

**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**

Brussels, 23 September 2021

**Re: Input to the EU Environment Council Meeting, Luxembourg, 6 October 2021**

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. With the exception of the first item – *The EU's position at Aarhus MoP-7*, we have structured the letter according to our understanding of the 6 October Council Agenda. We hope to see a discussion on Aarhus added as an agenda item given its fundamental importance for the rule of law, EU governance and reputation, and the implications for democracy in the wider European region.

### **1. The EU's position at Aarhus MoP-7**

At the forthcoming 7<sup>th</sup> session of the Meeting of the Parties to the Aarhus Convention (MoP-7, Geneva, 18-20 October 2021), the MoP will review the extent to which the amendments to the Aarhus Regulation that were recently agreed between the Council and Parliament have addressed the aspects of non-compliance that were identified in earlier findings of the Aarhus Convention Compliance Committee (in relation to Communication ACCC/C/2008/32). The MoP has also been invited, through a draft decision of the Convention's Bureau, to endorse a more recent finding of non-compliance by the EU due to the insufficient possibilities for access to justice at the level of the EU institutions in relation to state aid decisions (Communication ACCC/C/2015/128).

There is a longstanding precedent whereby all findings of non-compliance by the Aarhus Convention Compliance Committee have been endorsed by the MoP. Only one Party, the EU, has ever challenged this precedent, and it has only done so on one occasion, at MoP-6 in September 2017, when for the first time the EU itself was found by the Committee to be in non-compliance. Having supported MoP endorsement of every other finding of non-compliance by the Committee since it was established in 2002, on this occasion the EU succeeded in blocking the endorsement, creating a stalemate. The sheer hypocrisy of the EU's position was not lost on the other Parties: not a single other Party or stakeholder supported the EU. For those who believe in democracy and rule of law as core values of the EU, it was a moment of deep shame and perhaps the greatest threat to the Convention in its history.

Astonishingly, the European Commission appears to have learned little from this deeply regrettable and problematic episode and has put forward a [Proposal for a Council Decision](#) that would once again seek different treatment for the EU than for any other Party to the Convention. Specifically, it has proposed that the MoP should only 'acknowledge' the Committee's findings in the particular case of ACCC/C/2015/128 and that any decision on endorsement of those findings should be postponed to MoP-8. Essentially, this approach would send a message that while the EU recognises the legitimacy of the Committee and the MoP as the appropriate bodies to determine what constitutes compliance by all other Parties with the Convention, when it comes to its own compliance, it considers that it, and

not the Committee or the MoP, should decide what constitutes compliance with the Convention. In other words, it would mean that the EU considers that it is above the rule of international law.

The EU will therefore face a simple test at MoP-7: does it stand for the rule of law or not? The eyes of the world will be on the EU and its credibility as a proponent of the rule of law in a wide range of other contexts – such as post-Brexit relations with the UK or efforts to support democracy in Belarus – will be severely damaged if it fails the test.

***We therefore call upon the Environment Council to:***

- Insist that the Commission's proposal for a Council Decision on the EU position at the seventh Meeting of the Parties to the Aarhus Convention is revised to support the unambiguous endorsement of all findings of the Aarhus Convention Compliance Committee, including in relation to Communication ACCC/C/2015/128, thereby replacing the proposal that the MoP should merely acknowledge the findings and should postpone a decision on their endorsement.

For a more detailed explanation of our concerns, please see this [letter](#) sent to the attachés of the Working Party on the Environment and the Working Party on International Environmental Issues.

**2. EU-ETS: Proposal for a revision of Directive (EU) 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading to implement the ambition of the new 2030 climate target**

The Emissions Trading Scheme (ETS) can be an important driver towards decarbonising our economies, but market mechanisms must go in hand with tightened regulatory measures. In the past ten years, the ETS's potential has been reduced by at least three main flaws: the CO<sub>2</sub> price has been largely below what is needed, free CO<sub>2</sub> permits to most polluting industries have delayed decarbonisation and generated windfall profits, and the ETS revenues have been used by the Member States for other purposes than tackling climate change. The revision of the ETS Directive only partly addresses these flaws. The ambition of the ETS needs to be aligned with the urgency to massively reduce emissions as underlined by the IPCC 6<sup>th</sup> Scientific Report on Climate.

***We therefore call upon the Environment Council to:***

**On the ETS 1 - Power, industry, aviation and shipping:**

- Ensure that the ETS Directive delivers an EU-wide coal phase-out by 2030 at the latest and sets a Paris-Agreement-compatible minimum CO<sub>2</sub> price of 100 €/ton CO<sub>2</sub>;
- Remove Article 26 of the ETS Directive to ensure policy coherence between the ETS and the Industrial Emissions Directive (IED) through a combined approach to allow the application of performance-based standards (e.g. as set in EU BREFs/IED and Ecodesign Directive);
- Push for the inclusion of waste incineration as it still remains excluded from the ETS scope;
- Remove free allowances to industry and replace them by full auctioning;
- Phase out compensation for ETS indirect costs (state aid rules);
- Increase the target for shipping and extend the ETS to international flights;
- Set mandatory earmarking of 100% of auctioning revenues for climate purposes and avoid that Member States' revenues are spent to support fossil-fuel based industry (amongst others, state aid for CO<sub>2</sub> indirect costs for industry);

- Exclude fossil fuels from both the Innovation and Modernisation Funds.

See also [EEB comments on the Inception Impact Assessment of the revision of the EU ETS](#)

### **On ETS2 - Buildings and transport:**

While the proposed extension of the ETS to buildings and transport would apply carbon pricing to these sectors and hence potentially lead to important emissions savings, it would also bring with it significant environmental, financial and social risks. Concerns remain about whether this instrument will effectively deliver on CO<sub>2</sub> emission reductions (the Commission's proposal does not propose a cap on emissions for these sectors) and who will bear the costs. Fuel producers will pass on costs to final consumers – this is already happening in some Member States even without the EU-ETS extension being in place as industry is raising prices to profit from the political context, scaring consumers and blaming the European Green Deal (EGD) as seen in the recent State of the Union speech. These price rises are feeding through to consumers who often have low short-term ability to adjust (i.e. low 'elasticity'). On top of that, consumers' adaptability to energy prices varies a lot across the EU and largely depends on the households' wealth.

Energy policy is by far and large in the hands of national governments (as established in the EU Treaty) and ultimately influenced by vested interests that may or may not have consumers' interest as a prime interest. As a result, there is a risk that some national governments will not do enough for the common good and for citizens. Furthermore, political uncertainty over national budget decisions – with many important upcoming national elections - and over the redistribution of EU finance (Social Climate Fund, ETS revenues, CBAM revenues etc) risks putting the burden on society and heavily hitting the most vulnerable, well before any effective emission reductions will take place. Consequently, it is crucial that these social, financial and environmental risks are fully taken into account at EU level.

### ***We therefore call upon the Environment Council to:***

- Carefully assess the proposal by weighing benefits against environmental and social risks and by strengthening the measures with strong safeguards to address the risks of negative social impacts;
- Consider whether the EU-ETS instrument is fully fit to effectively drive emission reductions in the energy and transport sectors or whether other existing regulatory instruments in the Fit for 55 Package (RED, EED, CO<sub>2</sub> standards for cars & vans, ETD, EPBD), the EU Renovation Wave and relevant other EU regulation such as the taxonomy or state aid have a higher potential to drive emission reductions more quickly and with less social impacts;
- Seek to ensure that the EU-ETS for buildings and transport is consistent and coherent with the review of the Energy Tax Directive (ETD) – i.e. avoids loopholes and exemptions that can undermine the instruments' reach and impact;
- Remove environmentally harmful subsidies and fast track support schemes to enable households to transition to sustainable solutions for heating and for transport at both EU and national level – this would strengthen the EU-ETS and reduce risks of social impact and hence public resistance;
- Seek to ensure that national measures are quickly put in place to ensure that there are readily available alternative options for households to respond to and to avoid potential price impacts – i.e. access to heat pumps, solar thermal and PV, battery storage, renovation and insulation for buildings, and quality public transport and e-vehicles, complemented by improved infrastructure

for active mobility such as cycling and walking. If these were in place, it would mitigate some of the above-mentioned social risks of the EU-ETS and avoid cost-impacts to households;

- Make sure that a solid social package (Social Climate Fund and other financial resources) is agreed well before the revised Directive comes into force to apply the 'polluter pays principle' fairly and to avoid society having to bear the costs of poor political decisions to keep fossil fuels in the economy (see point 6).

Please also see [the EEB's main asks for the Fit for 55 Package- A package fit for the planet and fair to society, and the EEB's assessment of the Fit for 55 Package.](#)

### **3. Effort Sharing Regulation: Proposal for a revision of Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement**

The proposal on effort-sharing aims to increase the national binding targets for Member States to contribute to an EU-wide Effort Sharing Regulation (ESR) target that has been increased to 40% emissions reductions by 2030. The proposal does not lead to the changes in the ESR that are required to limit global warming to +1.5°C compared to pre-industrial levels. The new national targets are not enough to contribute to the 65% GHG emission reductions that are needed by 2030. Moreover, the national binding targets risk becoming a bargaining point with Member States that could lead to an insufficient level of climate action and unwanted trade-offs. Arguments on cost efficiency and fairness between Member States should not undermine the necessary climate action. The interaction between the ESR and the ETS for buildings and transport is still not clear and an impact assessment of how the carbon price for these sectors will evolve and the related social impacts is required. Until today, the agricultural sector has only contributed 1% to the former 30% reduction target of the ESR. The Commission's proposal provides another free pass for non-CO<sub>2</sub> agricultural emissions. Only a sectoral target for non-CO<sub>2</sub> agricultural emissions, accompanied by the development of sectoral climate neutrality roadmaps, will provide the right incentive for a transformative agenda in agriculture.

#### ***We therefore call upon the Environment Council to:***

- Increase national binding targets (beyond 55%) to align them to the effort needed to have more chance to meet the 1.5°C climate target, which has been confirmed by the IPCC as our safety threshold;
- Set out binding sectoral decarbonisation roadmaps in the energy, industry, buildings, agriculture and transport sectors to reach climate neutrality by 2050;
- Introduce stricter rules on banking, trading and borrowing among Member States (including the removal of flexibility with the ETS);
- Avoid political bargaining at the cost of environmental ambition;
- Introduce a right for the public to access national courts to enforce compliance and add a direct reference to the Aarhus Convention;
- Demand the establishment of a new binding EU-level target to cut non-CO<sub>2</sub> agricultural emissions by at least 20% by 2030 compared to 2005 levels.

For more details on agricultural emissions, please see: [EEB Beyond Net zero emissions in agriculture](#)

#### **4. LULUCF: Proposal for a revision of Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF) in the 2030 climate and energy framework**

The proposed revision of the LULUCF Regulation will progressively change the architecture and scope of the Regulation with small positive elements. The European Commission suggests reaching an overall EU target of net GHG removals of 310 million tonnes of CO<sub>2</sub> equivalent that will be distributed between Member States as annual national targets for the period of 2026-2030. While the introduction of annual national targets from 2026 is a good direction to increase removals in the LULUCF sector, we regret the timid level of the Union target. Managed croplands and grasslands accounted for almost 50 million tonnes of CO<sub>2</sub> in the EU-27 in 2019. These emissions could be brought to net-zero by 2030 by promoting agroecological practices, restoring peatlands, deploying hedges and agroforestry on croplands and grasslands.

From 2031 onwards, the scope of the Regulation will be expanded to include non-CO<sub>2</sub> emissions from the agriculture sector. It will become a *de facto* new Agriculture, Forestry and Land Use (AFOLU) policy instrument. The Commission expects Member States to take the necessary measures in the AFOLU sector by 2035, aiming towards the collective achievement of climate neutrality in the EU. This will give a dangerous free pass to the agricultural sector in the fight against climate change by taking the risk that it seeks to offset its emissions against the uncertain removals of forests and lands.

#### ***We therefore call upon the Environment Council to:***

- Promote a new governance model that reconnects agricultural activities and land management and fully accounts for the interdependency between climate and biodiversity objectives;
- Promote a higher EU target of net GHG removals to be achieved by 2030;
- Set a new binding EU-level target to bring agriculture-related land use emissions down to net-zero by 2030;
- Promote the introduction of EU national binding targets specific to agriculture, accompanied by governance firewalls with the forestry sector under the new AFOLU policy instrument to avoid offsetting agriculture-related emissions by the forestry sector.

See also EEB's [Beyond Net Zero Emissions in Agriculture](#)

#### **5. Proposal for a revision of Regulation (EU) 2019/631 setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles**

The Regulation 2019/631 and associated commitments were set during the Juncker Commission period and thus before the EU commitments for a carbon-neutral Europe, before the -55% commitment, and before the ever more dramatic and direct evidence of climate change as seen this summer, with floods, fires and storms, and the latest [IPPC Sixth Assessment Report](#) underlining the dramatic challenges facing society to avoid catastrophic climate change. The Regulation was also negotiated during a time when there were far lower shares of electric vehicles on the market, far lesser availability of 'zero emissions' vehicles than now. It is therefore both essential that the commitments on CO<sub>2</sub> emissions on cars and vans are tightened, and possible to do so, given the fast-evolving market. It is also essential for EU automotive manufacturers to move from a defensive position that enabled Toyota and Prius to take market leadership on hybrids and electrics and

embrace a more proactive and progressive strategy to ensure due market share and, over time, leadership in the market for 'zero emissions' vehicles.

***We therefore call upon the Environment Council to:***

- Promote tougher CO<sub>2</sub> regulation on cars and vans and encourage commitments to stop fossil-fueled transport, in particular by strengthening new EU fleet-wide CO<sub>2</sub> emission performance standards for new registered cars under Regulation 2019/631, increasing the 2025 reduction target to -25% (from 15%), setting a -40% reduction target for 2027, and strengthening the 2030 target to at least -65% (up from the current target of 37.5%);
- Set an EU-wide phase-out date for the sale of new internal combustion engine (ICE) cars, no later than 2035;
- Promote national enabling measures to facilitate this transition – e.g. electric charging infrastructure to support the transition from fossil to zero-emissions vehicles, complemented by improved public transport to support mobility for all, and city zoning in areas limiting use of ICEs, particularly where there are concerns of air quality and earlier national phase-out of ICE sales and registrations, notably for 2030.

For a range of complementary 'asks' and useful supporting facts and arguments, see [T&E's Briefing](#).

## **6. Regulation establishing a Social Climate Fund**

The new Fit for 55 package introduces some transformative new measures such as EU-ETS II and the target of having zero emissions transport. Social impacts risk being such that these measures cannot be adopted without social consent and support. Thus, the Fit-for-55 package needs to factor in how to have citizens' interests and realities on board. This requires dialogue and funding.

The Social Climate Fund is an essential tool to support low-income households, counterbalance impacts from increased consumer prices for home heating and car fuels and support investments for 2025-2032. It is to be part-financed through EU own resources (revenues from the ETS extension form ~25%) and complemented by Member State revenues. Each Member State is required to submit a Social Climate Plan together with updated National Energy and Climate Plans. However, given the scale of fuel poverty, the amount currently proposed (72.2 billion EUR EU contribution and 144.4 bn EUR with 50% national contribution) is far short and also at risk from the potential non-agreement on the ETS extension. Currently, the social fund adopts mainly a 'compensation based' approach rather than investing into empowering citizens to cut their electricity and heating bills. Furthermore, energy poverty is highly gendered, hitting women harder than men in many countries given the particular challenges of single parents and those above retirement age, who are on average more likely to be women.

***We therefore call upon the Environment Council to:***

- Explicitly engage citizens across Europe and within Member States to explore and understand the social challenges they face in the climate and ecological transformation – from energy poverty, to access to services (e.g. mobility and heating) – and how best to support them to make the transition (e.g. to be able to invest in renovation and insulation, changing heating systems) and feed this into the political discussions on the Fit-for-55;
- Invest in clear communications and knowledge-building to avoid misinformation on price impacts of the EGD measures and hence social risks of advancing progressive policies; target fake-news that seeks to undermine the EGD;

- Assess whether the estimated financial envelope is sufficient to address widespread social impacts of general rising energy prices as well as those specifically linked to new Fit-for-55 measures;
- Improve the definition of redistribution criteria across Member States to take into account differences in those providing funds and those receiving funds to ensure fairness;
- Add other conditionalities to avoid that money under the Social Climate Fund flow is misused, ensuring that there is no funding for fossil fuels - e.g. no support for coal to gas;
- Consider also the gender aspects of social impacts with an intersectional lens – given the higher incidence of fuel poverty among women, there should be specific targets and measures for women;
- Enlarge the definition of energy poverty and vulnerable households to capture the diversity of realities across Europe;
- Accompany financial instruments with measures to tackle the root causes of energy poverty.

## **7. Conclusions on the preparations for the United Nations Framework Convention on Climate Change (UNFCCC) meetings (Glasgow, 1-12 November 2021)**

COP26 will have to set another landmark after the 2015 Paris Agreement. 2021 has been the year of another painful wake-up call for the planet to remind us that the climate clock is running even faster than the scientific community had long predicted and people were expecting. During the past summer, extreme and long-lasting episodes of violent rains, floods, heatwaves and fires have taken a heavy toll all over the world on people, nature, goods and critical infrastructure. They have disrupted the lives of thousands of people in a world already made vulnerable by the Covid-19 pandemic. The pace and the severity of such episodes has unexpectedly increased to a point of irreversibility and is only bound to get worse, as highlighted by the [IPCC's Sixth Assessment Report](#) published on 7 August 2021. The Report has also confirmed that greenhouse gas (GHG) concentrations since around 1750 are unequivocally caused by human activities and that there is a clear correlation between the emissions levels and the extent of climate impacts. We need bold policy changes that will safeguard a healthy and sustainable tomorrow for current and future generations that leaves no-one behind while sharing the burden of change equitably and fairly. Mitigation efforts across the world, including Europe's -55% net target, will have to be increased to meet the climate challenge. In addition, action and funding on adaptation needs to be stepped up significantly to provide better protection against the already inevitable impacts of the climate crisis. Ecosystem-based approaches, such as ecosystem restoration should be at the core of such adaptation efforts.

### ***We therefore call upon the Environment Council to:***

- Ensure that Europe makes a fair contribution to the global climate challenge to keep temperature rise below 1.5°C with a mitigation effort aligned with science, equity and historical responsibility aiming to achieve at least 65% emissions reductions by 2030 and climate neutrality by 2040, by means of a phasing out of fossil fuels by 2040;;
- Speed up the transition to clean, renewable energy technologies to replace fossil fuels and by improving energy efficiency in the crucial sectors of power, heating and transportation as well as by enabling the overall reduction of energy consumption;

- Lead a transformative change at global level to shift towards a socially and ecologically just wellbeing economy that puts the interests of society and nature above those of corporations and embraces beyond-GDP indicators;
- Boost local resilience and global justice by providing financial and technical support to countries that are affected by climate change and by developing an international protection scheme for climate change-induced migration;
- Enable youth participation and integrate their views and vision into political decision-making by creating Youth Councils in the EU and Member States; these Youth Councils should gain the status of social partners in the EU and its member states and would liaise with the UN Youth Advisory Group on Climate Change;
- Ensure that climate adaptation actions play a central role at the COP, leading by example through the ambitious implementation of the EU's Climate Adaptation strategy and pushing for a stronger role of synergistic solutions that support climate adaptation and address the biodiversity crisis.

See EEB's [Building a Paris Agreement Compatible \(PAC\) energy scenario](#) and associated [policy brief](#)

## 8. New EU Forest Strategy for 2030

Forests play a crucial role in bending the curve of biodiversity loss and also bring significant potential for climate mitigation and adaptation and for enhancing resilience against climate-induced extreme weather events. The European Commission's proposals in the new EU Forest Strategy for 2030 include encouraging commitments to protect and improve the health and resilience of the EU's forests, such as a focus on strictly protecting old growth and primary forests or shifting to closer-to-nature forestry. Unfortunately, the Strategy is rather timid in addressing the drivers of forest destruction and biodiversity loss, such as unsustainable bioenergy, and mainly relies on voluntary targets and actions. The Council has an opportunity to support and strengthen the commitments in the Strategy through close collaboration on the Council Conclusions between the formations on agriculture and environment which would be best served by having joint Council Conclusions of the two formations. In addition, Ministers have endorsed EU targets to strictly protect old growth forests or promote closer-to-nature forestry in the Council Conclusions on the EU's Biodiversity Strategy for 2030 – it would be incoherent if the Council Conclusion on the Forest Strategy were to question the previous endorsement.

### ***We therefore call upon the Environment Council to:***

- Work closely with the Agriculture Council to fully endorse the commitments of the EU's new Forest Strategy for 2030, welcoming the commitments on the protection and restoration of forests and calling upon the timely implementation of the commitments;
- Stress the EU's competence on the protection of forests, as confirmed by the Court of Justice of the EU,<sup>1</sup> and the Strategy's full respect of the principle of subsidiarity, fully supporting the commitment for a legislative proposal on EU Forest Observation, Reporting and Data collection given the importance of adequate monitoring and data availability for effective forest protection measures;

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<sup>1</sup> Court of Justice of the European Union, Judgment of 25 February 1999 in joined cases C-164/97 and C-165/97, para 16.



- Welcome the development of additional indicators and thresholds for sustainable forest management, ensuring that biodiversity needs are fully included in it;
- Continue to fully support the work on the definition, mapping and strict protection of old-growth forests, ensuring that the definition is based upon science and can provide a solid prerequisite for the strict protection of all remaining old-growth forests, in line with the commitment of the EU Biodiversity Strategy for 2030.

#### **9. Preparations for the Convention on Biological Diversity meetings (11-24 October 2021 online and 25 April until 8 May 2022 in Kunming)**

We would like to take this opportunity to bring to your attention the recent [Non-State Actors' Call for Governments to Strengthen the Post-2020 Global Biodiversity Framework](#) that was issued by more than 100 organizations representing all corners of society from around the world at the IUCN World Congress on Nature on 7 September 2021.

There is growing concern over the lack of ambition displayed by governments negotiating the agreement. The signatories of the joint call stress that reversing biodiversity loss is a moral responsibility, but it will also help to avoid future pandemics, fight climate change and land degradation, and enhance environmental security. Continued loss of nature threatens not only half of global GDP, but also our opportunities to uphold human rights, and reduce social and gender inequalities.

To secure a nature-positive world by 2030, governments are urged to include a nature-positive mission in the post-2020 global biodiversity framework, and to ensure a rights-based approach, including to nature-based solutions and to conserving 30% of land, freshwater and seas by 2030.

Governments are further called on to ensure that the final agreement tackles the drivers of biodiversity loss - including unsustainable agriculture and food systems, forestry, fisheries, infrastructure, and extractives - by securing a just transition that halves the footprint of production and consumption by 2030. Other key areas of the draft agreement that need strengthening include ensuring adequate financial resources and an effective implementation mechanism.

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