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European
Environmental
Bureau

THE EEB

MEMORANDUM

TO THE BULGARIAN PRESIDENCY
OF THE EUROPEAN UNION



Including the Ten Green Tests

JANUARY - JUNE 2018

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



EUROPE'S LARGEST NETWORK
OF ENVIRONMENTAL CITIZENS'
ORGANISATIONS



European Environmental Bureau (EEB)

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

Website:

www.eeb.org

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INTRODUCTION

Bulgaria has taken over the Presidency of the European Union at a time when the challenge of strengthening EU environmental policies is as great as ever. More than two years after the world adopted the 2030 Agenda for Sustainable Development with its 17 Sustainable Development Goals (SDGs), the EU has manifestly failed to embrace the 2030 Agenda and apply it as the over-arching framework for all its policies.

In September 2017, Commission President Juncker once again delivered a more or less sustainability-free State of the Union address. The Leaders' Agenda which followed a month later was similarly devoid of reference to sustainability and environment other than climate change, being focused on issues such as defence and security, migration, digitalization and trade. These issues are important, but we ignore at our peril the life support system upon which the whole of society and the economy depend.

In the face of such pronouncements from European leaders, it is hard to believe that the very fate and future of our civilization depends upon our ability to learn to live well 'within the limits of our planet', to quote the EU's Seventh Environmental Action Programme, and yet that is the inconvenient truth that the EU's high-level political discourse shies away from.

Nowhere is this clearer than in the debate on the **future of Europe**, which apparently runs on a parallel track to the debate on the implementation of the SDGs. Only the former seems to catch the full attention of Europe's political leaders, and has largely centred on the question of 'more or less' Europe rather than 'what kind of Europe'. The SDG agenda, which was and is supposed to mainstream sustainability in all policy areas as the ultimate silo-busting tool, is at serious risk of ending up in its own silo. The Commission, with its narrow focus on jobs and growth, is only proposing to produce a 'reflection paper' on how the SDGs should be implemented in the EU between 2020 and 2030 – falling well short of the Council's call in June 2017 for an implementation strategy for Agenda 2030 outlining timeline, objectives and concrete measures.

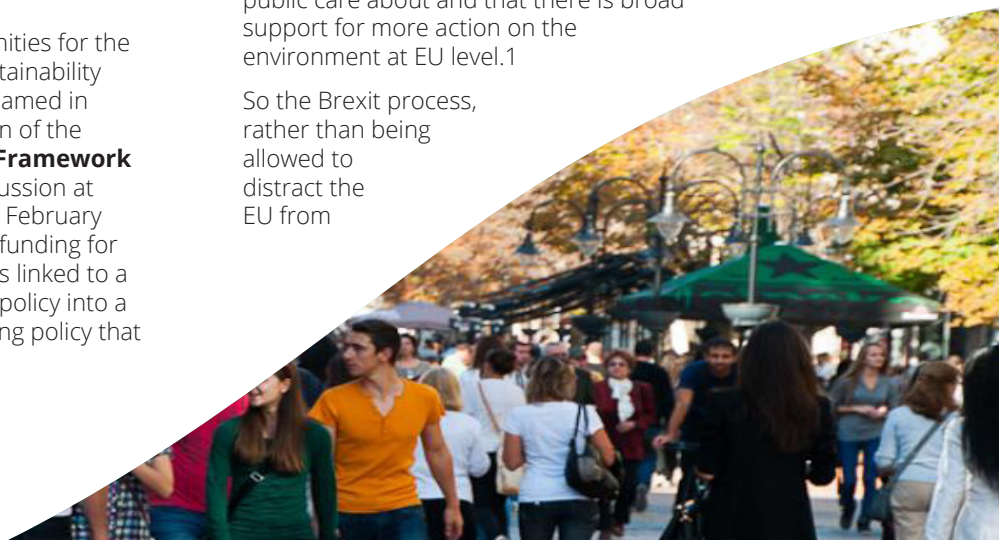
One of the more immediate opportunities for the Bulgarian Presidency to press for sustainability principles to be applied and mainstreamed in the EU post-2020 is in the preparation of the post-2020 **Multi-Annual Financial Framework (MFF)**, which will be the focus of discussion at a meeting of European leaders on 23 February 2018. Of key importance here is that funding for a future Common Agricultural Policy is linked to a transformation of that deeply flawed policy into a genuinely sustainable food and farming policy that

delivers public goods for the large amounts of public money it consumes. Substantially increased funding for LIFE, which currently accounts for a mere 0.35% of the EU budget, is also urgently needed.

The discussions on the future of Europe have been shaped to a large extent in reaction to the outcomes of the 2016 UK referendum on leaving the EU and the 2016 US Presidential elections.

As the **Brexit** talks enter their second phase, the lack of clarity in the UK negotiating position persists along with the sense that Brexit is most of all a UK problem which will need to run its course and should not unduly distract the rest of the EU from continuing in its path. At the same time, the challenge to the values underlying the EU, which threatens to stall or even put into reverse the development of a common set of laws, policies and standards built up over several decades, has not gone away and should not be underestimated. Even if the scenario of the Brexit process having a domino effect seems to have been averted for the time being, and indeed there are some indications that it may have provided a kind of inoculation against anti-EU populism, there are important lessons to be learned. The lack of popularity of the EU among large sections of the public is partially the outcome of a decades-old tendency among EU leaders to take personal credit for the EU's success and put all blame and responsibility on the EU or 'Brussels' for its failures. This applied in particular to the UK, but the same happens in the rest of Europe as well. In addition to that, the EU and its leaders have failed at a more substantive level to give sufficient priority to addressing issues that are of direct concern to citizens. Successive opinion polls show that the environment is high among the issues that the public care about and that there is broad support for more action on the environment at EU level.¹

So the Brexit process, rather than being allowed to distract the EU from



pursuing its environmental agenda, should rather be a reason for the EU to increase its efforts to address environmental challenges. It must be seized on as an opportunity to realign the EU around an agenda of transformational change, one that puts the interests of people and planet first in everything that it does, guided by the global 2030 Agenda for Sustainable Development and the Paris climate deal. This implies a significant change in political emphasis and direction, away from the deregulatory jobs-and-growth agenda that so clearly failed to convince British voters that belonging to Europe is a good thing. It implies replacing the current 'better regulation' agenda with a 'better governance' agenda, where new tools such as the environmental implementation review supplement and complement traditional enforcement measures to achieve better implementation and policy coherence for sustainable development is achieved through realigning impact assessment processes to serve the SDGs.

Across the Atlantic, the **Trump Presidency** is a further reason for the EU to up its game when it comes to the environment. Trump's deregulatory, anti-environmental, climate-denying policies will ultimately prove not only to be on the wrong side of science but also on the wrong side of history. But in the meantime, much damage can be done. While the rest of the world has remained united in defending the Paris Agreement – which is very welcome even if, given the lack of specific binding and enforceable commitments to emission reductions in the Agreement, it should not be a cause for euphoria – the risk of the US under Trump triggering a race to the bottom is very real and calls for an equally robust approach to counter that threat, if necessary through trade measures.

Europe's **democracy** has come under pressure in the past months, and not only from alleged Russian interference in elections and referenda in EU countries. The operating space for civil society organisations has been significantly reduced in certain of the newer Member States, notably Hungary and Poland. But at the level of the EU institutions there are also serious problems of democratic accountability which urgently need to be addressed if public confidence in the EU is to be maintained and strengthened. These were exposed at the sixth session of the Meeting of the Parties (MoP) to the **Aarhus Convention** (Montenegro, September 2017) where the EU managed to prevent the MoP from endorsing a finding of the Convention's independent compliance review body that the EU is in violation of the Convention due to the insufficient possibilities for the public to have access to justice in environmental matters at the EU level. Following a tense stand-off in which not a single other Party supported the EU's anti-democratic stance, the issue was postponed to the next MoP session in four years' time. To avoid a repeat of the debacle in 2021, it will be important that the EU now moves swiftly to revise the relevant EU legislation so as to improve access to justice and restore compliance with the Convention. The Bulgarian Presidency will have a key role to play in ensuring that the Council exerts the maximum pressure on the Commission to start preparing the legislative proposal.

The Bulgarian Presidency will need to play its part in increasing the ambition level of EU policies on **climate change**, ensuring that these are consistent with the commitment under the Paris Agreement to pursue efforts to limit warming to 1.5°C above pre-industrial levels, which is clearly not the case at the moment. The Estonian Presidency made good progress in completing the work on some files, even if some of the outcomes fell short of what is needed, but it will be for the Bulgarian Presidency to steer the Council in relation to important files on energy efficiency, renewable energy and governance of the Energy Union, as well as new proposals on CO₂ from cars and vans. The Presidency should also put pressure on the Commission to accelerate the work under the Ecodesign and Energy labeling instruments, which can significantly contribute to reducing emissions.

There are many other challenges and opportunities facing the Bulgarian Presidency in relation to policies affecting the environment, as described in the following pages. For example, to promote a **non-toxic circular economy**, the Presidency should aim to follow up on the Plastics Strategy proposal with ambitious Council Conclusions and proposals to address the chemicals-products-waste interface. The Presidency's proposed high-level discussion on **air quality** should be used to raise political awareness of the severity of the problems and the availability of solutions ahead of the fitness check of the EU's air quality legislation.

This Memorandum, prepared in cooperation with BirdLife Europe and Seas at Risk and with input from Transport & Environment, reflects on the issues that the EEB would like to see advanced during the Bulgarian Presidency. The most important issues are highlighted in the Ten Green Tests, which were already submitted to the Bulgarian Government ahead of the start of the Presidency. These were prepared in consultation with the EEB Board which has representatives from more than 30 countries and several European networks. At the end of June 2018, the Ten Green Tests will be used to evaluate the Presidency's performance over the next six months. While the Memorandum is directly addressed to the Presidency, we recognise that progress depends upon the cooperation of the European Commission, the European Parliament and other Member States, 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 Bulgarian Government throughout the Presidency and beyond.



Jeremy Wates
Secretary General

TEN GREEN TESTS FOR THE BULGARIAN PRESIDENCY

We call upon the Bulgarian 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. Make sustainable development central to 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;
- Seek to ensure that the Reflection Paper 'Towards a Sustainable Europe by 2030' on the follow-up to the UN Sustainable Development Goals (SDGs), which has been announced in the 2018 Commission Work Programme, will take up the demands voiced in the June 2017 Council conclusions on Agenda 2030 and that concrete steps are taken towards carrying out an in-depth gap analysis and putting in place a solid, transparent, participatory mechanism for implementing the SDGs;
- Use available opportunities to ensure that in the preparation of the post-2020 multi-annual financial framework (MFF), the allocation of budgetary resources is fully consistent with the Paris Agreement on climate change objectives and the need to implement the 2030 Agenda for Sustainable Development, e.g. in the informal discussions among European leaders' on the MFF scheduled to take place in February 2018;
- Press the Commission and encourage representatives of UN Environment and UNEA, including the Chair of UNEA-4, to actively participate in the next UN High Level Political Forum (HLPF) in July 2018 and urge the EC Commission to commit to present a first report on the EU's implementation of the SDGs in 2019 (in line with the June 2017 Council conclusions);

2. From better regulation to better governance

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





3. Fight climate change

- Ensure an improved implementation of the 2030 climate package in line with the environmental integrity of the EU climate objective for 2030, having in mind the need to bring the EU's contribution in line with the Paris commitment to pursue efforts to limit global warming to 1.5°C above pre-industrial levels. This requires a push for strengthened targets of at least 60% greenhouse gas emission reductions, 40% energy savings and 45% renewable energy by 2030 at the latest;
- Upgrade the EU long-term objective by setting out a path to net zero emissions by 2040 as part of the EU's obligation to put forward a mid-century, long-term low greenhouse gas emission development strategy;

4. Reform energy policy

- Put Energy Efficiency first in the revision of the Energy Union Governance regulation and the Electricity Market Design regulation and directive in order to reach our environmental objectives, create local jobs and growth and increase energy security;
- Be an honest and ambitious broker to achieve a deal between Council and Parliament for the revision of the Energy Efficiency Directive (EED), taking into consideration the full body of evidence on the multiple benefits of energy efficiency and the position of the European Parliament as co-legislator calling for a binding 40% energy efficiency target with individual national targets, and ensure consistency and strengthened energy savings measures in Article 7 of the EED;
- Pressure the highest level of the Commission to stop delaying Ecodesign and Energy labeling implementation measures and allocate the necessary resources to catch up with the backlog this past attitude has generated, so as to help grasp the internationally recognised potential they have for citizens, climate objectives and EU economy;
- Support measures that facilitate an energy transition to 100% renewable energy such as cutting all subsidies to fossil fuels, increasing the renewables target for 2030 to 45%, continuation of the current national binding targets also for 2030 with a linear trajectory and continuation of existing support provisions including priority dispatch and access to the grid for renewable energy, while ensuring that those renewable energy sources which are promoted are genuinely sustainable and are located and constructed in a way that minimises environmental impacts together with an interconnected and more flexible grid;
- Ensure during the trilogue on the Renewable Energy Directive that the EU does not return to misguided subsidies for environmentally and socially harmful crop-based biofuels and that provisions are put in place to minimize any negative impacts of bioenergy on forests and other sensitive ecosystems;

5. Restore ecosystems and biodiversity

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





6. Transform agriculture policy

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



7. Support the circular economy and waste minimisation

- Following the publication of the EU Plastics Strategy, the Bulgarian EU Presidency should work towards Council Conclusions supporting legislative measures limiting both macro- and micro-plastic items leaking into the environment, and reinforcing tracking and controlling the use of substances of concern in a circular economy;
- Ensure the Commission does not create further delays and delivers on resources savings through Ecodesign and Energy Labelling, and take the advantage of the new energy labeling schemes consultation process and testing to propose wide communication at national levels on the merits of the policy for transforming the market towards more durable and repairable products;
- Building on the annual report of the European Commission on the implementation of the EU Circular Economy Action Plan, the Informal Environmental Council should reflect on the need for future actions on promoting the transition towards a more circular economy through a more coherent EU Product Policy Framework, Digitization and International Collaboration;



8. Protect the public from hazardous chemicals and pollution

- Bring high-level political attention to the urgent need to improve air quality in the EU and to reach the long-term objectives of achieving levels of air pollution that do not lead to unacceptable harm to human health and the environment;
- Remind the Commission of its obligation under the Seventh Environmental Action Programme to develop by 2018 a new strategy for a non-toxic environment and urge that this builds on a strengthened implementation of REACH, fills regulatory gaps such as on nanomaterials and mixture effects, and sets out a way forward following the fitness checks of REACH and all other EU Chemical safety legislation;
- Ensure that the Commission develops scientific and horizontal criteria for the identification of endocrine-disrupting chemicals (EDCs) that are consistent with the EU identification system for CMRs (carcinogenic, mutagenic, or toxic for reproduction) and are protective enough to catch all EDCs to which the public and the environment are exposed;
- Within the context of REACH REFIT, call on the Commission, the European Chemicals Agency (ECHA) and Member States to address the obstacles in the implementation of the REACH regulation, and in particular to develop effective measures to ensure the compliance, quality and reliability of the registration information; ensure proper application, implementation and enforcement of REACH article 33 (the right to know on substances of very high concern (SVHCs)); and ensure effective restriction and phase out of substances of most concern through restriction and authorisation processes and creating a comprehensive Candidate List;
- Maintain EU leadership in relation to the Minamata Convention on Mercury by working towards establishing an effective international operational framework to achieve significant mercury reductions, seeking to ensure swift ratification of the Convention by the remaining EU Member States and enforcement of the EU Mercury regulation and promoting further actions to address mercury pollution in the EU;



9. Safeguard sustainable fisheries

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

10. Strengthen democratic governance



- Coordinate an effective follow-up by the EU Member States to the sixth session of the Meeting of the Parties to the Aarhus Convention (Montenegro, September 2017), notably by preparing and presiding over the adoption of a Council Decision calling on the European Commission to initiate the preparation of a legislative proposal for revision of the Aarhus Regulation so as to improve access to justice and bring the EU back into compliance with the Convention;
- Push for measures to apply and monitor the application of the interpretative guidance on access to justice in environmental matters adopted in April 2017 with a view to eventual preparation of a new legislative proposal on access to justice.

1. EUROPEAN COUNCIL

1.1 Implement the Global Sustainable Development Agenda in Europe

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

The adoption in September 2015 of the Global 2030 Agenda for Sustainable Development (2030 Agenda) with its 17 Sustainable Development Goals (SDGs) was a major milestone on the path to international recognition of the need for a more sustainable way of living. Whereas developing countries were the primary target of the Millennium Development Goals, the SDGs are universally applicable, reflecting both the fact that developed countries need to change their model of development in order for humanity's environmental footprint to remain within planetary boundaries, and to address the alarming inequalities that the current economic model has created. A completely new narrative on development needs to be put in place, where achieving well-being, social and environmental justice and respect for human rights enjoyed within planetary boundaries replace an excessive focus on material wealth. It should also support and allow developing countries to achieve a decent standard of living without repeating the mistakes made by the developed countries.

Despite the EU having played an important role in the development of the 2030 Agenda, the Commission has not given its implementation high priority in the more than two years since then. President Juncker failed in his State of the Union speeches in both 2016 and 2017 to even mention the 2030 Agenda or the SDGs. In November 2016, the Commission came forward with a disappointing package of proposals on how to carry the 2030 Agenda forward, including a Communication "Proposal for a new European consensus on development: our world, our dignity, our future" and a second Communication "Next steps for a sustainable European future: European action for sustainability".

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

The Communication affirms many positive policy principles such as the commitment to development that meets the needs of the present without compromising the ability of future generations to meet their own needs, inter alia through accelerating the transition to a low-carbon, climate resilient, resource-efficient and circular economy. However, it is disappointing in a number of respects. Given that it 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.

Regrettably, the call by many civil society organisations for an overarching sustainable development strategy for the EU mirroring the global 2030 strategy was ignored. Instead the Communication went to great lengths to describe synergies between the SDGs and the Juncker priorities while significantly overstating the extent to which the EU's policies already promote sustainability. It argued that under the current Commission "sustainable development is mainstreamed in key cross-cutting projects as

well as in sectoral policies and initiatives”, that “many of the SDGs are at the heart of the highest political priorities of the Juncker Commission” and that “The SDGs are already being pursued through many of the EU’s policies and integrated in all the Commission’s ten priorities”. These last claims were particularly unconvincing: the reality is that with their narrow focus on growth and jobs, the ten priorities contained in Juncker’s Political Guidelines virtually ignore sustainable development and environmental issues other than climate change.

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

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

Several existing strategies that the Commission is executing will support part of the 2030 Agenda, but what is urgently needed is policy coherence amongst them all, filling in the gaps where the EU is lagging behind and making all action in line with the SDG ambitions. The value in having some of the current policies and priorities supporting sustainable development is undermined if others directly work in the opposite direction. The

Communication implies in some places that the fact that the EU has a policy in a field covered by an SDG (e.g. the Common Agriculture Policy) means that it is implementing that SDG (SDG-2), irrespective of the fact that the policy manifestly fails to achieve the result prescribed in the SDG.

Among the positive elements in the Communication are the commitment by the Commission to “explore how EU budgets and future financial programmes can best continue to adequately contribute to the delivery of the 2030 Agenda and support Member States in their efforts; and its recognition of the important role of impact assessments in ensuring mainstreaming of sustainable development in EU policies”. However, the EC’s recent reflection paper on the budget claims that the EU’s allocation of funds is already streamlined with Agenda 2030 thus denying the need to make the new Multiannual Financial Framework fully consistent with the need to achieve the SDGs.

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

The Europe 2020 Strategy on competitiveness and growth has some elements relating to environmental sustainability. In 2011 and 2012, the Strategy was given shape through a series of Flagship Initiatives, EU budget proposals, the Annual Growth Surveys, economic ‘Semesters’, National Reform Programmes and national budget consolidation plans. Having a strategy to bring about recovery from Europe’s economic crisis is clearly important but it must be done in a way that secures sustainability from environmental and social points of view as well. A timely investment in alternative energy, climate adaptation and infrastructure could stimulate innovation in new technology and increase energy efficiency, create new jobs and lower production costs. In order to achieve these goals, Member States’ national public spending and investment plans should be checked against their delivery on sustainable development by making full use of the peer-to-peer exchange of information between public officials of Member States officials on the implementation of environmental legislation. Thus there is clearly significant potential to make better use of the Semester as a tool to steer the economy in a more sustainable direction and to make it one of the instruments to ensure the SDGs

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

are implemented all over the Union. Environmental accounting could and should be further integrated into national budgets. Although there is broad recognition that a shift in the tax base from labour to pollution and resources is an effective market based instrument, little progress has been made in implementing this. Phasing out environmentally harmful subsidies, while protecting against adverse social effects and short sighted cuts in investments in environmental protection and public services, is also important but again little progress is made. The Semester should also become more transparent and democratic with a stronger role for the European Parliament.

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

The 17 SDGs and targets are based in no small part on the recognition of and respect for planetary boundaries, the redistribution of wealth, opportunities and labour and a reduced use of natural resources. Heightened concerns over energy security, following civil wars and unrest on the EU's borders in Ukraine as well as in Syria and Libya where access to natural resources plays a crucial role, coupled with increased awareness around security of supply of food and raw materials for European industry, have strengthened the realization that continuing European over-consumption at current levels is no longer an option and that transitioning towards a comprehensive sustainable economic system is essential. That

means taking seriously the discussions about limiting the use of energy and natural resources for “over-consumers” in absolute amounts. We also need to break down the global targets to an EU level, taking into consideration common but differentiated responsibilities. Europe has a special responsibility here: firstly to take the initiative to set such targets for its own economies, but also to show leadership by demonstrating that achieving prosperity and well being is possible within the limits of a fair share of the planet's carrying capacity.

Strong accountability and review mechanisms of the 2030 Sustainable Development Agenda are crucial for achieving the targets. A dashboard of indicators, focusing on several targets, has to guide policymaking, instead of solely focusing on growth in terms of GDP. On 31 May 2017, EuroStat published a first set of 100 indicators for the EU to measure progress in SDG implementation, and has followed up with the publication on its first monitoring report on the implementation of the SDGs on 20 November 2017. Unfortunately, the creation of the indicator set was not based on a broad stakeholder consultation as the process was rather rushed. While the set contains useful indicators, civil society has also quickly identified important gaps such as the lack of an indicator that helps to measure whether resource consumption in absolute terms continues to increase or whether we are able to bring down European over-consumption. As a consequence, the monitoring report draws a skewed picture of the EU's progress towards the SDGs: as the indicators are unable to capture the performance of the Union regarding some of its biggest challenges the verdict of the report is far too rosy given the fact that the EU will fail to achieve several of the SDGs if it does not changes its policies and goals immediately.

Under the Maltese Presidency, the Council in June 2017 adopted its conclusions in reaction to the Commission's November 2016 Communication on action for sustainable development. While the Communication had not provided any concrete details about whether an EU-wide SDG implementation plan with specific targets and deadlines would be developed, the Council urged the Commission to elaborate, by mid-2018, an implementation strategy for the Agenda 2030 outlining timeline, objectives and concrete measures for all relevant internal and external policies and to identify existing gaps by mid-2018 in all relevant policy areas in order to assess what more needs to be done on policy, legislation, governance structure for horizontal coherence and means of implementation. Moreover, the Council conclusions asked the Commission to implement the Agenda 2030 in a full, coherent, comprehensive, integrated and effective manner reflecting civil society's persistent call for policy coherence for sustainable development, and to report about its internal and external implementation of the SDGs at the UN High

Level Political Forum in 2019. The EEB has welcomed these elements and is asking the Commission to follow the Council's conclusions.

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

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

Finally, an appropriate structure facilitating active and full multi stakeholder civil society participation needs to be set up. The Multi-Stakeholder Platform must play an important role in contributing to and reviewing the EU's implementation of the Agenda 2030. The Bulgarian Presidency should seek to ensure that the new Platform will have a relevant say in the political debate on achieving a sustainable future.

Aside from implementing the 2030 Agenda within Europe, the EU needs to continue playing an active and constructive role in the global follow-up processes. In this regard, having welcomed the establishment of the UN's High-Level Political Forum on Sustainable Development (HLPF), the EEB wants to underline the importance of it being given adequate authority and resources, with a board and a well funded secretariat and active participation modalities for all stakeholders. Another concern is that since the HLPF is mainly under ECOSOC structures, trade and development ministers will be mostly present during the meetings, while ministers representing environmental and other relevant policy areas will be less actively involved.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Seek to ensure that the Reflection Paper 'Towards a Sustainable Europe by 2030' on the follow-up to the UN Sustainable Development Goals (SDGs), which has been announced in the 2018 Commission Work Programme, will take up the demands voiced in the June 2017 Council conclusions on Agenda 2030 and that concrete steps are taken towards carrying out an in-depth gap analysis and putting in place a solid, transparent, participatory mechanism for implementing the SDGs;
- In particular, urge the Commission to:
 - o Develop an EU Sustainable Development Strategy as the overarching strategic framework guiding Europe's future and thereby ensure effective regional implementation of the 2030 Agenda for Sustainable Development, promoting a transformation of consumption and production patterns in the EU to an economy that respects planetary limits and is not at the expense of livelihoods in the Global South;
 - o Put in place a more detailed SDG implementation plan with specific targets and deadlines, prepared with meaningful public participation and ensuring effective co-ordination within and between the EU institutions and Member States;
- Promote the establishment of innovative governance structures for the implementation of the 2030 Sustainable Development Agenda at EU and Member State level that include at EU level intersectoral working groups between the DGs, joint Council 'Jumbo' meetings and civil society engagement policies and structures;
- Seek to guarantee coherence between all European policies and strategies and sustainable development objectives, inter alia by seeking a strengthened role for sustainability considerations in the Commission's internal impact

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

- Ensure that the eventual outcome of the delayed interim review of the Europe 2020 strategy is consistent with delivering on the SDGs and that the European semester is used to give maximum support to the transformation to a green and fair economy, in particular through integrating environmental accounting into the national budgets, socially just environmental fiscal reform and the removal of environmentally harmful subsidies;
- Ensure effective and inclusive modalities for civil society participation in the global (HLPF), pan-European and EU sustainable development processes, in all cases with full respect for the principle of self-organisation;
- Press the Commission and encourage representatives of UN Environment and UNEA, including the Chair of UNEA-4, to actively participate in the next UN High Level Political Forum (HLPF) in July 2018 and urge the Commission to commit to present 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, e.g. in the informal discussions among European leaders' on the MFF scheduled to take place in February 2018.

1.2 Better Regulation and managing Brexit

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. Under the Barroso Commission, a High-Level Group on Administrative Burdens, known as the Stoiber Group after the former Bavarian politician Edmund Stoiber who served as its chair, was set up to reduce red tape for businesses and ran from 2007 until the end of the Barroso II Commission in 2014. While it proved possible to limit the damage to environmental laws from this process by applying an evidence-based approach showing the clear benefits of such laws, the Group served as a magnet for complaints about red tape and gave a profile and platform to such complaints.

The enthusiasm for deregulation increased if anything 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 and the removal of President Juncker's political guidelines as a basis for joint work programming, some rather worrying new elements were added as well. In particular, a commitment by the Commission

as part of a 'simplification' effort to systematically quantify regulatory costs to business and to assess the feasibility of putting in place targets to reduce those costs in certain sectors is alarming. This was given a further push during the Dutch Presidency in the first half of 2016 with the adoption of conclusions from the Competitiveness Council to press the Commission to not only assess feasibility, but also commit to put burden reduction targets in place by 2017.

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

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

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

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

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

The appalling fire at Grenfell Tower apartment block in London in June 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'.

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

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 slowly coming to terms with the real consequences of leaving the EU, the risk that the Brexit process and eventually a post-Brexit UK could exert a downward pull on environmental laws, policies and standards should not be completely discounted. The rhetoric on both sides of the Channel has been encouraging so far. 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, as the Phase 2 talks get under way 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. 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.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Seek to avert deregulatory threats to EU environmental legislation and policy and call for a rethink of the EU's approach to Better Regulation so that the public benefits of regulatory action are given first priority and that all development respects planetary boundaries;

- Ensure that the current consensus among the EU-27 that the Brexit process should not be allowed to undermine the EU's environmental standards and that access to the EU market must be linked with acceptance of those standards is maintained as Phase 2 of the Brexit negotiations gets under way.

- Upgrade the EU long-term objective by setting out a path to net zero emissions by 2040 as part of the EU's obligation to put forward a mid-century, long-term low greenhouse gas emission development strategy.

1.3 State of play of the 2030 Climate and Energy Framework

With the conclusion of the 2030 climate framework under the Estonian Presidency, the Bulgarian Presidency is in the perfect position to progress on the energy provisions that are key to deliver the European climate targets.

The informal agreement on the Energy Performance of Buildings Directive, as the first success of the Clean Energy Package, should act as reference point for the following negotiations and possible agreements of the "Clean Energy for All Europeans".

In light of the objectives of the Paris Agreement, the European Council needs to give its full support to the appropriate Council formations, considering the need for more ambitious targets in light of the upcoming facilitative dialogue in 2018. In order to truly promote the Paris Agreement, the EU needs to upgrade its policies by setting out a path to net zero emissions by 2040 as part of the upcoming EU mid-century, long-term low greenhouse gas emission development strategies.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Ensure an improved implementation of the 2030 climate package in line with the environmental integrity of the EU climate objective for 2030, having in mind the need to bring the EU's contribution in line with the Paris commitment to pursue efforts to limit global warming to 1.5°C above pre-industrial levels. This requires a push for strengthened targets of at least 60% greenhouse gas emission reductions, 40% energy savings and 45% renewable energy by 2030 at the latest;

2. ENERGY AND TRANSPORT COUNCIL

2.1 Towards stronger climate and energy policies

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

We welcome the announcement of the Bulgarian Presidency to pursue a comprehensive collaboration with the European Parliament and start the final negotiations on the governance of the Energy Union regulation and the energy efficiency and renewable energy directives. This is the perfect opportunity for the Presidency to show how to put energy efficiency first in the Council debate on the package.

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

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

The successful agreement on the Energy Performance of Buildings Directive to transform the existing building stock into nearly zero energy buildings needs to be backed by the continued and strengthened annual savings measure of Article 7 of the Energy Efficiency Directive to ensure consistency for the relevant sectors and future investors.

Now that the Energy Labelling reform is in its final procedural stage, the Presidency needs to ensure that the priority product groups to which a rescaled label is to be applied before 2020 are seriously

progressed by the European Commission and the national experts. These are electronic displays (televisions and monitors), washing machines, dishwashers, washer-driers, refrigerators-freezers and lamps & luminaires. The first features of the new product database to be established at European level should also be discussed, and we encourage the Presidency to consider how to best use this database as a supporting instrument to enhance a product- and materials-harmonized information system that could promote the circular economy and be a relevant pillar of the eco-innovation strategy of the Presidency.

In the aftermath of the publication of the Communication on the new 2016/2019 ecodesign work plan in November 2016, the re-start of a proper implementation of ecodesign policy was expected. One year after this announcement, progress has been made. However, long-stalled measures, notably measures on commercial refrigeration, motors, fans, as well as measures to define an energy labelling scheme for windows and water taps, have not been released as expected. This situation is inconsistent with the ‘energy efficiency first’ and the consumer empowerment principles put forward by the European institutions.

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

The general approaches achieved in the Electricity Market Regulation and Directive reflect the different pressures on the decision making process as key elements have been left in ambiguity. Key cornerstones for a successful energy transition, that is supported by active citizens and would build on renewable energy, have been left out. Instead the general approach allows a continuation of fossil fuel subsidies including for highly polluting coal lasting way ahead into the future.

As the European Parliament's work on these crucial files is now picking up pace, it will be important for the Bulgarian Presidency to monitor these discussions closely to minimize the ambiguity currently present and align the Electricity Market provision with the decarbonisation objectives as set out in the Paris Agreement.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Ensure that the Council is aware of the need to adjust the 2030 climate and energy framework to be in line with the Paris Agreement and to achieve emission reductions in line with a path to net zero emissions by 2040 and to source most of the EU's energy from renewables;
- Lead the negotiations with the European Parliament and the Commission to deliver an EU target for energy efficiency that will allow and encourage Member States to tap the cost-effective potential for energy savings and reflects the Energy Efficiency First principle, working in particular to mobilise the progressive and less-involved Member States;
- Be an honest and ambitious broker to achieve a deal between Council and Parliament for the revision of the Energy Efficiency Directive (EED), taking into consideration the full body of evidence on the multiple benefits of energy efficiency and the position of the European Parliament as co-legislator calling for a binding 40% energy efficiency target with individual national targets, and ensure consistency and strengthened energy savings measures in Article 7 of the EED;
- Specifically, improve the existing EED measures so that they are able to contribute to the objectives set out in the Energy Performance of Buildings Directive by removing loopholes in order to ensure regulatory predictability and enable investor confidence in long-term investments;
- Prepare a continued in-depth discussion of the Electricity Market Regulation and Directive to remove the ambiguity of the current general approach and in order to reach environmental objectives, create local jobs and increase energy security;
- Finalise the revision of the EU Energy Labelling legislation without delaying the re-scaling of energy labels for televisions, white goods and lamps;
- Support the expedited finalisation of stalled measures notably for displays,

commercial refrigeration, taps and shower heads;

- Release public statements supporting the eco-design and labelling policies and invite national delegations to communicate on the benefits of these policies for EU citizens rather than allow anti-EU voices to deliver their misleading messages unchallenged.

2.2 Sustainable Renewable Energy and Bioenergy

The Clean Energy Package of the European Commission published in 2016 included new and revised policy proposals on how to increase the uptake and production of renewable energy in the EU, namely the recast of the Renewable Energy Directive. The general approach reached under the Estonian Presidency fails to live up to the requirements of the Paris Agreement. The proposed level of ambition of at least a 27% share of renewable energy in 2030 constitutes a step back from the current rate of investment and business-as-usual for the renewable energy sectors. At the same time the proposed provisions fail to ensure the sustainability of the bioenergy used, concerning both biofuels and other biomass.

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

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

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

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

- The overall amount of biomass used for energy should not exceed the EU's 'fair share' of global biomass resources based on what the ecosystems can sustainably supply, taking account of the demands from other sectors and the extent to which these demands are sustainable, and should ensure that the total ecological footprint of Europe is not further expanded but rather decreased
- Only bioenergy sources that produce very low or even negative net GHG emissions, or significantly reduce net GHG emissions in comparison to the energy sources or system they substitute or other practically available alternatives, should be used, taking into account the direct and indirect carbon emissions from forests and land use as well as from the production life cycle of the bioenergy and the other energy sources or system in question.
- The time frame for evaluating the climate impact of bioenergy should be compatible with emissions scenarios for limiting warming to well below 2°C and pursuing efforts to limit temperature rises to 1.5°C.
- Energy production should not cause biodiversity degradation or the displacement of food production from agricultural land where this would, or would be likely to, have significant negative impacts, including through indirect land use changes.
- Any increase in forest harvest level for bioenergy purposes should only be allowed where it can be demonstrated, as a necessary but not sufficient condition, that this delivers significant net carbon benefits within relevant timeframes.
- The use of residues does not significantly harm soil quality, nutrients balance or carbon stocks of the soil or cause loss of biodiversity. Use of biomass for energy does not cause significant displacement of other, more efficient uses of biomass, including material uses.
- Waste biomass is used in line with the waste hierarchy as defined by Article 4 in the Waste Framework Directive and does not conflict with other aims of the EU waste policy, in particular moving the society towards a true circular economy.
- Bioenergy used does not drive the growing cultivation of invasive species.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Support measures that facilitate an energy transition to 100% renewable energy such as cutting all subsidies to fossil fuels, increasing the renewables target for 2030 to 45%, continuation of the current national binding targets also for 2030 with a linear trajectory and continuation of existing support provisions including priority dispatch and access to the grid for renewable energy, while ensuring that those renewable energy sources which are promoted are genuinely sustainable and are located and constructed in a way that minimises environmental impacts together with an interconnected and more flexible grid;
- Ensure in particular cross compliance between the Renewable Energy and the Birds & Habitats directives and establish legislation on the governance of the Energy Union that ensures that a Strategic Environmental Assessment is carried out within the national climate and energy action planning that Member States are required to produce;
- Bioenergy that does not meet the principles set out above should not be considered to be burnable carbon and should not be supported by public policies. Policies and criteria are needed by 2020 to steer the bioenergy demand towards burnable carbon, and to discourage and/or exclude the 'unburnable biomass carbon' from energy use. Legally binding sustainability criteria should be set to define what kind of bioenergy can be promoted or incentivised, including through being counted towards the EU's 2030 renewable energy targets or eligible for financial support.
- Ensure during the trilogue on the Renewable Energy Directive that the EU does not return to misguided subsidies for environmentally and socially harmful crop-based biofuels and that provisions are put in place to minimize any negative impacts of bioenergy on forests and other sensitive ecosystems;

3. AGRICULTURE COUNCIL

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

In addition to the above, a recent detailed analysis of more than 450 publications using the Commission's own fitness check methodology (commissioned partly by the EEB and BirdLife Europe but done by independent researchers) has shown that the CAP is not fit for purpose from either an environmental or a socio-economic perspective; it in particular sheds light on the inefficiency and inequity of direct payments, which still get the largest share of the CAP budget.

Unfortunately the Communication on the future of the CAP published by the European Commission on 29 November 2017 still puts a lot of emphasis on the need for direct payments to remain and is therefore ignoring citizens' demands and evidence. It proposes an interesting move to a more results-based policy but this also comes with a lot of risks linked to a largely vague and empty governance mechanism.

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 targets and objectives in place (which at the very least are in full coherence with existing EU legislation on the environment, health and animal welfare), the right consultation and partnership mechanism and above all the right accountability tools (ex ante approval, financial penalties).

The Bulgarian Presidency will come at a key moment in the future CAP debate as legislative proposals are expected to be published in May 2018.

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. Agriculture and environment are two sides of the same coin and seeing the increasing challenges linked with the decline of natural resources, it is of paramount importance to look for win-win solutions and have the proper level of involvement of environmental authorities and stakeholders in the process.

2017 was also critical with regards to environmental aspects of fertilizers sold in Europe. 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. Since cadmium residues can be found in much of the food we eat and since it is a dangerous carcinogen, it became a priority to tackle the last big source of cadmium in our European environment. 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 making the situation worse and exposing European citizens to even more cadmium in their food. That is why it is of paramount importance that the final deal struck between the three institutions in dialogues is close to the Parliament's and the Commission's proposed limit of 20mg/kg.

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

In parallel with the ESR and LULUCF the Council and the Parliament worked on the governance of the Energy Union. As this file underpins the whole climate and energy package, it is important it contains the necessary tools for the agriculture sector to fully contribute to its share in the various actions needed in all Member states.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Provide platforms for the debate on the future of the CAP (food policy) to make it more inclusive (including environmental authorities and environment ministers), to reflect better the outcome of the public consultation of the increasing societal interest in the CAP and to provide environmental NGOs with an opportunity to express their concerns and recommendations ahead of the ministers' debates;

- Ensure that the legislative proposals on the future of the CAP are evidence-based and contain the necessary safeguards to make the future policy truly deliver on results such as biodiversity, water and soil protection and sustainable food and farming overall, and provide predictable, adequate, regular and targeted EU financing for biodiversity and Natura 2000 from the CAP budget, and that these elements are reflected in the MFF proposals;
- 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;
- Ensure that efforts required by the agriculture sector within the climate and energy package are not watered down by providing further flexibility on top of the one proposed by the Commission and that the final deal on the Governance Regulation provides the right framework for all Member States to properly include the farming sector in their efforts.

4. FISHERIES COUNCIL

4.1 North Sea Multi-Annual Plan

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

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

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

4.2 Technical Measures Regulation

As part of the Common Fisheries Policy (CFP) reform, the Commission has proposed a new overarching framework for the protection of the marine environment through technical fishery conservation measures (COM(2016) 134). The proposal foresees a set of objectives, targets to achieve the objectives and baselines as a minimum to achieve the targets. To deviate from the regional baselines, Member States can propose joint recommendations regionally. Therefore this proposal gives the EU a unique opportunity to take a systematic approach to minimise and where possible eliminate the environmental impacts of fisheries. However, the Council General Approach on the revision of the Technical Measures Regulation fails to establish an EU framework that enables the implementation of rules to manage fisheries. In particular: it fails to set the maximum amount (i.e. quantitative target) that the EU can harvest of juveniles (i.e. species below minimum reference size); deletes all management baselines for incidental catches of seabirds signifying that management measures at regional level (i.e. the regionalisation process) cannot be applied to manage incidental catches of seabirds; weakens the requirements that can be set for applying regional measures on previously prohibited fisheries; and fails to establish an independent scientific assessment (i.e. an assessment by STECF) for fisheries management measures that will be regionally proposed (i.e. joint recommendations).

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Ensure that the final agreed Technical Measures Regulation is a framework for managing fisheries that is set to achieve the objectives of environmental legislation, in particular: the Birds Directive, the Habitats Directive and the Marine Strategy Framework Directive;
- Ensure that the Technical Measures Regulation establishes baseline management measures in all sea basins for all its objectives, including to: 1) have concrete and quantifiable targets to reduce the amount of catches below the minimum conservation reference size; 2) avoid or at least minimise unwanted catches including through tactical selectivity measures; and 3) minimise and, where possible, eliminate the impact of fishing on the ecosystem, in particular incidental catches of seabirds, marine mammals, and sea turtles;
- Ensure that the Technical Measures Regulation does not weaken requirements that can be set for applying regional measures on previously prohibited fisheries, including any new innovative gear;
- Ensure that the Technical Measures Regulation is rooted in best available science and that any process to deviate from baseline management measures undergoes an independent scientific assessment (i.e. an assessment by STECF).

5. ENVIRONMENT COUNCIL

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

In sections 1.1 and 1.2, we put forward proposals for the development of an EU SDS as a regional response to the global 2030 ASD and stressed the need to ensure that this agenda is adequately reflected in the debate on the Future of Europe with 27 Member States. While the European Council should take the lead role in relation to the implementation and follow up of the 2030 sustainable development agenda, the EEB considers it essential that the Environment Council plays an active role in debates with the Commission on these issues and in the evaluation of national reform programmes as well as in discussions regarding the budget stabilisation programme. We also believe that the Environment Council should take a lead in promoting the establishment of National Sustainable Development Councils, as already agreed in the Johannesburg Plan of Implementation (Rio+10).

We welcome the efforts of the Environment Council over the past couple of years to green the Semester. Unfortunately the Commission has flagrantly disregarded these conclusions in its recent country-specific recommendations. The Bulgarian 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.

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

WE THEREFORE CALL UPON THE BULGARIAN 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.

5.2 Defend and develop EU Environmental Policies

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

It is important for Environment Ministers to be involved in the further discussions on the future of Europe, including the roll-out of the Leaders' Agenda. An important objective in 2018 will be to ensure political continuity in the EU's environmental agenda by initiating an early discussion on a review of the 7th Environmental Action Programme (EAP) and the timely preparation of an 8th EAP.

Environment Ministers also need to be vigilant in ensuring that the so-called 'better regulation' agenda is not used to weaken environmental laws and policies (see section 1.2 above).

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Ensure timely input by the Environment Ministers to the discussions on the future of the EU and initiate a debate on how to ensure political continuity in the EU's environmental agenda, including through preparation of an 8th EAP;
- Oppose any attempts within the framework of REFIT that are aimed at the reduction of administrative burdens being misused to weaken environmental law or putting the level of environmental standards at risk.

5.3 Towards a stronger Climate Policy

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

The outcome concerning the Effort Sharing Regulation and the Regulation on emissions and removals in land use, land use change and forestry (LULUCF) under the previous Presidency leave Europe with an inadequate framework, including numerous loopholes undermining the actual reductions in emissions as they affect the atmosphere and thus the real level of ambition.

It will be key for the Bulgarian Presidency to initiate a sound understanding of the importance and implications of the facilitative dialogue in 2018 and facilitate the contribution of the Environment Council to the upcoming EU mid-century, long-term low greenhouse gas emission development strategies.

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

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Recognise that the EU's climate policy commitments prior to Paris, being based on the goal of limiting warming to 2°C, now need significantly strengthening in the light of the new commitment to pursue efforts to limit warming to 1.5°C requiring also the strengthening of the capacity of ecosystems like forests to store carbon;
- Continue to explore options to increase ambition to be consistent with climate science and the Paris Agreement by including a trajectory for the EU to achieve net zero emissions by 2040 supported by, at a minimum, 47% reductions in the non-traded sectors by 2030;
- Prepare the Council formations to contribute constructively to the 2018 Facilitative dialogue and the EU mid-century, long-term low greenhouse gas emission development strategies;
- Initiate a debate on the need to reform the Energy Taxation Directive.

5.4 Cars and vans CO₂ regulation

While most sectors' CO₂ emissions are falling, transport CO₂ emissions have increased in the last 3 years – this 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. In particular, we would like to draw the Presidency's attention on three main weaknesses of the draft regulation:

1. The proposed 2025 and 2030 ambition for CO₂

emission reductions is too weak

The Commission proposed a 15% reduction by 2025 and a 30% reduction of car and van CO₂ emissions by 2030. While carmakers are currently required to reduce emissions at a pace of 4.5% per year (from 130g/km in 2015 to 95g/km in 2021), the new proposal corresponds to a mere reduction of 3.3% per year, meaning slowing down the current pace of action despite the growing emissions. The exact opposite is needed: emissions should drop by 9% each year in order to meet the minimum objective of the Paris Climate Agreement to limit global warming to below 2°C, not to mention its requirement to pursue efforts to limit warming to 1.5°C. In 2013, the European Parliament had called for bigger emission cuts. Earlier this year, eight member states (Austria, Belgium, France, Ireland, Luxembourg, the Netherlands, Portugal and Slovenia) did the same, supporting a binding 2025 target and a cut of 40% by 2030.

2. The lack of penalty for failing to hit the Zero Emission Vehicles (ZEV) goal renders the target ineffective

A rapid increase of Zero Emission Vehicles in the EU's fleet presents many advantages. It would help combat climate change, improve cities' air quality and Europeans' health, save car drivers money and help create thousands of new jobs in the EU. We therefore regret the deletion from earlier drafts of a penalty for failing to meet the Zero Emission Vehicles (ZEV) crediting system benchmarks due to the last minute lobbying by the German car industry. Instead, the Commission proposes to only reward car makers which exceed an indicative target of 15% sales of ZEVs in 2025 and 30% sales of ZEVs in 2030 with less strict overall CO₂ targets. This makes the ZEV target voluntary and ineffective, and risks undermining the already weak CO₂ reduction target.

3. There is no effective means to prevent test manipulation such as a real world test

Since current laws have been adopted in 2009, only 40% of the CO₂ cuts measured in official figures have actually been delivered on the road. We therefore welcome the Commission's attempt to better monitor CO₂ emissions by proposing a Worldwide Harmonized Light Vehicles Test Procedure (WLTP), in-service conformity checks as well as provisions on fuel consumption meters. However, a better way to address the widening gap between laboratory tests and real-world emissions would be to introduce real world CO₂ emission tests, as the EU already did for nitrogen dioxide (NO₂) and particle emissions. Without such tests in place, the gap between the WLTP test and real world emissions is expected to grow even more according

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- 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 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.

5.5 Fighting air pollution

Air pollution is still a major issue 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 that more than half of Europeans were exposed to concentrations exceeding the WHO air quality guidelines in 2015. 82 % of the population was exposed to concentrations exceeding the WHO guidelines for PM_{2.5}, 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. The recently agreed National Emission Ceilings (NEC) Directive and Large Combustion Plants (LCP) standards are key instruments to help improve air quality. 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 welcome the Bulgarian Presidency's decision to make air quality one of its priorities. However, we are concerned by Bulgaria's recent support to Poland in an appeal against critical air pollution standards for Large Combustion Plants.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Lead by example with strong and clear support for the rapid implementation of existing EU air pollution laws. In particular, we call upon Bulgaria to withdraw its support for Poland's appeal against the recently agreed air pollution standards for Large Combustion Plants.
- 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.
- Support the continuity and strengthening of EU ambient air quality standards in the context of the ongoing fitness check by the European Commission and in the light of the most recent WHO recommendations.

5.6 Protect the public from hazardous chemicals

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

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

Unfortunately, the European Commission has invested very little resources in this important goal, already missed the 2015 deadline and most probably will also miss the 2018 one.

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

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

The European Commission, in line with its ambition to make the substitution of SVHCs a reality, committed in 2010 to place, by 2020, all relevant SVHCs on the REACH candidate list. However, the pace of inclusion is slowing down every year from 67 SVHCs added in 2012 to only six in 2017. On the other hand, the main tools of REACH to phase out the substances of most concern, namely

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

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

The European Commission is also delaying its work on the endocrine disrupting chemicals (EDCs) package (strategy, criteria and REACH review). After four years delay, the Commission's revised proposal on EDC criteria presented in December 2017, after the European Parliament rejected its previous proposal in October 2017, still fails to protect health and environment.

The Commission will have to obtain a qualified majority from EU countries in favour of the proposal for it to pass.

The burden of proof to identify EDCs is still too high, lacks multiple categories to rank chemicals according to scientific evidence and discriminates against independent studies. It is key that work on this package is accelerated, instead of being further delayed, and that its outcome will support the 7EAP's goals of minimising exposure to EDCs by 2018 and protecting not only the environment but also the health and quality of life of Europe's citizens, especially the most vulnerable ones, such as women and children.

Since commercial applications began in the early 2000s, nanotechnology has expanded exponentially in different industrial sectors such as pharmaceuticals, electronics, food, cosmetics and chemicals - between 500 and 3,000 different nanomaterials (NMs) are now estimated to be on the European market. The number of citizens exposed to nanomaterials has therefore risen sharply in recent years, raising health and environmental concerns. However, very little is still known about the NMs used and produced in the EU. In fact, nanomaterials are virtually unregulated in Europe. In spite of calls for 10 years from the European Parliament and a substantial number of Member States, together with environmental, worker and consumer organisations, for the public availability of information about the nature, quantity and uses of nanomaterials, and the products containing them, the Commission has persistently delayed any action with regard to NMs, including amendment of the REACH Regulation annexes, still under discussion despite the fact that the obligation to register marketed chemicals under REACH expires in 2018. The amendment of REACH annexes will be hence meaningless and NMs will not be registered under

REACH. Moreover, the Commission's proposal to replace the highly demanded EU wide nano register by a mere observatory that will only compile and repackage existing information will only waste time and resources from the European public. No transparency on the use of nanomaterials in the EU is foreseen in the medium term.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

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

concern through restriction and authorisation processes and creating a comprehensive Candidate List;

- Encourage the development of a nanomaterials framework regulation to govern human health and environmental protection for all potential uses of nanomaterials in a harmonised way and to call on the European Commission to develop proposals to ensure that all nano-containing products placed on the market (after having undergone assessment procedures) are registered for identification and traceability purposes and included in an EU-wide public inventory;
- Urge the Commission to stop delaying action on hazardous chemicals, for example in relation to its obligations referred to in REACH article 138 and the Cosmetics Regulation, the assessment of chemical mixtures, the horizontal measures for a non toxic environment and the REACH annexes on nanomaterials among others.

5.7 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 the EU mercury regulation 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 85 by the end of 2017.

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 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 BULGARIAN 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;
- At EU level, promote further actions to address mercury including banning the use of mercury in Compact Fluorescent Lamps under the RoHS annex review and implementing effectively the newly adopted Regulation on mercury.

5.8 Circular Economy and Waste Policy

In addition to concluding the last procedural steps to adopt the waste policy revision as agreed among the EU institutions in December 2017, the Bulgarian Presidency should seize the unique opportunity offered by the Plastics Strategy and the single market product policy to unleash the economic and environmental benefits linked to the circular economy. The EU Plastics Strategy, published in January 2017, paves the way towards potential legislative measures tackling plastic pollution in the environment and barriers towards a more circular plastics economy. The Bulgarian EU Presidency should lead a constructive dialogue on the policy options presented by the European Commission and aim at adopting Council conclusions supporting as a minimum the following aspects:

- An EU level binding instrument needs to be developed to curb the use of single-use plastics by replicating the success of the existing provisions in the EU Packaging and Packaging Waste Directive limiting the use of lightweight plastic carrier bags for other single use plastics, starting with the most littered items found on beaches.
- An EU wide ban on micro-plastic ingredients in detergents and cosmetics needs to be complemented by a legal framework facilitating measures to reduce unintentional release of micro-plastics from textiles or tyres.
- Finally, based on current experiences and best practices, a more consistent policy approach towards better collection, reuse and recycling systems for plastic materials contained in different types of products and packaging, including bio-based plastics, should be established.

Avoiding re-injecting hazardous substances into the economy through recycling is another issue which should be addressed during the discussion on the interfaces between chemicals, product and waste policies, as planned in the EU Circular Economy Action Plan. The recycling of materials containing hazardous substances may seem rather marginal compared to the huge potential for recycling of non-hazardous products. But the difficulty of anticipating multiple uses of materials in a circular economy also creates more risks of further untraceable spreading of hazardous substances. As a minimum, an information scheme would need to be developed to make sure that all materials (whether they are to be recycled or rather not) containing hazardous materials can be easily identified and sorted, and not endlessly re-injected into the market economy.

Finally, 2018 is the last year that the Commission is going to implement new measures as listed in the EU Circular Economy Action Plan. The Bulgarian Presidency should seize the opportunity when the Commission is going to deliver its report to the Council on progress being made so far to highlight the outstanding issues and set the scene for the future work on circular economy at EU level. It could do so by building on the work undertaken by the Estonian EU Presidency on Eco-innovation, in particular the Council Conclusions from 19 December 2017 addressing the need for a more comprehensive product policy approach, the use of digital tools to increase transparency about sustainability and circularity of products and services, as well as implications of EU policies on circular economy on global supply chains and international collaboration.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Finalise the last formal steps leading to the adoption of the revised waste policy and allow the transposition process to start at national level;
- Following the publication of the EU Plastics Strategy, work towards Council Conclusions supporting legislative measures limiting both macro- and micro-plastic items leaking into the environment and reinforcing the tracking and controlling of the use of substances of concern in a circular economy;
- Ensure that the Commission does not create further delays and delivers on resources savings through Ecodesign and Energy Labelling, and take the advantage of new energy labeling schemes consultation process and testing to propose wide communication at national levels on the merits for the policy to transform the market towards more durable and repairable products;
- Building on the annual report of the Commission on the implementation of the EU Circular Economy Action Plan, arrange for the Informal Environmental Council to reflect on the need for future actions on promoting the transition towards a more circular economy through a more coherent EU Product Policy Framework, Digitization and International Collaboration.

5.9 Biodiversity Policy

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

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

In addition to stressing the need to fully implement the Nature Directives, the Commission's Mid-Term Review of the Biodiversity Strategy and findings of the Fitness Check underline that some sectoral policies need to change to meet the Strategy's headline target to halt the loss of biodiversity and the degradation of ecosystem services. The longer that the detrimental impacts of such policies on biodiversity and ecosystems remain unaddressed, the more resources will be needed to halt the loss of biodiversity and ecosystem services. In this regard it is of particular importance that the Commission and Member States step up the work towards eliminating environmentally harmful subsidies and other perverse incentives resulting from national and EU policies that lead to detrimental impacts on biodiversity.

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

- It is becoming increasingly clear that the CAP greening has failed and that under the current CAP, farming intensification continues at the expense of biodiversity. A thorough assessment of the impacts of the new CAP on biodiversity is

needed as a first necessary step towards a truly sustainable common agricultural policy.

- Since the reform of the Common Fisheries Policy in 2013, the Commission and Member States have continuously failed in setting all catch limits in line with scientific advice in order to achieve the Maximum Sustainable Yield (MSY) target. It is of crucial importance to break with such bad habits and more generally to take an ecosystem-based approach to fisheries management in order to minimise impacts on the natural environment and in particular ecosystems in marine protected areas.
- The Renewable Energy Directive includes sustainability criteria for biofuels used in the transport sector, but these criteria are incomplete, and for biomass used elsewhere in the energy sector, no criteria currently exist. EU policies on bioenergy should be overhauled to bring demand into line with what can be produced sustainably and to ensure effective safeguards for biodiversity.

Similarly, when it comes to the EU's regional policy, while there are positive examples of helpful projects in the area of green infrastructure and nature-based solutions, overall synergies remain largely under-exploited and trade-offs at the expense of biodiversity are still ubiquitous.

A true greening of the EU budget therefore still needs to take place in order to ensure that EU spending overall does not result in a net loss of biodiversity and ecosystem services. The present approach to integration for biodiversity and Natura 2000 financing has largely failed and can be considered responsible for the severe underfunding of nature conservation from the EU budget. The current chronic lack of funding needs to be recognised, 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 must be found.

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

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

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

5.10 Soil Policy

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

soil the deserved level of protection is achieved swiftly. Although the Commission has withdrawn the 2006 Soil Framework Directive proposal, the EU still has a commitment through the 7EAP to 'reflect as soon as possible on how soil quality issues could be addressed using a targeted and proportionate risk-based approach within a binding legal framework'.² The UN Sustainable Development Agenda also calls for protection of soil and a growing number of civil organizations united in a People4Soil Initiative, including the EEB, are calling for the EU to start protecting its soils.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

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

5.11 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 recent months, as

² Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', Annex, paragraph 25.

described in the following paragraphs. The Bulgarian 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. 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 a champion of 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. Although there is no public summary of this meeting, the fact that the Presidency chose to convene such a meeting to try to move the process forward is to its credit and hopefully the discussions held will provide a good basis for the Bulgarian Presidency to take the issue forward.

Looking ahead, it is of crucial importance that the EU takes steps without delay 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 should initiate the process of revising the Aarhus Regulation forthwith, not only to remove the limitation on the administrative acts that may be challenged to 'measures of individual scope under environmental law' but also to address problems in relation to the information provisions of the Aarhus Regulation. From the role played by the Commission so far, it is clear that it will need considerable persuasion to act. Specifically, the Council and Parliament should apply maximum pressure on the Commission using the relevant provisions of the Treaty on the Functioning of the European Union (Articles 241 and 225 respectively) to call on the Commission to take the necessary measures to address the problem. The [Inter-Institutional Agreement on](#)

[Better Law-Making](#) as updated in May 2016 obliges the Commission to give prompt and detailed consideration to such requests (see para. 10).

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Coordinate an effective follow-up by the EU Member States to the sixth session of the Meeting of the Parties to the Aarhus Convention, notably by preparing and presiding over the adoption of a Council Decision calling on the European Commission to initiate the preparation of a legislative proposal for revision of the Aarhus Regulation so as to improve access to justice and bring the EU back into compliance with the Convention.

5.12 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 comments) the EEB fully endorses.

WE THEREFORE CALL UPON THE BULGARIAN 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.

5.13 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"³. 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 welcome⁴, 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.⁵ 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:⁶

- Improving the way that knowledge about implementation is collected and disseminated;
- Extending requirements relating to

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

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

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

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

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 presenting new laws is yet another reason to increase efforts to improve enforcement. Laxity in the handling of breaches of EU law sends the wrong signals. The EEB considers that in the long run only a solid harmonised environmental *acquis* and its full application can provide the conditions for a healthy sustainable economy.

In May 2016, the Commission published a Communication establishing a new Environmental Implementation Review (EIR)⁷ process which involves publishing European and country-specific reports every two years focusing on essential topics in the area of environmental legislation. The first EIR package was published in February 2017. 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 Commission has clearly signalled that the EIR process is not intended to reduce emphasis on traditional enforcement measures i.e. the infringements process.

Even more recently (January 2018), the Commission has come forward with a Communication on an action plan on EU actions to improve environmental compliance and governance. While the timing of its release does not permit an assessment of its content here, the Bulgarian Presidency should give appropriate consideration to the proposed actions and using them as a basis for taking up the issue at Council level.

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

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

- Remind the Council, Commission and Parliament of their joint commitment under the 7EAP to give top priority to improving implementation of the EU environmental acquis at Member State level and call on the Commission to come forward with legislative proposals to deliver on that commitment, drawing on elements of the 2012 Communication as appropriate;
- Encourage and support 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;
- Increase public involvement through improved access to documents, including in relation to the infringements process, and access to justice as required by the Aarhus

⁷ http://ec.europa.eu/environment/eir/index_en.htm

Convention and confirmed by ECJ rulings;

- Encourage Member States to use modern information technology to make information easily and quickly available, with limited costs, recognising that doing it in a harmonised way will in the end also result in administrative burden reductions;
- Support the Commission's proposals to improve national complaint handling;
- Emphasise in its discussions with Member States the need for appropriate bodies and structures at EU level to improve the transposition and application of EU law, such as an EU agency coordinating environmental inspections, and seek Member States' support for such an agency;
- 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;
- Use the recent Commission Communication on EU actions to improve environmental compliance and governance as a basis for launching a debate in the Council on this topic.

5.14 Environmental inspections

The divergence in the quality of national inspection and enforcement regimes across Member States is evident and has been acknowledged in many official EU documents. The Barroso II Commission was at an advanced stage in the preparation of a legislative proposal on environmental inspections which would have addressed this problem, but unfortunately it failed to issue the proposal before the expiry of its mandate. Regrettably, though perhaps not

surprisingly in light of its overall priorities and determination to give a message of discontinuity, the Juncker Commission has also thus far failed to issue any legislative proposal on the issue, despite the 'dieselgate' scandal which should have given a new impetus to work in this area, as well as to the strengthening of inspection and enforcement powers and capacities at EU level.

In the past, Member States opposed the European Parliament's efforts to have an EU directive on environmental inspections with the result that the only progress that was made horizontally was the adoption of the non-binding 2001 recommendation on minimum criteria for environmental inspections. Thereafter, inspection requirements of a binding nature have been included in some sectoral laws. The EEB believes, however, that an EU law establishing minimum standards for environmental inspections horizontally, without in any way hampering or weakening existing environmental inspection provisions in sectoral law, would be more efficient and lead to a more harmonised application of EU environmental law and requirements. Such a law should also be fully in line with the Aarhus Convention, as participation of a well-informed public will improve the efficient application of a new inspections law. This would help to uphold the rule of law, be positive for the environment and would also contribute to more harmonised business conditions. The EEB welcomes the Commission's aforementioned efforts to improve compliance assurance, but underlines that mere recommendations and best practice information exchanges will never deliver the results of an environmental inspections law.

WE THEREFORE CALL UPON THE BULGARIAN PRESIDENCY TO:

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



European Environmental Bureau

Boulevard de Waterloo 34
B-1000 Brussels, BELGIUM

Tel +32 2 289 1090

eeb@eeb.org | www.eeb.org