. This requires a non-regression commitment, not only for products

traded into the EU market, but also more widely – with commitments to maintain nature legislation and air and water pollution laws to avoid cross-border impacts.

### 2.2 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>2</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, 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). President Juncker described the framework as an "opportunity to shape the future as a new, ambitious Union of 27".

The proposed EU budget represents 1.114% of GNI, or 1.279 trillion euro over the period 2021-2027 (payments commitments, in current prices). The EU budget is structured into seven 'headings' – the largest being "Cohesion and Values" at 442.4 billion euro (34% of the EU budget) and "Natural Resources and Environment" at 378.9 billion euro (30% of the EU budget). There are a range of funds and programmes under each heading. Agriculture and fisheries together make up around 98% of the "Natural Resources and Environment" budget line. The climate mainstreaming commitment, which was 20% of the current EU budget, has increased to 25% - i.e. 25% of all funding should "contribute" to climate objectives.

The climate mainstreaming is integrated into the Cohesion Policy funding proposals. Under the heading 'A Smarter Europe', there is to be funding to promote business and entrepreneurship, including the circular economy and climate change; and under 'A greener carbon free Europe' funds

<sup>2</sup> Quote from Jean-Claude Juncker, 22 September 2015. See the Reflection Paper on the future of EU finances, page 4.

will be available to support clean and fair energy transition, to enhance energy efficiency; to support transition to low-carbon economy; to stimulate renewable energy; to support innovative use of low-carbon technologies, to support green and blue investment, including in sustainable natural resource management, circular economy, climate adaptation and mitigation.

For the CAP, the climate mainstreaming elements were part of the 1 June 2018 proposal on the future of food and farming. 'Climate change action' is one of the nine priorities and the proposal states that '40% of the CAP's overall budget is expected to contribute to climate action'. As regards the wider environment, the text promises 'Tougher requirements on farmers to meet societal expectations on food and health, such as making support more closely linked to compliance with rules on protecting water quality, reducing pesticide use, or encouraging a reduction in the use of antibiotics through more effective livestock management programmes that improve animal health and welfare.

While the above are promising words, there are two fundamental problems in both the Cohesion Policy and CAP related stated aspirations – one is the reliance on regions and Member States coming forward with appropriate programmes and projects to realise the ambitions and the other is the measurement criteria. On the former, there are insufficient mechanisms to encourage Member State ambition and there is a risk of either a 'race to the bottom' as regards agriculture practice, and less demand for low carbon projects under the Cohesion budget line given the higher relative ease of using funds for large transport infrastructure projects that raise rather than reduce emissions. The measurement criteria for climate proofing is the use of a 'Rio-marker' type mechanism focusing on contributions to climate change, and it is, in practice, too easy for a project or farm activity to be recognised as 'contributing to' climate change, and be counted as contributing '40% to climate action' without actually contributing sufficiently to climate mitigation and hence providing enough support to the Paris Agreement.

As regards environmental measures, neither Cohesion Policy nor Common Agricultural Policy funding will do enough to halt biodiversity loss or water quality degradation. Indeed, there is a risk of continued ongoing pressure on both biodiversity and water quality. Furthermore, the MFF does not integrate the globally agreed sustainable development goals (SDGs) in any meaningful way. The EU budget, as proposed, will therefore be a missed opportunity for EU added-value to address the Paris Agreement, to help realise EU commitments to biodiversity, or pave the way for a sustainable future.

As negotiations on the EU budget continue, it is clear that there is a need for EU money to drive emission reductions to help tackle climate change, ensure net gains for biodiversity, catalyze environmentally

progressive agriculture and be systematically sustainability-proofed. This would address the public's wishes and the needs of future generations. In addition, if we want Europe to progress towards more sustainability, we need more than a few 'key strategic investments' foreseen in the current proposal; rather we need to ensure that the EU's entire public spending is oriented towards meeting the Sustainable Development Goals (SDGs) rather than supporting sustainable development through scattered programmes.

Ongoing negotiations of the new MFF must exclude all contradictory subsidies and non-sustainable spending such as support for fossil fuels and on farming and fishing practices that undermine the environment, biodiversity and its role as natural capital. There is a positive signal that it is proposed that the LIFE fund – the only direct source of EU environmental and climate funding – be increased – even if the proposed increase is not as great as might appear given the inclusion of funds for clean energy activities that are currently funded through Horizon 2020. But 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.

A true greening of the EU budget therefore still needs to take place in order to ensure that EU spending overall does not result in a net loss of biodiversity and ecosystem services. The present approach to integration for biodiversity and Natura 2000 financing has largely failed and can be credited for the severe underfunding of nature conservation from the EU budget. The current chronic lack of funding needs to be recognised and the potential for the present approach to yield satisfactory results needs to be seriously called into question and more effective solutions to channel sufficient levels of financing found.

**We therefore call upon the Austrian 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. The CAP budget must be convincingly compatible with climate, biodiversity and other environmental objectives. At least 1% of the budget should be allocated to LIFE+ and EUR 15bn per year should go for the implementation of Natura 2000 and other measures that primarily support the implementation of the nature directives on land.

- 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 downstream tax focusing on end-of-life plastic. Negotiations should push for an upstream tax on all virgin plastic (ideally modulated on grounds of hazardous 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 will miss the opportunity to go beyond simply encouraging plastic recycling which, while helpful, is not enough to address marine litter.
- 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) 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.

## 2.3 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 Austrian 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 agro-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.

## 2.4 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.

As noted in the Programme of the Austrian Presidency, 'bringing the six accession candidates from South Eastern Europe closer to the EU in the framework of the enlargement process is a strategic investment in peace, democracy, prosperity, security and stability in Europe.' The Presidency is committed to 'achieving concrete progress in the accession process of the Western Balkan countries'. As mentioned above, a core part of EU accession is the alignment of accession countries' laws with the environmental *acquis communautaire*, and to support this with pre-accession funding. Progress with environmental laws helps to prepare accession

countries for joining the EU internal market, reduces pressure on the environment, nature and its ecosystems, protects the rights and wellbeing of citizens (both accession countries and neighbouring states), creates socio-economic benefits and helps the EU to meet its obligations.

**We therefore call upon the Austrian 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 Austrian 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 recognizing 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 undercuts one of the EU's greatest achievements: its impressive framework of laws providing social and environmental safeguards for its citizens. However suspect Trump's motivation may be (and this hardly needs to be a matter of speculation), 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 recent agreement 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.

Given Trump's volatility, 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 Austrian Presidency has rightly identified the need to "take public regulatory concerns into account"<sup>3</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.

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

<sup>3</sup> Programme of the Austrian Presidency, section 'Trade' (p.22).

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 to foreign investors by EU member states had reached at least €3.5 billion. If such an ISDS were to be included in the major bilateral trade agreement, there will be risks of major negative implications on the ability of governments worldwide 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 Austrian 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 SOCIAL AFFAIRS COUNCIL**

### **4.1 Taxation and environmental fiscal reform**

The Austrian Presidency priorities include pursuing policies that lead to a stable and strong euro area and fair and efficient taxation. The Presidency Programme also recognizes that the current period of economic expansion, with the economy expected to grow by at least 2% in 2018 and 2019, provides a window of opportunity for strengthening the region’s resilience; the Programme affirms the need to make the European economy, among other things, more sustainable.

These are welcome elements. 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 sense of e.g. the 2030 Agenda for Sustainable Development. This requires a more fundamental rethink about how the economy works and recognition of the limitations of parameters

such as Gross Domestic Product as a measure of success.

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 behaviours 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.

A stable and strong euro area requires, inter alia, a sufficient and well-targeted EU budget (see section

2.2 above), no unfair practices as regards taxation or subsidies that may lead to short term gain for a minority that undermines medium or long term viability for the majority, and targeted policies to encourage stability, fairness and progress.

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 (see section 1.1 above).

### **We therefore call upon the Austrian Presidency to:**

- Promote environmental fiscal reform as a central plank of economic policy;
- 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 economic metrics for decision-making.

## **5. COMPETITIVENESS COUNCIL**

### **5.1 Better Regulation**

Like most things that are 'better', the concept of better regulation seems hard to object to – no one would want worse regulation. But the concept has been used and indeed abused as a tool to promote deregulation, in particular in the years since the economic crisis began in 2008. The enthusiasm for deregulation increased under the Juncker Commission, with the responsibility for 'better regulation' being assigned to First Vice-President Timmermans who was instructed to oversee the REFIT process and work with the European Parliament and the Council to remove unnecessary "red tape" at both European and national level.

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

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

The IIABLM was adopted at the end of December 2015, following negotiations with the EP and Council which led to some significant changes to the Commission proposal. Although the final IIABLM improved in a number of important points, including a more appropriate use of Impact Assessment (IA) and the removal of President Juncker's political

guidelines as a basis for joint work programming, some rather worrying new elements were added as well. In particular, a commitment by the Commission as part of a 'simplification' effort to systematically quantify regulatory costs to business and to assess the feasibility of putting in place targets to reduce those costs in certain sectors has been, and remains, alarming. This was given a further push during the Dutch Presidency in the first half of 2016 with the adoption of conclusions from the Competitiveness Council to press the Commission to not only assess feasibility, but also commit to put burden reduction targets in place by 2017.

The goal of cutting so-called "red tape" also formed a central part of David Cameron's negotiation on a new settlement for the UK in the EU. The settlement package, which was subsequently annulled by the outcome of the UK referendum vote, contained a number of similarly problematic provisions. The post-referendum demographic analysis suggests that it is doubtful whether these business-driven efforts to weaken the EU's regulatory role had any significant impact in convincing British Eurosceptics to vote 'remain'. It has also been a central part of US President Trump's political programme which introduced a '1 in, 2 out' rule.

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

Furthermore, the premise that the EU regulatory system is overly burdensome and a major barrier to economic development is a highly subjective one, underpinned by little, if any, evidence. In fact, the

available evidence, in particular in the environmental field, shows that a competitive industry is easily able to absorb and adjust to the costs of new regulations. Further, a continuous focus on reducing regulatory costs would mean the subsidising of Europe's least competitive enterprises by allowing them to externalise part of their production costs. As a result, consumers and tax payers would foot the bill through, for example, increased health care costs, while efforts by leaders and frontrunners within industry would be undermined.

The appalling fire at Grenfell Tower apartment block in London in June 2017 is one of the more recent tragedies to underline the dangers of inadequate regulatory oversight and highlight the reckless folly of those advocates of deregulation who have been seeking a 'bonfire of regulations'. The "diesel gate" scandal further underlines the importance of regulation and its enforcement.

Thus robust regulatory frameworks are needed to create the space for a healthy, civilized society. But 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 Austrian Presidency to 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 Austrian 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;
- **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.

## **6. TRANSPORT, TELECOMMUNICATIONS AND ENERGY COUNCIL**

### **6.1 Towards energy policies that drive climate action**

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 and Bulgarian Presidencies a political agreement has been found for 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. Despite improvements in energy efficiency, renewable energy and the long-term climate planning, the outcome of the agreement falls short of putting the EU on track to meeting its international climate commitments.

We welcome the announcement of the Austrian

Presidency to pursue a comprehensive collaboration with the European Parliament and drive the final negotiations on the Electricity Market Design and all its elements. This is the perfect opportunity for the Presidency to show how to put energy efficiency first as now legally defined in the new Governance Regulation.

The general approaches achieved for the Electricity Market Regulation and Directive reflect the different pressures on the decision making process as key elements have been left in ambiguity.

The proposed continuation of fossil fuel subsidies including for highly polluting coal lasting far into the future constitutes an inconsistency with the decarbonisation objectives as set out in the Paris Agreement. The future rules of the European electricity market design are not just decisive for the

functioning of the future energy system, they are also an important signal on how serious Europe is about decarbonising the power sector.

Concerning the recast of the Regulation on the internal market for electricity, key decisions will be taken concerning the future rule of priority access and dispatch, capacity mechanisms, regional security coordinators and the new coordination between DSOs and correlating network codes. It will be an important task for the Presidency to facilitate a sound discussion of all these elements and ensuring the consistency of the market design initiative (MDI) with the overall climate objectives.

Concerning the recast of the Directive on the internal market for electricity, the key issues of

active consumers and energy communities, the role of Distribution System Operators and Transmission System Operators, pricing and a new understanding of how to create a level playing field for demand-side and supply-side solutions will need to be put at the core of the negotiations.

The Informal Meeting of Energy Ministers in September will be an important milestone in building consensus on the remaining legislative files and should specifically reflect the demand-side potentials of the MDI to enable the Energy Council in December to conclude all legislative efforts.

### **We therefore call upon the Austrian Presidency to:**

- Ensure that the negotiations on the Electricity Market legislation and the Gas Directive take full account of the requirements of the Paris Agreement: the future market design constitutes an essential piece of the Clean Energy for Europe package and any final outcomes must be fully aligned with the international climate requirements.
- Ensure the adoption of an ambitious Ecodesign and Energy Labelling Package of measures: Make sure that Member States vote on Ecodesign measures and agree on Energy Label schemes to further save on energy and help transform the market towards more durable and repairable products; and also encourage progress on transparent verification of green claims to improve consumer confidence in product labelling.

## **7. AGRICULTURE AND FISHERIES COUNCIL**

### **7.1 Agriculture**

Facing a failure of the greening and criticism from civil society that the CAP is broken (a perspective confirmed by EEB-commissioned studies among others) and from the farming community that it is far too complex, the Commission launched reflections on the future of this policy with a public consultation that ran from February until May 2017 and a Communication that was published in November 2017. This was followed by the publication of the legislative proposals on the post-2020 MFF in May 2018 and on the CAP in June 2018. Finally, the Environmental Committee of EP has been granted "shared competence" with the Agriculture Committee on certain environmental aspects of the future CAP.

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. Instead the new CAP delivery model asks Member States to report on the percentage of hectares or animals under certain schemes. Despite the European Commission rhetoric to move towards a performance-based model, under the new proposal EU countries would not receive dissuasive sanctions for failing to meet the policy's environmental and

climate objectives. 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 (to avoid negative impacts on the environment from non-environmental policy instruments), the right consultation and partnership mechanism (consultation of the civil society in the design of the national Strategic Plans) and above all the right accountability and monitoring tools (ex ante approval, monitoring of schemes during the programming period and financial penalties).

The Austrian Presidency will come at a key moment in the debate on the future of CAP as the Parliament and the Council will shortly start to work on their respective positions.

It is disappointing that until now environmental NGOs have not been invited to the table with agriculture 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 recognized 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.

The Austrian Presidency also comes at a key moment with regards to environmental aspects of fertilizers sold in Europe. Many fertilizers used on farms across Europe contain unsafe levels of cadmium. While all the sectors have had to lower their level of cadmium residues, the agriculture sector is the last one to do so until now. The Commission therefore proposed to limit the amount of cadmium in chemical fertilizers to 20 mg/kg and this was backed by the European Parliament. In the Council however the positions are not the same and due to the push of some Member States a limit of 60 mg/kg was adopted in late 2017. This 60mg/kg limit risks worsening the situation and increase exposure of citizens. That is why it is of paramount importance that the final deal struck between the three institutions in trialogues is close to the Parliament's and the Commission's proposed limit of 20mg/kg.

**We therefore call upon the Austrian 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, including EUR 15bn per annum for Natura 2000 and other measures primarily supporting implementation of the nature directives. Furthermore, in light of the fact that the new proposed CAP aims for higher environmental and climate ambition, at least 40% of the first pillar should be ring-fenced for the eco-scheme.
- 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. Past experience shows that the misuse of certain tools, like investment support or coupled payments, has reinforced environmentally harmful farming practices. The new regulation must include clear safeguards to prevent CAP money being used for perverse subsidies that will cause environmental, climate and economic damage over the short and long run.

- 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.
- Ensure that the deal struck on cadmium in fertilizers truly helps to reduce citizens' exposure to cadmium in their food and is as close as possible to 20mg/kg.

## 7.2 Fisheries

Caring for our shared environment has been one of the success stories of the European project and the conservation of the ocean is one of the areas where citizens want to see Europe fully engaged. This has been brought through the UN's Sustainable Development Goal 14: "Conserve and sustainably use the oceans, seas and marine resources for sustainable development." However, the EU's delivery on ocean environmental objectives has been badly lagging behind the popular support.

EU countries made a binding promise that they would do everything in their power to have clean and healthy seas by 2020<sup>4</sup>. However, in the area of marine nature protection, the EU has been repeatedly failing on its own objectives and Europe continues losing biodiversity at an alarming rate. Although Member States committed to end overfishing by 2015, at the latest 2020<sup>5</sup>, 90% of the Mediterranean is still today overfished. In particular, Member States are failing to:

- Establish a coherent and well-managed network of Marine Protected Areas, including through the implementation of the marine Natura 2000 network<sup>6</sup>;
- Establish management rules for human activities that have a detrimental impact on the marine environment, including on seabirds,

<sup>4</sup> Marine Directive (2008/56/EC), EU  
<sup>5</sup> Common Fisheries Policy  
<sup>6</sup> Birds and Habitats Directives

marine mammals, sea turtles and the seabed;

- Adhere to the 2015 deadline to follow scientifically-defined sustainable fishing limits for many harvested species and setting the Total Allowable Catches (TACs) and quotas below the maximum rate of fishing mortality.

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

- **Scale up implementation of the Common Fisheries Policy:** In order to reach the objectives of the CFP, Member States with sea areas should be encouraged to sustainably manage all harvested species and minimize the fishing impacts on the marine

environment. This includes ensuring that Total Allowable Catches (TACs) and quotas for 2019-2020 are set below scientifically-defined sustainable limits (Fmsy) for all fish stocks at the Fisheries Councils, and that unwanted catches of fish are minimized, data on discards recorded and bycatch of protected seabirds, marine mammals and reptiles minimized through the Multi-Annual Plans and Technical Measures Regulation. The revision of the EU Fisheries Control System needs to ensure that all fishing rules are controlled and sanctioned and that a sustainable ocean fund supports the achievement of the CFP instead of re-introducing harmful subsidies.

## 8. ENVIRONMENT COUNCIL

### 8.1 Implementing and promoting the 2030 Sustainable Development Agenda in the European Union and globally

In sections 1.1, 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 flagrantly disregarded these conclusions in its recent country-specific recommendations. The Austrian 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 almost 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 Austrian 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;
- Assess the indicator system and first monitoring report 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 2017 Fiji COP in Bonn gave the facilitative dialogue the new name “Talanoa dialogue” and a new spirit focusing on the three essential questions, “Where are we? Where do we want to go? How do we get there?” With the Talanoa dialogue opening meeting having taken place during the Bulgarian Presidency, the publication of the Intergovernmental Panel on Climate Change (IPCC)’s 1.5°C special report in the first week of October 2018 will be a key moment just a few weeks before the 2018 COP 24 in Katowice.

Only if the EU successfully demonstrates how to deliver on the commitments and promises made will Europe be able to hold international partners responsible for their commitments and promises. This requires a comprehensive global transformation with deep emission cuts enabling a zero carbon society by 2050, or shortly thereafter, in line with the Earth Statement. If the EU wants to be a global leader in this endeavour, EU net emissions should reach zero by 2040.

2018 is a big year for both international and EU climate policies. The Paris Agreement, which set the framework for international cooperation in the field of climate protection post-2020, will be ineffective without implementing provisions. During the Austrian Presidency the parties have the opportunity to complete the negotiation phase and focus on delivering on the commitments made. The adoption of a full implementation package to the Paris Agreement appears as the most important goal of COP24 in Katowice also for the Austrian Presidency and has been compared to COP21 by the Executive Secretary of the Convention. The Presidency needs to ensure full support and dedication of the EU and the Member States to make this progress.

The Talanoa Dialogue taking place in 2018 is about bridging the emissions gap by exploring what more can we do. When the Paris Agreement was

concluded three years ago, it was already clear that the contributions of the parties for Paris were nowhere close to reaching the long-term goals of the Agreement. The COP24 in 2018 is the moment to look at the adequacy of current 2030 targets (NDCs), and prepare for their revision and re-submission to the UNFCCC by 2020.

This reflection must be based on established scientific literature, among others from the IPCC and the UNFCCC, as it already offers insights on the adequacy of current action, level of emissions and about the scientific imperative to reduce emissions urgently

The Austrian Presidency can contribute positively by ensuring a discussion on the means and willingness to rapidly decarbonise our economies and a renewed and enhanced commitment (a COP 24 Decision) to revise and align the 2030 NDCs with the long term goals of the Paris Agreement before 2020 as it would encourage the national revision processes that need to follow in the coming two years.

As part of the Paris Agreement, countries will communicate their long-term decarbonisation strategies to the UNFCCC by 2020. The March 2018 Council invited the Commission to present by the first quarter of 2019 a proposal for a Strategy for long-term EU greenhouse gas emissions reduction. The Commission proposal is currently expected in time for the Katowice COP and will be a key milestone for Europe to show leadership on the international level.

The Austrian presidency can enable a well-informed debate on pathways ensuring that the EU and all Member States’ long term planning is consistent with keeping temperature rise below 1.5°C and reducing emissions to zero. This debate will need to include innovative supply-side aspects including a shift to fully renewable energy system and the demand side with a strong contribution of energy efficiency and circular economy as well as a better understanding of the role of agriculture, forestry, and land-use and land-use change in providing carbon sequestration and sink potentials.

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

- Lead climate diplomacy at the Katowice Climate Change Conference (UNFCCC COP 24): Ensure that the conclusions in relation to COP24 coming out of the Environment Council in October drive European leadership on international climate diplomacy;
- Facilitate progress on the Talanoa dialogue: support the European Commission to ensure that an increase in action can be achieved in the political phase of the Talanoa Dialogue which will take place at COP24 in Poland;
- Contribute to the update of the 2050 long-term strategy: enable a well-informed debate

during the Austrian Presidency corresponding to the conclusions of the March European Council.

### 8.3 Cars and vans CO2 regulation

While most sectors' CO2 emissions are falling, transport CO2 emissions have increased in the last three years. Transport is now the biggest source of GHG emissions in Europe. Cutting CO2 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.

The EEB therefore welcomes the adoption by the European Commission of a "2nd Mobility Package" including a proposal to set new CO2 emission standards for passenger cars and vans for the period after 2020. However, the overall lack of ambition of the Commission's proposal is disappointing.

As a key tool to help EU Member States achieve their Effort Sharing goals for reducing greenhouse gas emissions by 2030 and for Europe to meet its Paris Agreement commitments, it is paramount for the post-2020 proposals to increase the ambition levels compared to the 2021 CO2 targets in place today.

This requires a number of steps including:

1. Set a goal of 20% reduction in fleet average new car CO2 for each carmaker from 2021 to 2025, to apply to both cars and vans;
2. Introduce a goal of 50-60% reduction by 2030 – the target to be reviewed in 2022 to allow sufficient lead time;
3. Ensure a vision toward Zero Emission Vehicles by setting a 0gCO2/km target for 2035 to indicate to the industry the required direction and speed for improvement.

The inclusion of a 2025 target is essential since it doubles anticipated carbon savings by 2030. In the absence of such a target, much less improvement is envisaged in new car and van CO2 emissions between 2021 and 2025 and, as a result, the fleet consumes substantially more fuel in 2030.

Furthermore, a malus needs to be added to the toothless bonus proposed for sales of zero emission vehicles in 2025 and 2030 (also called the "two-way adjustment"). We need a 'sticks & carrots' approach (malus = stick) to get carmakers to be serious about investing in electric vehicles in Europe. Provisions setting a malus will guarantee that carmakers market and sell electric vehicles (EVs) properly; it will create certainty in the EV market in Europe and is key to the supply chain (e.g. batteries) developing.

On the matter of tests, real-world CO2 tests are needed so that CO2 reductions are finally achieved on the road and drivers benefit from the promised fuel savings. The gap between what applying standards based on real-world conditions would deliver and what is emitted on the road

today is a staggering 42%, weakening much of the improvement of the 95g/km 2021 standard. Future rules must learn from past mistakes and control CO2 emissions in the real-world by setting not-to-exceed limits in 2021, not to be surpassed in 2025 or 2030. Finally, a real-world test (similar to the one already done for air pollution) should be developed for the purpose or alternatively the use of fuel consumption meters should be established.

#### **We therefore call upon the Austrian Presidency to:**

- Bring the requirements for passenger and heavy goods vehicles in line with the requirements of the Paris Agreement: to avoid any further delay contribute to a comprehensive discussion and general approach for the remaining elements of the 2017 clean mobility package and the 2018 third mobility package.
- Make rapid progress on the file in order to reach a political agreement with the Parliament before the next European elections;
- Ensure the adoption of greater CO2 emission reductions via an ambitious 2025 target with a view to reach zero emissions in 2035;
- Support the adoption of an effective Zero Emission Vehicle (ZEV) sales target, including penalties for non-compliance;
- Ensure the adoption of real-world CO2 tests to make sure vehicles effectively reduce their CO2 emissions on the road.

### 8.4 Fighting air pollution

Air pollution is still a major problem in the EU. It is estimated to cause around 400,000 premature deaths each year and contributes to severe chronic disease across the lifespan. This includes cardio-vascular disease, asthma, allergies, chronic obstructive pulmonary disease (COPD), lung cancer, impaired prenatal and early childhood development, as well as other chronic conditions such as diabetes, liver disease, 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.

EU action is critical and particularly effective in improving air quality. For instance, emissions of sulphur dioxide have dropped significantly in the last three decades as a result of EU standards, leading to reduced acidification and recovery of some forests and lakes.

But air pollution is still an "invisible killer" and substantial challenges remain. The latest air quality report by the European Environment Agency (EEA) shows that a large proportion of Europeans are

still exposed to levels of air pollution that put their health at risk. The EEA estimates<sup>7</sup> that more than half of Europeans were exposed to concentrations exceeding the WHO air quality guidelines in 2013-2015. 82-85 % of the population was exposed to concentrations exceeding the WHO guidelines for PM<sub>2.5</sub>, particles which are most harmful to health.

The EU and its Member States must therefore continue and intensify their fight against air pollution. First and foremost, they 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 (including the Industrial Emissions Directive and the EURO standards). Their quick implementation will help countries to meet EU ambient air quality standards and move closer towards the WHO guidelines. In parallel, the EU must continue its efforts and focus on reaching WHO levels across the EU. The ongoing fitness check on ambient air quality must contribute to reaching this objective as soon as possible.

#### **We therefore call upon the Austrian Presidency to:**

- Lead by example with strong and clear support for the rapid implementation of existing EU air pollution laws and ensuring an ambitious contribution to the Ambient Air Quality Directives fitness check while also improving transparency and information provision on the level of actions taken by Member States, when implementing the Ambient Air Quality Directives and the National Emission Ceilings Directive.
- Encourage the European Commission to take additional action to address the most harmful sources of air pollution. This includes emissions from 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's Executive Body meeting, from 10 to 14 December 2018 in Geneva.
- Ensure criteria are set on the determination of BAT benchmarks, with improved links to promotion of compliance with Environmental

<sup>7</sup> EEA "Air quality in Europe – 2017 report"

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**

The third priority objective of the EU's 7EAP aims "to safeguard the Union's citizens from environment-related pressures and risks to health and well-being", inter alia by developing by 2018 a strategy for a non-toxic environment that is conducive to innovation and the development of sustainable substitutes, including non-chemical solutions, building on horizontal measures that were to be undertaken by 2015 to ensure: the safety of nanomaterials; the minimisation of exposure to endocrine disruptors; appropriate regulatory approaches to address the combination effects of chemicals; and the minimisation of exposure to chemicals in products, including, inter alia, imported products, with a view to promoting non-toxic material cycles and reducing indoor exposure to harmful substances.

Unfortunately, the European Commission already missed the 2015 deadline and most probably will also miss the 2018 one.

The Commission has published recently the results of its review of the REACH Regulation, specifically a Staff Working Document (SWD) on the REACH Evaluation<sup>8</sup> and a Communication<sup>9</sup> including the conclusions and actions resulting from this review.

Although we agree with the SWD's conclusions and challenges identified concerning the current implementation of REACH, the Commission's Communication is not coherent with the SWD as it fails to address these challenges and to commit to concrete actions to allow REACH to provide high levels of protection of human health and the environment and help to achieve the Sustainable Development Goals (SDGs) and the EU goal of a non-toxic environment. Further, most of the actions proposed are not linked with any specific timeframe. The Commission's Communication lacks specific commitments to:

- Implement the "no data, no market" principle and effectively shift the burden of proof to companies;

<sup>8</sup> <https://ec.europa.eu/docsroom/documents/28202>

<sup>9</sup> <https://ec.europa.eu/docsroom/documents/28201>

- Truly stimulate the substitution of toxic substances through the authorisation process;
- Improve the identification of new substances of very high concern;
- Encourage proper EU-wide enforcement of Art. 33 and make the consumer “right to know” more practicable;
- Lower the burden of required evidence for regulating substances of concern and improve the use (and prevent misuse) of alternative test methods;
- Better address emerging issues, in particular endocrine disruptors and combination effects of chemicals;
- Bring low-volume production substances and polymers into the REACH regulation.

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

The European competent authorities for REACH and CLP regulations will vote in September on the harmonised classification and labelling of a suspected carcinogen which is omnipresent in consumer products, namely titanium dioxide (TiO<sub>2</sub>). Despite the European Chemicals Agency (ECHA) having proposed its classification as a category 2 carcinogen through inhalation, the authorities are considering not to classify and label titanium dioxide as a consequence of an unprecedented lobby by TiO<sub>2</sub> industry claiming socio economic impacts that are irrelevant to CLP.

If the competent authorities do not follow ECHA's opinion a very bad precedent will be set as competent authorities will have left the door open for disregarding science in the future.

### **We therefore call upon the Austrian Presidency to:**

- Seek to ensure an ambitious Non-Toxic Environment (NTE) Strategy that promotes innovation and substitution: Both the NTE and substitution and innovation strategies should be developed in close collaboration with the Member States and the Union institutions.
- Agree Council conclusions on concrete actions for improvement based on the outcome of the REACH review, including the SWD and timelines. Conclusions should focus on actions lacking such as to ensure that, by 2020, all substances of very high concern (SVHC) are included in the REACH candidate list and the identification of new substances of very high concern is improved; increased transparency; improved implementation of the precautionary principle; effective shift of the burden of proof to companies; improved information on hazards and risks of chemicals in consumer products; and low-volume production substances and polymers being brought into the REACH regulation.
- Promote transparency, traceability, labelling and provision of consumer information on nano-technologies, and research into their health and environmental impacts - improving the evidence base for better policy and risk management.
- Call on the European Commission not to disregard science but rather to follow ECHA's opinion on the classification and labelling of all forms of titanium dioxide as a suspected carcinogen by inhalation.

## **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 bioaccumulates up through the food chain, especially in certain predatory fish, and presents a human exposure risk. This neurotoxin is widely diffused through the atmosphere and has contaminated global food supplies at levels which pose a major risk to human health, wildlife and the environment.

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

mercury from button cell batteries by 1 October 2015, although this review was initially intended only for cadmium in cordless power tools.

In May 2017 the EU adopted the revised Regulation on Mercury, putting in place additional provisions in view of complying with the requirements of the Minamata Convention (see below). The EEB welcomed the new Regulation since it improved upon the Commission's initial proposal, strengthened and on a number of issues went beyond the requirements of the Minamata Convention: the Regulation is based only on article 192 of the TFEU, allowing Member States to adopt more stringent measures; it widens the scope of the export ban including three additional compounds; it aligns partly the export of mercury-added products with those allowed in the EU market; phases out the use of mercury in industry, though allowing generous time to a few industries for the switch; improves the management of mercury waste and demands that liquid mercury waste is converted to a solid form before its final disposal in underground salt mines or in dedicated above ground facilities (with an additional solidification step). Mercury use in artisanal and small scale gold-mining will be prohibited. Reporting obligations have also been generally improved, including concerning the traceability of mercury waste. The decision to end dental amalgam use in children under 15 years and pregnant and breastfeeding women is a positive step in the right direction, but it is disappointing that a general phase out was not agreed. The failure to end the export of all mercury-added products already prohibited in the EU and mercury use in some processes sooner rather than later also suggests that financial interests still prevailed over health and nature protection for certain issues.

It is very important now that the EU really implements this regulation and that where feasible Member States go beyond its provisions, such as by phasing out mercury in dentistry.

At the global level, the Minamata Convention on Mercury had already been signed by 128 countries and ratified by 94 by the beginning of July 2018.

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

exposure worldwide.

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

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

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

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

#### **We therefore call upon the Austrian Presidency to:**

- **Maintain EU leadership in relation to the Minamata Convention on Mercury by working towards establishing an effective international operational framework to achieve significant mercury reductions and seeking to ensure swift ratification of the Convention by the remaining EU Member States;**
- **Implement the EU Mercury Regulation, including by raising awareness and enforcing the ban on dental mercury for children under 15 and pregnant and breast-feeding woman that entered into force on 1st July 2018.**

## 8.7 Circular economy and waste policy

The Circular Economy is now an acknowledged strategic agenda for Europe. It drives new job creation with environmental savings and reduced dependency on material and fuel imports. Furthermore, it contributes to meeting climate change commitments, creating the opportunities for complementing the CO2 savings expected by a decarbonized energy system through more efficient use of materials and resources embedding massive CO2 emissions linked to extraction and manufacturing stages. It 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. It also has the potential to help deliver on a number of SDGs and inspire other economies around the world. The Austrian Presidency comes at a time where it will be crucial to ensure that the Commission delivers on the actions listed in the CE action plan of December 2015 before the end of its mandate and the slowdown that can be expected during EU elections period.

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 necessity to keep material cycles clean from toxics.

Plastic pollution, notably in the oceans, and overuse of unnecessary plastic materials, frequently associated with toxic substances or other additives not yet fully documented in terms of environmental and human health consequences, are the clear symbols and legacy of a linear, unsustainable economy. It is time to put an end to this and re-orient plastic consumption around resource prevention, resource productivity and the 'circular first' principle as enunciated by the EU Parliament.

Products placed on the EU market are at a decisive point in the materials chain and determine the future potential for circularity of our economy. Allowing to put on the market poorly designed products that will not last as expected or products with no information with regard to their chemical contents, critical material contents, or repair or recycle potentials is just hampering circularity and the realization of the related benefits. We need to have more systematic eco-design of products, we need to acknowledge and 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.

A toxic legacy is the enemy of circularity, notably if maintained in the dark. A proper circular economy can deliver its potential only if the material cycles are clean. This starts with detoxifying products placed on the market, being much more ambitious

with regards prevention of hazardous materials, accelerating safe substitution. This also requires to not re-inject contaminated streams into the economy through recycling. And whenever hazardous substances or not yet well known substances are used, they should clearly be labeled so that once again consumers and economic actors are fully informed and the next cycle of the legacy can be prevented.

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

- Progress EU Plastics Strategy measures to reduce plastic pollution and achieve a Plastics Free Ocean: Limit both macro- and micro-plastic by working towards a final ambitious position of the Council on the proposal on the reduction of the impact of certain plastic products on the environment (including banning certain single-use plastic products; setting reduction targets as well as labelling and Extended Producer Responsibility (EPR) obligations for products that remain on the market; collecting data for other plastic products most commonly found on European beaches; and developing standards for the prevention at source of all forms of microplastics for relevant sectors).
- Ensure the adoption of an ambitious Ecodesign and Energy Labelling Package of measures: Make sure that Member States vote on Ecodesign measures and agree on Energy Label schemes to further save on energy and help transform the market towards more durable and repairable products; and also encourage progress on transparent verification of green claims to improve consumer confidence in product labelling.
- Promote a more coherent EU Product Policy Framework, Digitisation and International Collaboration: Urge the Commission to continue delivering on the Circular Economy Action Plan (CEAP) implementation with clear policy options to make products placed on the EU market more circular, to set a (scoring) repair information system in the context of Ecodesign and to work towards disclosure of chemicals and material contents of products.; reinforce the EU Ecolabel as a trustworthy information tool for consumers and procurers by increasing awareness and public recognition through Green Public Procurement (GPP) and other national support schemes, including financial incentives; and investigate the use of the product environmental footprint methodology to substantiate green claims.

## 8.8 Halt biodiversity loss: Protect

## our land and oceans

The EU has committed to halt and reverse biodiversity loss within the EU and globally - and with this, to maintain the capacity of natural ecosystems to provide essential ecosystem services including pollination for food production, the provision of clean air and water, the regulation of climate, and nature's contribution to human health and recreation among others. However, the EU is way off track to meet this crucial target as demonstrated by the assessments of the European Commission and the European Environmental Agency as well as other authoritative bodies such as the International Panel on Biodiversity and Ecosystem Services (IPBES). Biodiversity loss is one of the core planetary boundaries that have already been crossed by humanity. Exacerbated by climate change, this increases the risk of irreversible changes and undermines economic development and the resilience of societies in the face of new challenges.

The need is clear for urgent transformational change in the approaches taken to safeguard, restore, and invest in biodiversity up to 2020 and beyond. The Agenda 2030 and Sustainable Development Goals provide an inspirational framework for reaching biodiversity targets in an integrated manner. The Austrian Presidency is well placed to lead the debate on the EU's contribution towards a "New Deal for Nature" that can mobilize governments, stakeholders and global community to address the challenge of biodiversity and ecosystems loss. The 14th Conference of Parties (COP14) to the UN Convention on Biological Diversity (CBD) in November this year will discuss the strategic directions to the 2050 Vision for Biodiversity and post 2020 biodiversity framework and the Austrian Presidency needs to ensure that the EU steps up its game and demonstrates clear European leadership on international biodiversity diplomacy.

Global leadership, however, will need to be complemented by serious action across the EU to fully and effectively implement and enforce the EU's nature, water and marine protection legislation in order to protect and restore our ecosystems and the public goods / ecosystem services they provide. One specific area where the Austrian Presidency can make a difference is the preparation and adoption of the EU Action Plan on sturgeons in order to enhance EU cooperation and conservation of the most threatened fish species in Europe, being in critical danger of extinction.

The Austrian Presidency will also lead the adoption of the Council position on the Commission proposal for the EU initiative to address the rapid decline of wild pollinators, such as bees, bumblebees, butterflies and other insects. More than three-quarters of the world's food crops are in part dependent on pollination, and in Europe, crop pollination is estimated to be worth EUR 15 billion annually. The Commission proposal failed to include strong measures to address the most important drivers of pollinators decline: intensive agriculture,

pesticide use and land use change. The EU Ministers can commit to implement those measures as well as ensure that the reformed Common Agricultural Policy addresses the main drivers of the pollinators decline.

As the Austrian 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. There is a positive signal that it is proposed that the LIFE fund – the only direct source of EU environmental and climate funding – be increased – even if the proposed increase is not as great as might appear given the inclusion of funds for clean energy activities that are currently funded through Horizon 2020. But 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.

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

- Ensure that the October Council conclusions on the COP14 of the Convention on Biological Diversity (CBD) in November demonstrate and drive European leadership on international biodiversity diplomacy, and contribute to discussions on strategic directions to the 2050 Vision for Biodiversity and preparation of the post-2020 global biodiversity framework;
- 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, a Sustainable Ocean Fund of at least 7 billion EUR for nature protection, as well as a significant increase in the LIFE fund to 1% of the EU budget;
- Increase the level of ambition in the EU's Pollinators Initiative: Introduce additional measures such as restoring and connecting essential pollinators' habitats and address problems of derogations and lack of transparency on the pesticide use as well as the need to reform the Common Agricultural Policy so that the dramatic decline of pollinators can be reversed;
- Scale up implementation of the EU's Nature

Directives: Use the *EU Action Plan for Nature, People and the Economy* to fast-track measures to achieve significant progress towards halting and reversing biodiversity loss including preparation of the *EU Action Plan on Sturgeons*;

- Drive commitment to Healthy Seas and Oceans: Adopt conclusions at the December Environmental Council on the Commission's assessment of Member States' measures under the Marine Strategy Framework Directive, highlighting the need for much more ambitious and urgent action to achieve Good Environmental Status of EU seas by 2020 by reducing pressures from human activities on marine biodiversity. These include overfishing and other fishing impacts, pollution (chemicals, plastics, nutrients, noise), energy infrastructure development (offshore wind, grid connections and interconnectors, oil and gas), seabed destruction and spatial obstruction. Marine biodiversity should be safeguarded through an ecologically coherent network of well-managed Marine Protected Areas contributing to the implementation of the Nature Directives at sea. Furthermore, the Austrian Presidency should ensure that Council recommendations adopted to manage fishing activities in marine Natura 2000 sites support the achievement of the conservation objectives of those sites.

## 8.9 Ensure clean and sufficient water for all

Austria will be at the helm of the EU Council during a crucial 6 months for EU water policy as the EU's flagship Water Framework Directive (WFD) undergoes a fitness check evaluation and Environment Council is expected to adopt its position and negotiate with the European Parliament on the recast of the Drinking Water Directive as well as advance its deliberation on the proposed Regulation on Water Reuse.

The WFD and its daughter directives are the EU's main legislation to protect and restore EU's rivers, lakes and coasts and a main legal framework to address EU's growing water challenges of pollution including by emerging pollutants, over-abstraction and loss of habitats. The WFD has led to important improvements in water status throughout the EU since it was adopted in 2000 but its goal to prevent deterioration and bring all water bodies in the EU to ecological health by 2015 has been missed by a long shot. Currently, only around 40% of surface waters are in good ecological status according to the EEA State of Water report.

In preparation for the 3rd river basin management cycle in 2021-2027, the European Commission started a fitness check evaluation of the WFD. The EEB considers that the Directive is fit for purpose, its ambitious objectives are justified and the main focus should be on improving its implementation

and achieving coherence with other EU sectoral policies such as agriculture, energy and transport, as well as increasing the budget for sustainable water management from national and EU funding instruments. 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 and sustainable water management efforts for years to come and create a significant level of uncertainty for businesses. Given the current pace of biodiversity loss and degradation of aquatic ecosystems this would significantly compromise the achievement of the EU's global commitments under the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals, and the Paris Agreement on climate change.

Thus it is crucial that the WFD fitness check takes full account of the benefits of full implementation of the legislation. The European Water Conference that the Austrian Presidency is organizing together with the European Commission should put forward ways how WFD implementation can be made more efficient and effective and how additional resources can be mobilized for its full and ambitious implementation.

In addition as the Austrian Presidency leads the ongoing negotiations on how the Common Agricultural Policy 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 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 cohesions funds. There is a positive signal that the LIFE fund – the only direct source of EU environmental and climate funding – has been increased, but if the EU is serious about halting biodiversity loss and bringing all its waters back to ecological health, the funding allocated to nature and sustainable water must further increase significantly and funding that undermines biodiversity and ecosystems must be ruled out.

The Austrian Presidency is also expected to lead the adoption of the Council position on the recast of the Drinking Water Directive which is a direct follow up to the European citizens' initiative 'Right2Water', the REFIT evaluation, and circular economy considerations that underline the importance of improving people's confidence in tap water and hence reduce the number of plastic bottles used. Thus it is crucial that the Council position maintains at least the level of ambition set in the current proposal by safeguarding the minimum requirements (including for endocrine disruptors and per- and poly-fluoroalkyl substances (PFAS), in line with the precautionary principle. It should also enshrine human rights obligations regarding access to safe drinking water, which must be available,

physically accessible, affordable and acceptable and ensures that this remains at the heart of EU and Member State policies and their implementation. Moreover, it should improve the provisions for transparency as regards the communication to the general public of adequate and up-to-date information on water intended for human consumption, including assessing and transparently communicating on the impacts of microplastics and chemicals in drinking water.

The Environmental Council under the leadership of the Austrian Presidency is expected to deliberate on the European Commission proposal for new rules to stimulate and facilitate water reuse in the EU for agricultural irrigation (Regulation on Water Reuse). The potential role of treated wastewater reuse or reclaimed water as an alternative source of water supply is now well acknowledged and embedded within international, European and national strategies. The Sustainable Development Goal on Water (SDG 6) specifically targets a substantial increase in recycling and safe reuse globally by 2030. Thus 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. It will also be important to support new transparency rules so that the public gets information online, in a user-friendly way, about water reuse practice in their Member States.

### **We therefore call upon the Austrian Presidency to:**

- Encourage the European Commission to undertake a balanced fitness check evaluation of the Water Framework Directive: The WFD fitness check must take full account of the benefits of full implementation of the legislation, and the European Water Conference should put forward ways as to how WFD implementation can be made more efficient and effective;
- 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 and enforcement**

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

In its 2007 Communication on the application of EU law, the European Commission stated that "Laws do not serve their full purpose unless they are properly applied and enforced"<sup>10</sup>. Striving for better enforcement should embrace both improving enforcement of the EU *acquis* by the competent authorities and creating the right conditions for citizens to play an active part in supporting enforcement efforts. The EEB gave the Commission's Communication on implementing European Community Environmental Law COM(2008) 773/4 a cautious welcome<sup>11</sup>, outlining several aspects it considered as shortcomings.

These earlier Communications were followed up by the publication in March 2012 of a new Communication on the better implementation of EU environmental measures<sup>12</sup>. The Commission referred in the related press release to an estimated €50 billion per year in health and environmental costs at a time of economic crisis due to the failure to implement environmental legislation and mentioned that in the waste sector alone, full implementation would generate an additional 400,000 jobs. These were just two examples of the costs of failure to take action and of the fact that environmental protection can create jobs.

Several elements from the 2012 Communication were then taken up in the 7EAP, adopted in November 2013, which noted the high number of infringements, complaints and petitions in the area of the environment and committed to giving 'top priority' to 'improving the implementation of the Union environment *acquis* at Member State level'. Specifically, the 7EAP states that efforts in the period up to 2020 will focus on delivering improvements in four key areas, which may be summarised as follows<sup>13</sup>:

<sup>10</sup> A Europe of Results - Applying Community Law, COM (2007) 502 final, Brussels, 5.09.2007.

<sup>11</sup> EEB Comments on the Commission Communication on implementing European Community Environmental Law COM(2008) 773/4.

<sup>12</sup> Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (COM(2012)95).

<sup>13</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a

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

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

One new element that provides an additional reason for taking a robust approach on this issue is the 'dieselgate' fallout. This has badly damaged the confidence of citizens in the ability of governments to effectively regulate the corporate sector. The scandal has 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.

The fact that Member States face difficulties in implementing EU laws has sometimes too hastily been used to argue that there are too many EU laws, without first considering whether the absence of those laws, even if poorly complied with, would lead to a better society and environment. The EEB regrets the general slowdown in presenting new laws and the tendency to replace binding law by communications or recommendations and guidelines (see also section 1.2). However, this slowdown in developing new laws is yet another reason to increase efforts to improve enforcement. Laxity in the handling of breaches of EU law sends the wrong signals. The EEB considers that in the long run only

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General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (paras. 58-62).

a solid harmonised environmental acquis and its full application can provide the conditions for a healthy sustainable economy.

In May 2016, the Commission published a Communication establishing a new Environmental Implementation Review (EIR)<sup>14</sup> process. The EIR responded to the recognition that the implementation of EU environmental acquis was proving a major challenge across many Member States, with significant implementation gaps in European environmental legislation in air quality, biodiversity, water quality and management, waste management, and noise. This implementation deficit leads to significant environmental, economic and social costs, and reduces the credibility of the EU with its citizens. As with the European Semester, there is a regular analysis of state of progress in Member States, with European and country-specific reports being published every two years focusing on essential topics in the area of environmental legislation, and accompanying recommendations for action. There are also important national dialogues, an initiative for peer-to-peer support across Member States. The first EIR package was published in February 2017 and work is currently underway on the country reports that will form the core of the second EIR package expected in spring 2019. The EIR provides a good opportunity to initiate high level discussions in the Council on significant implementation gaps common to several Member States as well as specific actions at Member State level to improve the implementation of the EU environmental acquis.

The EIR process supports the European Commission's role as Guardian of the Treaties, supports the better regulation objective of policy coherence and responds to public interest. In the November 2017 Eurobarometer survey, 94% of respondents said that protecting the environment is important to them personally, and there was significant support for better enforcement of legislation (31%), the introduction of heavier fines for breaches of environmental legislation (34%) and introducing stricter environmental legislation (30%). The Grenfell tower fires, Dieselgate, Bialowieza Forest, and the Deepwater Horizon oil spills underline the need for better implementation and enforcement of EU and national laws.

In January 2018, in order to further address the implementation deficit, the Commission published a set of 'EU actions to improve environmental compliance and governance' (COM/2018/10), accompanied by a decision to establish a new expert group entitled the 'Environmental Compliance and Governance Forum' (Commission Decision C(2018)10). It is worth noting that, unlike many such expert groups established by the Commission, this body does not include NGOs as full members.

In conclusion, the EU cannot afford to continue not taking seriously the enforcement of environmental law. It has an impressive environmental acquis jointly

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14 [http://ec.europa.eu/environment/eir/index\\_en.htm](http://ec.europa.eu/environment/eir/index_en.htm)

adopted with the Member States and Parliament and it is time to fully implement it to derive all of the benefits.

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

- Recognise that the implementation deficit needs to be treated with continued urgency and high level political commitment to ensure a Europe where the rule of law is respected. Clarification as to institutional roles and responsibilities is important, their capacity to act should be supported, and the sanctions and fines for non compliance and wider environmental crimes need significant strengthening.
- Remind the Council, Commission and Parliament of their joint commitment under the 7EAP to give top priority to improving implementation of the EU environmental acquis at Member State level and call on the Commission to come forward with legislative proposals to deliver on that commitment, drawing on elements of the 2012 Communication as appropriate;
- Encourage and support initiatives by the Commission to deal with its enforcement obligations in a transparent and timely manner, and to increase transparency in relation to the implementation performance of Member States;
- 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 agro-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;
- Ensure that the Environment Council reiterates the call for better implementation in support of the environmental implementation review (EIR) process and supports development of effective measures to improve implementation - e.g. strengthening inspection and enforcement capacities at EU and Member State level;
- Encourage that the EIR process builds in public interests and engages with civil society organisations to ensure that citizens' voices are heard. This is important for the legitimacy of the process, for identifying priority areas of focus and for developing the buy-in for implementation. Civil society engagement in country dialogues should be encouraged,

and CSOs should be consulted as regards priorities for action so that the citizen perspective is duly integrated;

- Use the Environmental Implementation Review process to launch high level discussions in the Council on significant implementation gaps common to several Member States as well as to initiate specific actions at EU and Member State level to improve the implementation of the EU environmental acquis, e.g. new legislative and budgetary proposals aimed at strengthening inspection and enforcement capacities at EU and Member State level;
- Recognise that providing wide access to justice is a crucial tool for promoting better implementation and therefore support measures promoting more effective access to justice: Maintain pressure on the Commission to initiate the preparation of a legislative proposal for revision of the Aarhus Regulation to improve access to justice at the level of the EU institutions and bring the EU back into compliance with the Convention; in addition, push for measures to apply the interpretative guidance on access to justice in environmental matters adopted in April 2017, with a view to eventual preparation of a new legislative proposal on access to justice (see also sections 8.11 and 8.12);
- Increase public involvement also through improved access to documents, including in relation to the infringements process;
- Emphasise in its discussions with Member States the need for adequately-resourced bodies and structures at EU level to improve the transposition and application of EU law, such as an EU agency coordinating environmental inspections, and seek Member States' support for such bodies and structures.

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

The debate over whether to take further steps towards increased integration of the European Union has intensified in recent years, partly but not only because of the Brexit process. This debate should focus, more than it does now, on what kind of EU we should be striving for, rather than the simplistic 'more or less' question. Specifically, it should focus on the need to uphold the core democratic principles underlying the EU and should ask what measures need to be taken to ensure and indeed enhance the democratic accountability and transparency of the EU institutions, given that some of the resistance to 'more Europe' has its roots in concerns over such democratic governance issues.

The fact that not only all EU Member States but also the EU itself are Parties to the Aarhus Convention is

relevant in this regard. The 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. However, the EU's commitment to the Convention has been seriously called into question in the past year or so, as described in the following paragraphs. The Austrian Presidency can play a key role in putting the EU back on course to fully respecting the Convention as it applies to its own institutions.

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

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

The very restricted conditions under which NGOs can have access to justice at the level of the EU institutions was the subject of a complaint ('communication') to the Aarhus Convention Compliance Committee by the NGO ClientEarth as long ago as 2008. The surprising and controversial ECJ ruling of January 2015 enabled the Committee to bring its longstanding deliberations on the 2008

case to a conclusion: on 17 March 2017, having taken into account the comments of the parties concerned on draft findings issued in June 2016, the Committee concluded that the EU is not in compliance with the Convention.

It is important to emphasise that the decision by the EU institutions (through the wording of the Aarhus Regulation) to limit the types of acts that may be challenged to 'measures of individual scope' was a political decision, not based on any legal imperative. There was nothing in the Aarhus Convention that required this limitation; rather it reflected the reluctance of the EU institutions to render their decisions open to public scrutiny and challenge. In March 2017, the **Committee's findings** confirmed that there is also nothing in the Convention that permits such a limitation, and that by including it in the Aarhus Regulation the EU is in breach of international law.

The Committee's findings and recommendations were submitted for endorsement by the Meeting of the Parties (MoP) at its sixth session which took place in Montenegro in September 2017.

On 29 June 2017, in response to the Committee's findings and in preparation for the MoP, the Commission adopted a **proposal for a Council Decision** whereby the EU would vote to reject the Committee's findings when they are presented for endorsement at the MoP.

The significance of this proposal was enormous. Since the establishment of the compliance mechanism in 2002, the findings of the Committee had always been endorsed by the MoP, with the support of the EU and its Member States. For the EU to use its political muscle to secure a rejection of the Committee's findings of non-compliance in the one case where the EU is the subject of those findings would have set a dangerous precedent and sent a stark message to its citizens, to other non-EU Parties to the Convention and to the rest of the world that the EU considers itself above the rule of law.

Aside from the political implications of the Commission proposal, the substance of the Commission's legal argumentation was weak and misleading. The Compliance Committee itself, which is a non-political body made up of experts elected directly by the MoP on account of their qualities as 'persons of high moral character and recognized competence in the fields to which the Convention relates', felt bound to issue a **clarifying note** on 30 June 2017 refuting several of the Commission's key arguments, even having to explain in one place some basic principles of how international treaty law works.

Fortunately the idea of rejecting the Committee's finding of non-compliance was itself rejected by the EU Member States. Amending the Commission's proposal required unanimity according to the Council's internal decision-making rules, and it is a measure of just how extreme the Commission's position was that this unanimity was achieved. However, the resulting compromise that emerged

in the form of the **Council Decision** of 17 July 2017 and became the EU position was nonetheless very problematic, in three respects in particular:

- First, it proposed that the MoP would only 'take note' of the findings, and while it could be argued that this was much nearer to endorsing them than to rejecting them, it would still represent a departure from the longstanding practice of the Committee's findings being always endorsed by the MoP. This would weaken the authority of the Committee, the compliance mechanism and indeed the Convention itself, and would set a dangerous precedent which other Parties would seek to follow.
- Second, it sought to weaken the force of the proposed MoP recommendations by proposing that they should only be recommendations 'to consider' a number of actions to address the problems behind the non-compliance rather than actually carry out those actions. Again, this would set a precedent which would be seized on by other non-compliant Parties seeking softer treatment and would set the bar very low in relation to the Committee's monitoring of the follow-up by the Party concerned.
- Third, it inappropriately invoked a 'separation of powers' argument to propose the deletion crucial references to the Court of Justice of the European Union (CJEU) and jurisprudence in the recommendations, implying that MoP findings should not explicitly make recommendations concerning a non-compliant Party's jurisprudence even if the Party's jurisprudence is the reason, or part of the reason, for the non-compliance.

At the MoP in Montenegro, the EU position was widely and severely criticized by other non-EU Parties as well as by NGOs. To their credit, not a single other Party or stakeholder supported the EU's position at the MoP. The EU was isolated in defending a position which, had it been accepted, would have been more damaging to the Convention and the democratic principles it stands for than any other decision taken under the Convention since its entry into force in 2001.

The fact that the EU adopted its position only shortly before the MoP and at the highest level, through an EU Council Decision, left very little flexibility for it to listen to and adapt its position in response to other Parties' positions. At the MoP in Montenegro, it clarified that that limited flexibility effectively amounted to zero, and that it was a matter of 'take it or leave it'. As other Parties were not willing to accept the EU position, a stand-off ensued and the entire issue was put off until the MoP next convenes which will be in 2021 (MoP-7). While it is regrettable that further consideration of this matter by the MoP will need to wait four more years, and that, due in particular to the Commission's determination to prevent as far as possible NGOs being able to challenge its decisions before the CJEU, the EU has

been able to obstruct the normal processing of a finding of non-compliance under the Convention, an even worse precedent would have been set by acceptance of the EU proposal. This could have seriously and permanently weakened the compliance mechanism and thereby the Convention itself, with detrimental effects across the region.

The Aarhus MoP in Montenegro was a low moment for the EU. Its credentials as an advocate for democracy in the wider region have been seriously damaged. Essentially, the EU was willing to jeopardize the progress towards democratization triggered by the Aarhus Convention in the continent, including in Eastern Europe and Central Asia, for the sake of defending the lack of public accountability of its institutions, and in particular the European Commission.

After the dust settled from 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.

This may be seen as a mixed result. Article 241 has rarely been used and reportedly never before in an environmental case. The fact that the Council saw fit to invoke it in this case has sent a clear signal of the depth of feeling among Member States and the extent to which they considered that the Commission would not take the necessary action without such a step being taken. The **Inter-Institutional Agreement on Better Law-Making** as updated in May 2016 obliges the Commission to give prompt and detailed consideration to requests under TFEU Art. 241 (see para. 10).

On the other hand, the content of the Decision is very weak in two respects: first, because it does not make an unequivocal call on the Commission to start preparing a legislative proposal, even though it has for a long time been abundantly clear that revising the Aarhus Regulation is the only effective way to restore compliance; and second, because of the lengthy timeline proposed, which fails to ensure that the EU is back in compliance by 2021 when the MoP next convenes. Without being privy to the internal Council processes, it would appear from the stated positions of Member States willing to be open about their positions ahead of the Council Decision that there very probably would have been support for a much stronger Council Decision, with five Member States feeling sufficiently concerned about this to issue a **parallel statement** criticising the

outcome as too weak. Thus the Bulgarian Presidency appears to have opted for a minimalist response and missed the opportunity to send a stronger message at this crucial moment.

In May 2018, several weeks before the Council Decision was adopted and no doubt in anticipation of its adoption, the Commission published for consultation a roadmap on the EU implementation of the Aarhus Convention in the area of access to justice in environmental matters. The proposed roadmap unfortunately resurrected some of the flawed argumentation used by the Commission at earlier stages in the process and raises questions as to whether the Commission is really ready to take the steps required to bring the EU into line with international law.

The Commission is now obliged to give 'prompt and detailed consideration' to the Council's Article 241 request; specifically, it is required to respond within three months, stating the follow-up it intends to give to the request by adopting a specific communication. It will thus fall to the Austrian Presidency to review the Commission's response and consider what further action might be required by the Council, both in relation to the Commission's formal response and in relation to the actions it has undertaken pursuant to its proposed roadmap. In doing so, it is essential that the Presidency seeks to maintain the pressure on the Commission for action to ensure that the EU is back in compliance by the time of Aarhus MoP-7. This means taking urgent steps to address the problem at the root of the non-compliance that was correctly identified by the Committee, namely the fact that except in access to documents cases, environmental NGOs have virtually no access to the CJEU to challenge the acts and omissions of the EU institutions. Specifically, the Commission will need to revise the Aarhus Regulation and the study it undertakes should consider the options for doing so in detail, not only through removing the limitation on the administrative acts that may be challenged to 'measures of individual scope under environmental law' but also through address problems in relation to the information provisions of the Aarhus Regulation which are known to be problematic. From the role played by the Commission so far, it is clear that it will need considerable persuasion to act. The Council may need to remain open to the possibility of a second Art. 241 request.

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

- Coordinate an effective response by the EU Member States to the Commission's response to the Council Decision and 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 improve access to justice and bring the EU back into compliance with the Convention in advance of Aarhus MoP-7.

## 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. It was intended to implement the 'third pillar' of the Aarhus Convention in EU Member States, which would help to improve opportunities for the public and environmental citizens' organisations to insist on respect for environmental law. For many years, the Council declined to discuss the proposal, due to the resistance of a number of Member States that do not view this issue as an EU responsibility.

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 concerning failures of EU Member States to properly apply the access to justice pillar of the Convention.

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

The jurisprudence of the Court of Justice of the European Union, notably a ruling in a case concerning Slovakia (C-240/09) issued in March 2011, provided a further reason why it is important to revive discussions on a directive. The Court found on the one hand that access to justice in environmental matters in the sense of Article 9(3) of the Aarhus Convention falls within the scope of EU law, and on the other that Article 9(3) needed a uniform interpretation within the EU in order to "forestall different interpretations" by Member States (paras. 40 and 42).

In March 2012, the Commission published a Communication on improving the implementation and enforcement of environmental law. Clearly one of the more effective means of achieving better implementation is by empowering citizens to challenge perceived violations of the law. The Communication identified the need to provide greater certainty for national courts and economic

and environmental interests in respect of access to justice, mentioning the option of defining at EU level the conditions for efficient and effective access to national courts in respect of all areas of EU environmental law.

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

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

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

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

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

public seeking access to justice in recent years.

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

The Juncker Commission has in general shown reluctance to come forward with any new environmental initiatives and therefore it was not surprising when it failed to come forward with a legislative proposal. However, its Work Programme for 2016 did include a commitment to "take forward work to clarify access to justice in environmental matters". In its 2017 Work Programme, the Commission indicated its intention to "step up its efforts on the application, implementation and enforcement of EU law", including through "measures to facilitate access to justice and support environmental compliance assurance in Member States".

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

The EEB welcomes the interpretative guidance 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.

In August 2017, EEB member organisation Justice & Environment produced a set of comments on the Commission Communication which (the J&E comments) the EEB fully endorses.

#### **We therefore call upon the Austrian Presidency to:**

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



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