

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, Luxembourg, 24 October 2022

Brussels, 13 October 2022

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, including how a range of items on the agenda are critically important in light of the Russian war in Ukraine and the ongoing energy crisis. A clean industrial transformation is urgently needed to achieve climate neutrality, save energy and meet the European Green Deal promises, whilst sustainable product regulation has great potential to save resources, emissions, protect European citizens, and promote EU future resilience. At the same time, there are pressures to use the crisis to push for a moratorium on legislation and weaken environmental protections. We call upon Environment Ministers to resist those pressures which do not provide the needed transformative and progressive answers that we need and solutions that exist, and more often reflect private interests or ideological positions rather than the best way forward. I invite you to take our concerns into account during the final official level preparations, as well as at the meeting itself. We have structured the letter according to our understanding of the 24 October Council Agenda.

1. Revision of the Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) and Directive 1999/31/EC on the landfill of waste (revised IED)

The EEB believes that the revised IED proposal is not yet fit for purpose to clean up industrial production and generate transformative change towards circular, decarbonised and zero-pollution industry. Many important aspects such as output-oriented performance expectations from the EU's industrial transformation are either shifted towards a future review or left for implementation measures, escaping public scrutiny.

We therefore call upon the Environment Council to:

- **Extend the IED's scope** to capture additional major pollution sources and issues, e.g., intensive aquaculture, greenhouse gases, whilst not losing the focus on the intended outputs of the activity. Lower the threshold for Large Combustions Plants;
- **Reject any regulatory backtracking**, by ensuring Chapter II provisions apply for the most intensive farms which are already covered by the IED as well as large cattle farms e.g., above 300 Livestock Units;
- **Strengthen the pollution prevention and animal welfare provisions** for all other livestock operations covered by the Directive, notably by:
 - strengthening the basic obligations (incl. on inspection monitoring) and permitting rules;
 - ensuring public participation in the development of the operating rules;

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- defining minimal pollution prevention measures in the Directive (that apply as operating rules by a given date);
- ensuring full compliance with environmental quality standards and respect of carrying capacity of receiving environment / impacted areas (e.g., nutrients surplus);
- lowering the administrative burden for enforcement and permitting authorities by requiring operators to make key information (e.g., permit conditions and compliance report) directly accessible through the industrial Emissions Portal through electronic reporting in a timely manner.
- **Change to a ‘forward looking’ BAT determination procedure** to promote the industrial activity with the least environmental impact for the provision of a given product/service based on technical feasibility – e.g., for energy production, water quality and supply, protein production, and resource management;
- **Ensure for a “combined approach”** of strong carbon pricing via the EU ETS to deliver in combination with performance-based standards. **Replace Article 9(1) to require the setting of dedicated decarbonisation measures** e.g., on the electrification of energy-intensive industries, fossil and feedstock substitution. As a minimum expect operators to not exceed the GHG performance levels of the best products class EU ETS benchmarks. **Delete Article 9(1) as fallback.** Add “climate neutrality” as supplementary BAT criteria (IED Annex III);
- **Extend and update the EU “safety net” requirements** for preventing impacts from the most polluting activities, accelerate coal combustion phase out by 2030 by aligning Annex V ELVs to the strictest 2017 LCP BREF BAT conclusions and accelerate fossil gas phase out by 2035 at the latest, notably through the setting of mandatory GHG performance limits set to 100gCO₂eq/KWh by 2035;
- **Provide for effective and enforceable Transformation Plans** (Article 27d), provide for concrete actions on pollution prevention measures to be delivered at latest by 2025 with milestones and headline key performance indicators on all EU EGD objectives set in the Directive further clarified at sector level through an inclusive multi-stakeholder process (e.g., INCITE), and make the targets and obligations part of permit conditions, subject to regular review and verification;
- **Strengthen further the conditionalities for compliance with Environmental Quality Standards** e.g., by explicitly referring to the WHO air quality guidelines, the NECPs, and climate protection;
- Further tighten up the new default approach to the **strictest technically achievable possible emission limit / environmental performance limit values** with a clearer reference point to the *most effective* BAT(s) or other relevant benchmarks. **Set a clear compliance deadline** by when this approach is to be complied with (Art 15.3);
- **Strengthen the provision on derogations** (Art 15.4) to ensure **timely public participation in the decision making**, limit to cases where a substantiated cross-media effect is established, with a zero-tolerance approach on pollutants subject to EQS, set a maximum 4-year validity period;

- Support resilience, material efficiency and substitution of hazardous/of concern substances throughout the value chain by **strengthening relevant provisions on the Environmental Management System (EMS)**;
- Strengthen the provisions on **public access to information and participation** in the permitting procedure as well as on **access to justice** (see link to IEP-R);
- **Improve the provisions on sanctions** (minimal sanctions), support a strong compensation regime with maintaining the presumption of “guilty of harm caused by industrial pollution” on the operators;
- **Provide for a full internalisation of external costs** in the proposed Annex on cost benefit assessment not only in the case of granting derogations from BAT, but the method should also provide for a **meaningful carbon shadow price** and refer to the EEA value of statistical life method adapted to US damage cost price levels. **A specific minimum ratio should be set** to clarify the meaning of “disproportionality”;
- **Ensure the list of pollutants of Annex II of the IED is kept** subject to regulatory obligations and reporting, **add a further cross-link to the new and additional entries of Annex II of the Proposal for a Regulation on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal.**

For more details, see the link to IEP-R and [dedicated briefing on Annex II loss](#), [NGO assessment](#), [joint NGO position](#) and [thematic briefings](#)

2. Proposal for a Regulation on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal (IEP-R)

For the related Industrial Emissions Portal Regulation (ex-PRTR, now IEP-R), included here due to its close relation to the IED revision, the proposal misses the opportunity to make the best use of information for other purposes such as benchmarking (of operators and permit writers permitting ambition) and compliance promotion. It is crucial to ensure that digital reporting obligations serve progress on environmental performance benchmarking and accountability of decision making and send a strong and coherent signal regarding the improvement of the UNECE PRTR Protocol.

We therefore call upon the Environment Council to:

- **Provide for a strong mandate to the European Environment Agency to improve the current Portal¹ to develop a centralised and powerful EU database “Industrial Pollution Prevention Portal”** allowing for the better benchmarking of real-time environmental performance and better use of information for other purposes e.g., BREF reviews (e.g., by including site-specific resource consumption data and production volumes, ensure that performance information generated under other IED provisions such as the Environmental Management System (EMS) are directly integrated in that portal);

¹ <https://industry.eea.europa.eu/>

- **Clarify the meaning of “contextual information”.** Allow benchmarking of the operator versus state of the art in the sector (e.g., metric of impact on environment v. useful outputs of the industrial activity), pollution intensities (e.g., mass of pollutant per amount of service/product provided) or by other metrics such a depollution / substitution index, carbon intensity. This would enable a more accurate rating of efforts made by the operators of industrial activities and permit ambition set by Member States to **transition towards a clean, circular and climate neutral industrial production;**
- Provide for a policy mandate to the European Environment Agency or the European Commission to provide online input forms for **harmonised reporting for key IED documents** - e.g., IED Electronic Permit Template (EPT) (Article 5 of the IED) and IED annual compliance report allowing centralised reporting and direct integration of content of performance monitoring data and permit conditions (i.e. by setting obligations on operators to report directly that information according to that format and means);
- Delete reporting thresholds from its Annex II, where data is available it should be used;
- **Extend the list of pollutants in its Annex II.** The generic Annex II of the IED group entries should be retained and, where missing, added (see last bullet point of the agenda point 1 on the IED review and this [dedicated briefing](#)). Add the following substances directly to Annex II through co-decision:
 - Persistent mobile organic chemicals (PMOCs) – group
 - The list of pollutants listed under the listed EU environmental acquis referred to under Article 14(2b). Refer to REACH (candidate list) as a minimum and “substances of concern” such as proposed under the Proposal establishing a framework for setting eco-design requirements for sustainable products.
- **Ensure high level of data quality and comparability:** Where measurement uncertainty is applied, the levels applied should be reported and a link to the latest accredited calibration tests provided;
- Provide for **powerful search filters** to enable faster access to relevant information;
- **Improve reporting** on diffuse emissions from products and **enabling progress tracking** towards Sustainable Development Goals achievement, with systematic and formalised consultation of end-users, where data is not available apply release estimation factors as proposed by the OECD;
- Lead by example and **implement recommendations made in the reports of the UNECE PRTR Bureau** and ensure that the Council Working Parties systematically allow for early and effective pre-consultation with civil society interest groups like the EU ECO Forum;
- **Provide for a political commitment to review the Commission Expert Groups Rules and Council work practice** to ensure full transparency and accountability to the “Green Oath”, improving the balance of public vs private interest stakeholder representation, setting Key Performance Indicators to track progress and supporting accountability in decision-making.

See [NGO Briefing on IEP-R](#) and related IED briefings [here](#) & [here](#)

3. Revision of the regulation on the eco-design of products

The EEB welcomes the New Ecodesign for Sustainable Products Regulation (ESPR) proposal. We are active members of the Ecodesign Consultation forum for the existing Ecodesign and Energy Labelling Framework and believe that a similar approach should be applied to other high impact product groups such as textiles, furniture and intermediary products like steel and cement. Going forward we see challenges in ensuring that this framework delivers its potential to save resources, emissions and consumer expenditure across a broad number of sectors.

We therefore call upon the Environment Council to:

- Ensure the Ecodesign for Sustainable Products Regulation has clear objectives to **save resources** and **bring our environmental footprint to within planetary boundaries** – deploying material footprint and consumption footprint as core indicators of success. This should build on the experiences with the ecodesign directive and its relation to the energy efficiency directive and targets, as well as ecodesign impact accounting;
- **Put a stop to anti-competitive and exploitative free-riding from online marketplaces.** Ensure these actors who are both powerful and increasingly responsible for putting unsustainable products on the European market have the **same responsibilities as “bricks and mortar” shops**. Unless they accept their responsibility, ensuring compliance with product policy will be an impossibility for market surveillance authorities, which already struggle with resource challenges;
- Re-establish **the principle of Least Life Cycle Cost**, wherever possible **integrating societal costs**, to ensure that a balanced approach can be taken with respect to long term resilience and up-front affordability;
- **Relieve public authority and stakeholder resources** dedicated to developing future acts by avoiding the package approach of releasing measures; prioritising horizontal requirements addressing many product groups (e.g., as done with standby regulation); and taking bold steps already today (e.g., by banning outright the ban on the destruction of unsold goods);
- **Avoid past mistakes with self-regulation initiatives**, as experienced with imaging equipment by removing this option from the proposal. These have clearly failed to perform as well as minimum requirements and have even required more (wasted) resources from stakeholders and policy makers than developing them;
- Keep the door open to **including social sustainability** and **due diligence criteria** in the ESPR, notably using the product passport as a vector for information in supply chains. Forthcoming horizontal legislation on due diligence will not address SMEs and will never be as precise as product policy. The nearly finalised Batteries Regulation sets a good precedent in this regard.

For more information, see the EEB's [response to the public consultation on the proposal](#). We are also currently working on recommendations for amendments for the ESPR which we will publish soon.

4. Conclusions on the preparations for the United Nations Framework Convention on Climate Change (UNFCCC) meetings

The EEB is concerned that Russia's war in the Ukraine and associated geopolitical turmoil is delaying countries' acting on their engagements made in previous COP meetings. Countries are not honouring their commitments, including EU countries. The credibility of international climate diplomacy and the chance of averting catastrophic climate change depends vitally on rich countries living up to their commitments in an exemplary fashion. The EU is not living up to its own standards.

We therefore call upon the Environment Council to:

- Ensure **EU countries take a leading role in the loss and damage process** in good faith and make **concrete financial commitments** during COP27 at the latest;
- Demonstrate clearly how the EU will close the gap and live up to its promise on climate finance in line with the **global \$100 bn pledge**. The least developed countries and the most fragile countries are suffering most from the current funding gap;
- **Urgently review progress on Methane and deforestation pledges of COP26**. Concrete measures need to be taken and regular public updates on progress are necessary with respect to; slashing Methane emissions in line with the Global Methane Pledge and halting and reversing forest loss and land degradation;
- Ensure that EU countries **urgently update their NDCs** in line with updated Fit-for-55 goals.

5. Conclusions on the preparations for the Conference of the Parties of the Convention on Biological Diversity (CBD COP 15)

To take a credible leadership role at the COP15 of the Convention for Biological Diversity (CBD), the EU must live up to its historical and ongoing responsibility as a major driver of the interlinked climate, pollution, and biodiversity crises. We welcome recent statements from EU leaders on the importance of COP15 and EU's commitment to reach a global Deal for Nature, including increasing EU's funding for biodiversity. COP15 needs to become the moment to turn rhetoric into action and become a key part of the UN's wider ambition for humans to live in harmony with nature by 2050. However, the EU's global leadership role must be backed up by adequate action and demonstrable progress to protect and restore nature at home, address key drivers of biodiversity loss and include the drastic reduction of the EU's global ecological footprint.

We therefore call upon the Environment Council to:

- **Adopt strong Council Conclusions** to best prepare the EU to take a leadership role at the CBD COP 15, aiming to establish a global network of effectively managed protected marine, freshwater and terrestrial areas, covering 30% of the planet in full respect of human rights;
- **Adopt a strong and timely position on the EC proposal for the Nature Restoration Law** to ensure that 20% of the EU's land and sea area will be subject to effective area-based restoration measures by 2030 as well as 15% of rivers to be restored into free-flowing state;
- Lead by example through the **timely submission of national pledges** to ensure 30% of the EU's land and sea area are protected by 2030 and ensure the full implementation and enforcement of the EU's legislation protecting EU's nature, water, seas and oceans.

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5. 9th Environment for Europe (EfE) Ministerial Conference (Nicosia, Cyprus, 5-7 October 2022)

Representatives of environment ministries from across the UNECE region convened in Nicosia, Cyprus, for the 9th EfE Ministerial Conference to discuss sustainable infrastructure, in particular circularity and sustainable tourism. The EEB would like to thank the government of Cyprus for hosting the Ministerial Conference and for its warm welcome and support to environmental citizens groups. We now call on EU ministers to commit to regional cooperation through the Europe for Environment process. In times of multiple crises, regional cooperation and support for poor countries in the UNECE region has become even more important. Environmental NGOs in the European ECO Forum have published an [NGO Declaration](#) summarising main concerns and recommendations. A particularly pertinent issue links to ensuring a [people-centred nature-positive energy transition](#).

We therefore call upon the Environment Council to:

- Adopt an **ambitious approach on the revision of the Renewable Energy Directive** to speed up permit-granting processes for renewables. In particular:
- Fully safeguard the Aarhus Convention rights on **public participation, access to information and access to justice** in the renewable energy permitting process, in line with the EU's international obligations;
- Avoid any watering down or bypassing of the **assessments under the Environmental Impact Assessment Directive or the Habitats Directive**, as these provide fundamental safeguards for people and nature and provide the legal certainty needed for renewable energy developers;
- Ensure **adequate capacity and funding for national and local authorities** responsible for the permitting of renewables, as well as for those public bodies involved in environmental assessment processes;

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 support EU and national legitimacy in the eyes of a public which broadly supports increased action at EU level to protect the environment. We also firmly believe that in the current context of the Russian war in Ukraine, it is essential for the EU to honour its climate commitments to help achieve energy independence, support EU agency and reduce funding of belligerent forces. Similarly, it is vital to stay true to the transformative EGD agenda (see also [EEB OpEd](#)) and promote a carbon neutral, energy- and resource-efficient circular economy, with a commitment to reducing industrial emissions, the ecodesign of products, and the upcoming international meetings on climate diplomacy.

This will support EU resilience in the face of pressures and create a stronger basis for a future for the youth of today who are arguably going to inherit a world in a much worse state than this generation unless we act decisively. Your engagement is essential.

Yours sincerely,



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