

To: Environment Ministers of EU Member States

Cc: Commission President, Executive Vice-President for the European Green Deal and Commissioners for Environment, Transport, Energy, Industry, Agriculture, Health and Food Safety and the Chair of the European Parliament Environment Committee

Re: Input to the EU Environment Council Meeting, Brussels, 17 December 2020

Brussels, 3 December 2020

Dear Minister,

On behalf of the European Environmental Bureau, I am writing to share with you our views on some of the issues on the agenda of the forthcoming EU Environment Council. I invite you to take our concerns into account during final official level preparations as well as at the meeting itself. We have structured the letter according to our understanding of the 17 December Council Agenda.

1. Regulation amending Aarhus Regulation (EC)

On 14 October, the Commission published its much-anticipated proposal for the revision of the Aarhus Regulation. This is an important procedural step towards improving access to justice at the level of the EU institutions and thereby addressing the EU's longstanding non-compliance with international law in the form of the Aarhus Convention.

The Commission proposal addresses the single biggest obstacle facing NGOs seeking to challenge decisions, namely through removal of an arbitrary limitation on the type of decisions that may be challenged to those which have 'individual scope', e.g. decisions authorizing certain chemicals or GMOs. In fact, most of the decisions that NGOs seek to challenge, and should have a right under the Aarhus Convention to challenge, are those of general scope.

However, there are important deficiencies in the Commission proposal, which therefore need to be addressed through the forthcoming co-decision process. These include, for example, the exclusion of decisions that require implementing measures and of State aid decisions from the scope of the Regulation. There is no basis in the Convention for such exclusions, which would effectively mean that some of the decisions that have the biggest impact on the environment, for example public funding of the carbon economy, cannot be challenged. The EU risks being found to remain in non-compliance with international law should these problems not be solved during the co-decision process and should therefore be addressed by the Council.

We therefore call upon the Environment Council to:

- **Strengthen the Commission's proposal through the co-decision process** with a view to addressing the democratic deficit caused by insufficient access to justice at the heart of the EU's environmental decision-making processes, which is still not adequately tackled by the Commission proposal.
- **Commit to ensuring that the EU fully complies with international law** and therefore take full account of the outcome of the ongoing public consultation being held by the Commission as well as the advice being prepared by the Aarhus Convention Compliance Committee on the EU's non-compliance with Article 9(3) of the Convention in the Council Decision on the amendment to the Aarhus Regulation.

Further details of our recommendations can be found in the [joint letter](#) from the EEB, Client Earth and Justice & Environment dated 19 November 2020 and the associated [position paper](#).

2. Regulation on European Climate Law

We strongly support the climate neutrality objective set in the European Green Deal and enshrined in the Climate Law, but the proposed levels of ambition by 2030 currently under discussion (-55% net GHG target proposed by the Commission on 17 September and even the -60% endorsed by the European Parliament) are not enough to meet the Paris 1.5°C target and climate neutrality must be achieved well before 2050 to avoid the worst consequences of climate change.

The science is clear that to reach that target, global emissions need to fall 7.6% per year every year for the next ten years. Europe has been leading the fight against climate change so far and must seize the opportunity of the largest political and societal support in the past 15 years to face the climate challenge with brave and needed action. More than ever, policymakers need to heed these calls and align with science.

We look forward to the achievement of a General Approach on 17 December that will make the Climate Law the corner stone of an ambitious, science-based, comprehensive and coherent policy and regulatory framework to reach climate neutrality by 2040.

We therefore call upon the Environment Council to:

- **Support the highest level of ambition possible in the Climate Law**, knowing that the latest scientific evidence (IPCC 5th Report on Global Warming of 1.5°C) indicates that an effort of **at least 65% emissions reduction is needed by 2030** in the European Union;
- Match such commitment with an equally ambitious effort to increase the **energy efficiency target to at least 45%** with **at least 50% of energy sourced from sustainable renewable energy** by 2030;
- Make the **climate-neutrality target binding for each Member State**, and not only for the European Union as a whole;
- **Ensure mainstreaming of climate neutrality through ambitious fiscal measures**, including effective **"carbon pricing"** to address the true cost of negative externalities on the environment in all economic sectors;
- Ensure that **all financial support (EU, national and private finance) is aligned with the climate-neutrality objective** and with **phasing out investments in fossil fuel infrastructure**;
- **Ensure that climate targets will not compromise other priority environmental goals**, such as biodiversity protection - particular care is needed as regards biomass development, hydropower and afforestation;
- **Press for a greater level of climate ambition in the Recovery and Resilience Facility (RRF)** as well as the climate share of the EU budget to address the climate challenge, including the Just Transition Fund. This should be done by ringfencing of sustainable Paris-compatible funding and exclusion of funding for Paris-incompatible measures that lock in future fossil fuel use and GHG emissions; in addition, the accounting for climate contributions needs to be strengthened, and real climate

contributions monitored and assessed so that the budget is truly a climate budget and not just one on paper – see Annex 1 for additional details;

- **Ensure policy synergies between climate and circular economy** (and integrated into a new industrial strategy), **climate and biodiversity** via nature management and restoration agendas (peatlands, wetlands, forests, coastal sea grasslands), **climate and agriculture** by strengthening the CAP to drive higher investment in measures that increase soil carbon content and hence storage, with added benefits for soil fertility and productivity, and **climate and air pollution policies**, given the evidence of a wide range of health impacts from exposure to polluted air; **enhanced coherence** is essential if EU policies are to be a compelling driver to help address the climate emergency.

3. EU submission of an updated Nationally Determined Contribution (NDC) to the United Nations Framework Convention on Climate Change (UNFCCC)

Increasing the EU's 'Nationally Determined Contribution' (NDC) to the Paris Agreement will be key to maintaining leadership in international negotiations and driving ambition of major emitters ahead of the United Nations Climate Change Conference in Glasgow in November 2021 (COP26).

Evidence shows that with current NDCs the Paris goal will be missed by far. We cannot afford to waste time given the pace and size of climate change impacts we are experiencing in Europe and globally. The international community needs to embrace a truly transformative escalation of climate ambition in proportion to the environmental challenge.

We welcomed the European Parliament's vote on 8 October 2020 seeking to commit the EU to become the first climate-neutral continent by 2050 by increasing the EU's greenhouse gas (GHG) emission reduction target to -60% by 2030 from 1990 levels. However, such a target is still below what science requires for the EU, based on equity and historical responsibility.

We are therefore concerned with the lack of ambition expressed by the European Council, which so far did not agree to even the "net" target of at least 55% GHG emissions reduction by 2030 proposed by the European Commission. This is not the time for Europe to back down on ambition while other strong economies such as Japan, South Korea and China have signed up to net zero by 2050 or 2060 and the new US Administration has put climate emergency on top of the political agenda.

We believe that Europe can do more and should do more by fully exploiting the potential of energy efficiency, circular economy and renewable energy options already available today and by immediately stopping subsidising a fossil-fuel based economy. The unprecedented resources available under the European Recovery Plan provide an opportunity to step up climate and environmental ambition while rebuilding our economies on a path coherent with a sustainable and resilient environment.

It is of paramount importance that the contribution of emissions removals through natural and technological sinks is not included in the final emissions reduction target for 2030, as this would reduce the effort to cut emissions at source and to make the most of all the technological options and financial resources available today to undertake the necessary transformative change.

We are not against natural carbon sinks, indeed we support nature restoration and increased sequestration of carbon in soils and binding targets to achieve those goals, but any carbon storage benefits of such measures should be additional to the -55% target. Any negative emissions must not compensate for other sectors' emissions and an effective and robust certification system of carbon credits must be agreed at the EU level.

With regard to technological sinks (CCS, CCU) and hydrogen and gas as transition fuels, only hydrogen produced from electricity generated through sustainable renewables (wind, solar) should be supported. CCS technologies should not be promoted in the short-term (2030) as a means to keep oil and gas in the system, especially with regard to the production of fossil-based hydrogen, as they would lock the EU into a fossil-fuel based economy for decades. These technologies are not yet proven and come with very high economic and environmental costs. They should be left as "last resort" options to reach the climate neutrality target where needed to remove unabatable industry process emissions.

Finally, we fully support the introduction of a carbon border adjustment to complement the EU policy framework to increase climate ambition both at domestic and global level by addressing emissions embedded in imports and in final consumption. The instrument has the potential to play an important role to address global environmental externalities (contribution to climate change) through an effective and fair global trade measure.

The EEB therefore calls upon the Environment Council to:

- Set an **ambitious revised EU 2030 NDC** which is an emission reduction-only target, i.e. which does not incorporate sinks, and which is aligned with the effort required by science;
- Keep driving **ambition at global level** by leading by example and by increasing climate diplomacy in all multilateral fora, including the WTO, the G7 and the G20;
- Put in place **targeted measures, such as a carbon border adjustment**, with the priority objective of increasing climate ambition both in the EU and globally;
- Urge Member States to **lead by example via their NECPs as well as the NRRPs** and put in place effective policies accompanied by necessary investments and reforms to stop subsidising fossil fuels and accelerate the transition of their economies towards climate neutrality, circularity and zero pollution.

4. Conclusions on Making the Recovery Circular and Green

On 11 March 2020, the Commission released a new Circular Economy Action Plan, which aims to give circular economy a pivotal role in EU policy and was largely inspired from the Council conclusions on Circular Economy as adopted under the Finnish Presidency. The EEB welcomes this new action plan and urges Environment Ministers to enhance it further through Council conclusions that will improve it and secure its swift and ambitious implementation.

By associating the Circular Economy Action Plan with sustainability and committing to making it the norm for goods exchanged on the EU single market, the Plan clearly aims beyond mere incremental changes

towards an economy that does not only fit within the carrying capacity of the planet, but is also guided by inclusiveness and well-being and ensures a fair transition in line with the Sustainable Development Goals. Such a sustainable circular economy is what we need to reset our economy after the Corona crisis, and it should be at the core of Green Recovery and stimulus packages proposed at EU and national levels.

There is, however, a big gap in this Circular Economy Action Plan: it lacks a proper leading objective to cut resource use and the related environmental impact. Whereas we have clear targets for GHG emissions reduction and energy, we do not have equivalent legal drivers for the circular economy. As proven with climate and energy targets, a headline target is crucial not only to unleash actions in all sectors and at all levels, but also to motivate behavioural change and ownership by citizens. Furthermore, an EU headline material footprint reduction target with a harmonized monitoring framework will ensure all Member States use a similar approach to progress and report on their national endeavors and achievements and can thus share more effectively their best practices.

The EEB therefore calls upon the Environment Council to:

- Welcome and support the CE Action Plan and propose post-COVID **green recovery national strategies** and **recovery and resilience plans** that echo the sustainable circular economy agenda set in the plan;
- Call for the setting of an **EU-wide material and consumption footprint reduction target** as part of a more compelling circular economy monitoring framework to be deployed from EU and national levels to business and products level;
- Engage in the sustainable policy initiative and the **reform of the Ecodesign policy** to unleash its full potential for making safe and sustainable products the norm defining information and performance requirements, including on chemical contents, that will apply transversally to all products placed on the EU market in combination with tailored requirements that will fit the specificities of product sectors/categories and for which new sectoral policy should be set (textiles, furniture) or existing sectoral policies reformed (Batteries, Construction Products, Packaging);
- Accelerate the setting up of **digital product passports** that will encompass individual variables on material and chemical contents, circularity performance, carbon and environmental footprinting as well as social and due diligence aspects, so as to serve different purposes and be useful to various stakeholders including reverse logistics actors, consumers and market surveillance authorities;
- Make circular **sustainable public procurement** the default option and consider making it also the default choice for private companies with a reporting obligation as part of their non-financial reporting activities;
- Support efforts towards **waste prevention** and set associated waste prevention targets at national level;
- Anchor the **right to repair through the development of mandatory and comparable durability and repair labels**;
- Support through financial, fiscal and economic incentives, which are a unique competency of national authorities, the **uptake of Ecolabel** and circular products and the adoption of circular production and consumption patterns;

- *Inject sustainable circular economy provisions in the **EU and national trade policy**;*
- *Promote the **systematic use of complementary indicators to GDP**, in line with well-being and resilience priorities.*

5. Conclusions on Digitalisation for the Benefit of the Environment

We welcomed the German priority on digitalisation for sustainability of their presidency, aiming to create a practical bridge between the Commission's European Green Deal and digitalisation priorities. While Council Conclusions are expected for 17 December, the challenges around digitalisation and sustainability will naturally also concern the Portuguese and Slovenian presidencies of the current trio as well as the French, Czech and Swedish presidencies of the next presidency Trio.

The EEB is concerned that:

- The energy and resource use of digitalisation will have **major potential impacts on climate change and the environment**, unless very significant efforts are made. By 2030, the share of ICT in the total of greenhouse gas emission could jump from 1.4% to 14%. The pursuit of 5G as part of the digitalisation agenda would make the climate results coming from the European Green Deal significantly harder to achieve¹;
- Existing digital technology already poses significant **ethical risks** – from **privacy** related to **access and use of information**, unfair competition in digital markets, as well as from the growing field of **artificial intelligence and robotics**;
- The current tools on reporting of data are currently not fit for purpose to enable **compliance promotion** and **benchmarking of progress** towards delivery on the EU Green Deal objectives.

We therefore call upon the Environment Council to deliver Council conclusions that:

- *Promote **digitalisation for people and planet** and demand a policy initiative to define pathways to carbon neutrality and significant reductions in the material footprint from digital sectors;*
- *Focus on the role the **Circular Economy** can play in preventing electronic waste and significantly reducing the need to extract virgin raw materials to drive digital transformation (e.g. via expansion of battery storage);*
- *Welcomes and supports the forthcoming **Circular Electronics initiative** announced in the Circular Economy Action Plan, as well as measures supporting a **Right to Repair** for ICT products, and expected regulatory proposals addressing smartphones, laptops and common chargers;*
- *Raise concerns over the limited progress made on improving the **voluntary agreement** on printers to include cartridges and encourages the Commission to follow a regulatory approach;*
- *Support the development of **smart grids** and hence facilitate the move to a **carbon neutral electricity grid** and the wider development of **energy markets** (e.g. using blockchains to trace green electricity). In addition, digitalisation should support energy efficiency, and decentralization of energy production and consumption;*

¹ <https://ehtrust.org/wp-content/uploads/5G-and-Climate-Change-Flyer-EHT.pdf>

- Request a clearly defined strategy to achieve the Commission's stated objective to "achieve climate-neutral, highly energy efficient and **sustainable data centers** by no later than 2030" as well as assessing the overall **environmental footprint of telecoms** and setting a related target;
- Support the use of **digital tools** (such as digital product information systems and passports) to increase **transparency in value chains**, supporting secondary markets for materials, empowering consumers and procurers by facilitating access to information on repairability, recyclability, toxicity, traceability and ethical sourcing;
- Demand full **transparency on chemicals across the whole supply chain** (building on digital tools) to support the **circular economy ambition** from product repair, reuse to recycling and hence avoid the development of a toxic circular economy which would undermine ambition and potential for the needed transformative change from a linear to a circular economy;
- Demand a swift **review of the EU-PRTR and its parent UNECE Kiev protocol** so as to ensure that information on pollution is available in real time and easily usable, with a particular focus on improving benchmarking and compliance promotion on pollution prevention at source (e.g. merging existing databases on chemicals, production, use, emissions and monitoring data; ensuring that air, water, soil quality and noise levels information are accessible, understandable and comparable (put in relation to outputs) (see more information [here](#));
- Commit to **reviewing swiftly the Industrial Emissions Directive**: Reporting must be fit for the digital age so as to enable comparison of permit conditions and promote compliance promotion (see E-PRTR section). The IED scope should also be extended to include data centres, BAT could also be defined under the Energy Efficiency BREF review;
- Build on digitalisation methods to help improve **implementation and enforcement of EU law** – as, for example, already possible via spatial monitoring, using Copernicus, to identify illegal waste dumps;
- Promote **Artificial Intelligence for People and Planet** with measures to support public trust that the **ethical dimension** is fully integrated (i.e. "ecosystem of trust" as promised in the [White Paper](#)) and targeted to focus on **peoples' health and wellbeing and the planet** – i.e. addressing key societal questions to support a just transition to a carbon neutral, circular, zero pollution future that respects nature and planetary boundaries and that builds on societal needs, together placing the EU in a "safe operating space".

6. Communication on Chemicals Strategy for Sustainability: Towards a Toxic-Free Environment

We welcome the Chemicals Strategy for Sustainability (CSS) published on 14 October. It sets out a commitment that finally the most toxic chemicals will be progressively banned from consumer products; long delayed actions on endocrine disrupting chemicals and an action plan to phase out PFAS have been announced as well as zero tolerance for non-compliance. We also welcome the acknowledgement that safety and environmental sustainability are the future for European industry, that clean recycling should be the rule and that exports of chemicals that are banned (but still made in and exported from Europe) will stop.

However, the EEB is concerned that:

- **There is no absolute target to reduce chemical production**, despite massive predicted growth, [most of it toxic](#);
- **The Strategy lacks financial instruments to penalise hazardous chemicals production and use** and to ensure that polluters pay for health and environmental impacts, research, monitoring pollution as well as remediating the polluted environment, including cleaning polluted drinking water;
- **The intention to require comprehensive impact assessments for the legal proposals included in the CSS may lead to long delays** if not to paralysis by analysis. The announced actions are already the result of several in-depth reviews following the Commission's better regulation tools;
- Substitution is only mentioned once in the CSS text, which may imply that support to **substitution activities** (mainly by chemical users and SMEs) **would be replaced by 'safe by design chemicals'** (mainly by chemical industry).

We therefore call upon the Environment Council to deliver Council conclusions that, while broadly supporting the CSS, tackle these issues and call for:

- ***Concrete measures to reduce production volumes of chemicals, in order to reduce our overall exposure;***
- ***Ensure that the Strategy and upcoming legislative actions will apply the polluter pays principle through concrete financial incentives to penalise harmful chemistry and shift the economic burden of chemical pollution from the public to polluters;***
- ***Assurance that impact assessments will not delay the announced actions and that the Commission completely delivers the **Chemical Strategy for Sustainability actions by 2024**;***
- ***Substitution activities complement (rather than being replaced by) the safe & sustainable by design agenda by the EU authorities.***

Thank you in advance for your consideration of these points which support the ambitions of the European Green Deal and will help catalyse progress in meeting the environmental challenges facing Europe and the planet. This will respond to scientific evidence and also support EU and national legitimacy in the eyes of a public which broadly supports increased action at EU level to protect the environment.

Yours sincerely,



Jeremy Wates
Secretary General

ANNEX 1

Financial Tools to Step up Climate and wider EGD Ambition: using the Recovery and Resilience Facility and Plans and Just Transition Fund

The funding from the Recovery and Resilience Facility is essential for EU's commitments to tackle climate change, to catalyse a transformative European Green Deal, and for a green recovery. The choices where to allocate the funding under what conditions, and complemented by what reforms will determine whether we build back better, or miss an opportunity for a transformative catalyst. It is essential that sufficient and well-targeted funds are allocated to the European Green Deal and that no funds are allocated that "do harm" to the climate, nature and the wider environment.

It is therefore essential that EU Environment Ministers keep putting pressure on their governments to ensure that the RRF and national recovery and resilience plans take the following into account:

- Clarification of the **eligibility criteria / pre-conditions for receiving funding**, including the following aspects: National Energy and Climate Plans (NECPs) must include a timeline with milestones aimed at phasing out coal/lignite and peat power plants by 2030 as well as all fossil fuel use by 2040, the efficiency first principle, which implies a 90% GHG emissions reduction by 2050 for industry and buildings;
- **Recovery and Resilience Plans (RRPs) should demonstrate full consistency and coherence** with the implementation of other relevant EU environmental protection acquis objectives or performance against relevant Union standards;
- **The allocation of funds** should be subject to an EU-wide screening procedure that is transparent and subject to multi-stakeholder involvement as to final decisions made;
- The allocation of money under the Recovery Plan and the Just Transition Fund (JTF) should be **consistent with achieving the European Green Deal objectives of climate neutrality and zero pollution** as well as **abide by the "do no harm"** principle set by the Taxonomy Regulation COM (2018) 353;
- The **Recovery and Resilience Facility should contribute with at least 40% of its resources to mainstreaming climate actions and environmental sustainability** and to the achievement of an overall target of at least 40% of the EU budget expenditures supporting climate objectives. A significant share of this should go to nature-based solutions as well as circular economy actions, both of which are an integral and essential part of needed climate response;
- **Fossil fuels in all forms should be excluded from funds under the Recovery Plan and the Just Transition Fund;**
- **The Just Transition Fund** should allow and support communities and workers to start the transition towards renewable energy sources, not to lock them into short-sighted solutions as fossil gas projects;
- The **"Partnership Principle"** should be embraced in the **development of RRFs and JTF** (as should also be the case for Partnership Agreements (PAs) and CAP Strategic Plans under the MFF) – including by committing to transparency with and due engagement of civil society.

Many of these decisions are national decisions and we call upon **Member States to lead by example** as regards the **integration of the EGD into the NRRPs and engagement of civil society** into the development of plans, building on the experience of civil society across the EU.