

**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, 16 March 2023**

Brussels, 2 March 2023

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.

We are one year into the illegal Russian war in Ukraine with its untold suffering. It is also an authoritarian attack on the democratic model and a profound threat to the EU. While fuel availability is better than feared given the measures taken, fuel price and inflation impacts are still a major concern across Europe. The instrumentalisation of the war to drop, delay or dilute environmental policy files and undermine the European Green Deal (EGD) is also a major problem. This will not address the claimed challenges. It will only weaken environmental and social protections and miss a crucial opportunity to invest in future resilience.

The EGD should be recognised as a peace project, given how the measures will help over time reduce energy use and dependency, materials use and sensitivity to pricing hence reducing the power of regimes that wish the EU ill. Furthermore, the EGD will encourage innovation to enable the EU to lead in future sustainable industries and support the EU's competitive position. We therefore call upon Environment Ministers to resist those pressures which do not provide the needed transformative and progressive answers that we need and that more often reflect short-term private interests or ideological positions rather than the best way forward for Member States and the EU.

I invite you to take our concerns into account during the final official level preparations, as well as at the meeting itself. Many files will of course remain active under the Spanish Presidency and a few during the Belgian Presidency.

We have structured the letter according to our understanding of the 16 March Council Agenda.

### **1. Revision of Directive 2010/75/EU on industrial emissions**

The EEB believes that the revised IED proposal is not yet fit for the purpose to clean up industrial production and generate transformative change towards circular, decarbonised and zero-pollution industry. In some instances, the overall package currently prepared by the Swedish Presidency translates into significant weakening of the text proposed by the European Commission. Co-decision on the IED should not be sped up at the expense of quality and concrete improvement of health and environmental protection levels.

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***We therefore call upon the Environment Council to adapt the proposed general approach to the concrete suggestions below and if not, to block the adoption of a Council general agreement:***

- **Reject the extended ‘transition periods’ that delay progress towards the zero pollution targets, and put current EU standards into question. Set a maximum 4-year deadline for enforcing improved BAT performance.** Delaying permit updates by up to 16 years and only referring to revised BREFs published 2 years after entry into force of the revised IED, is not only disrespectful to people expecting progress on industrial pollution reduction, but also a waste of efforts and resources put into the elaboration of the IED BREFs during the 2010-2026 period. The BAT conclusions published under the current IED, present a sound basis for the implementation of most provisions, and provide authorities and operators with a high level of legal certainty.
- **Refer to strictest technically achievable / possible emission limit values in Art. 15(3)** and ensure that permitting considerations are focused on analysing the feasibility of meeting the strictest end of the BAT-AEL range, and demonstrating the best performance that installations can achieve by applying BAT.
- **Maintain the current Annex II list of pollutants to ensure more protective permits.**
- **Bring justice to affected citizens and provide meaningful sanctions:** Legal requirements will only be effective if it is more costly to breach them. The clear enforcement deficit due to non-dissuasive penalties must be remedied. The amount of the fines in Art. 79 should be set up to a minimum 10% of the operator's annual global turnover.
- **Apply IED obligations to livestock installations with more than 150 livestock units (LSU), including cattle.** The level of 150 LSU will only ‘cover’ 12.5% (Eurostat 2020, 10% from impact assessment) of the cattle farms, yet such tiny minority is responsible for 60% of the ammonia and 43% of methane emissions. Adopting a 150 LSU threshold is estimated to provide 5.5 billion euro annually in health and environmental benefits. Weakening to 200 LSU would however reduce the share of covered farms to just 7.4% and an LSU of 300 would mean an insignificant coverage of barely 4.6%. A full permitting regime should be required as of 300 LSU.
- **Strengthen the IED capacity to tackle climate change (Articles 1, 9, and Annex III).** The Council's position should include a clear pathway to ensure the climate neutrality goals are reached e.g., through dedicated and robust provisions in the transformation plans. The Council should also consider amending Article 9(1) so that operators are not allowed to exceed the GHG performance levels of the best performing EU ETS installations. Delete Article 9(1) as fallback.
- **Improve reporting, access to information and justice requirements, via integration of reporting to Industry Portal:** Whenever a reference is made to reporting environmental performance related information pursuant to the IED, an explicit cross link to the Industrial Emissions Portal (2022/0105COD) should be made.
- **Guarantee public participation in permit updates & improve access to justice provisions:** The Aarhus Compliance Committee has found shortcomings in relation to the effective public participation in decision making relating to IED activities. Article 24 (2) should thus explicitly refer to *“reconsideration or updating of permit conditions”*. Article 25 on access to

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justice should refer to any decisions, acts or omissions subject to “*this Directive*” and not be limited to a subset of listed cases.

- **Ensure policy consistency by expanding the concept of Environmental Quality Standards (EQS) to national and international rules.**
- **Maintain the Presidency proposal to improve substitution at source of hazardous chemicals.**

*Additional concrete suggestions and further rationale on the priority points are provided in the Annex to this letter.*

## 2. Review of the Directive on Packaging and Packaging Waste

The EEB welcomes the Commission’s proposal for a Regulation on Packaging and Packaging Waste, notably to deliver on the political ambition to make all packaging reusable or recyclable by 2030 and reverse the trend of ever-increasing levels of packaging waste. Packaging waste has grown by 20% in the last 10 years, exceeding the rate of economic growth. In this context, ambitious waste prevention targets and well-designed reuse systems can bring significant environmental benefits, including reducing emissions as well as resource, energy and chemicals use.

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

- **Waste no time in the negotiations for the packaging regulation to ensure it can be adopted in this parliamentary term.** Extensive preparatory work and stakeholders’ consultation already started in 2019, any efforts to deliberately delay the regulation will create legal uncertainty and further increase levels of packaging waste.
- **Maintain and bolster ambition on waste prevention and reuse** to reverse the historic trend of ever-increasing levels of packaging waste and its associated environmental footprint.
- **Explore the option of dual legal basis for the waste chapter (VII)** in order to allow Member States to pursue the initiatives necessary to achieve the waste prevention targets. Clarify what actions can be taken without conflict with Article 4 on the free movement of goods.
- **Stipulate that the definition of “systems for reuse” must include incentives to return** the packaging. This follows the German approach and recognises that reuse systems are unlikely to deliver environmental savings without an incentive to return.
- **Apply reuse targets to a broader set of sectors**, including dry food retail and detergents, to boost innovation and build on promising existing practices.
- **Separate refill from the reuse targets**, recognising that though refill should be encouraged (refill should count towards the achievement of the waste prevention targets), data on refill is in its infancy, it relies on a different methodology and carries a risk of low environmental performance when refill articles are not reused.
- **Ensure a holistic approach to consumer safety and health by addressing the substances of concern in packaging**, with the aim to enable the disclosure and restriction of substances.

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- **Provide regulatory certainty** by limiting the number of derogations and vague exemptions in the regulation, as well as reducing the number of delegated acts and strengthening enforcement mechanisms. Key aspects such as a negative list of recycling inhibitors have already been extensively discussed with stakeholders and should be included directly in the legislation.
- **Avoid burdening municipalities with mountains of non-recyclable packaging waste by setting collection targets** on packaging formats without clear recycling pathways. However, once packaging has been defined as recyclable at scale with high quality outputs, mandatory collection targets could be set.
- **Realise the potential of standards to drive innovation and efficiency in reusable packaging** and systems for reuse. Without interoperability, reuse systems will be difficult to deploy at scale.
- **Ensure that the minimum criteria for new Deposit Refund Systems (DRS) include an obligation to accept both single use and reusable packaging** to optimise efficiency and investments. Existing DRS systems should have a clear timeline to integrate both single use and reusable packaging modalities.
- **Better utilise the revenues from Extended Producer Responsibility schemes for investments in reuse** infrastructure by creating a dedicated fund for change, building on the experience of the French circular economy law.

### 3. Carbon Removals Certification Framework (Regulation pending)

The EEB regrets that the proposal for the new **Carbon Removal Certification Framework (CRCF)** **greatly undermines the EU's climate and environmental ambition**, and risks having disastrous consequences for our climate, nature, and rural communities.

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

- **Ensure that the framework supports national and EU targets laid down in other EU environmental and climate policies** (such as the LULUCF Regulation and the Nature Restoration Law) to help Member States pursue ambitious climate and environmental action and fulfil their obligations;
- **Prevent the proposal from establishing a greenwashing tool with no real climate action**, and therefore **reject the possibility of using the generated credits as offsets on voluntary carbon markets**. Offsetting would constitute false pretence of climate action, greatly deterring the urgent emission reductions, and risks having disastrous implications for climate and citizens, as repeatedly shown at global level;
- **Acknowledge the scientific fact that improving ecosystem integrity should be regarded as a prerequisite for high-quality removals** in the land sector, vastly increasing the resilience of our land and minimising the likelihood of reversals. **Demand that ensuring highest levels of ecosystem integrity be included as a mandatory sustainability criterion** for carbon removal activities;

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- **Acknowledge that emission reduction efforts should take explicit priority in EU policy, and recognise that the reliance on removals will have a devastating impact on climate,** making the EU fall woefully short of reaching climate neutrality;
- **Exclude emission reductions from this proposal** and avoid sending the false signal, since emission reductions are fundamentally different to removals and should not be certified as such;
- **Ensure that the CRCF will not allow the certification of activities that are environmentally, socially or economically unsafe, may not result in a net removal, or are impossible to monitor,** including soil organic carbon, bioenergy carbon capture and storage (BECCS), and carbon storage in products;
- **Lay down fundamental rules for a robust, reliable, and trustworthy certification framework that have been left unaddressed,** including stringent liability mechanisms in case of reversals, minimum timelines of storage, and requirements for monitoring and reporting, as part of the basic act.

#### 4. Directive concerning urban wastewater treatment (recast)

The EEB welcomed the Commission's proposal for a revision of the Urban Wastewater Treatment Directive that sets the path for the wastewater treatment sector for the next 20 years. However, the proposal has elements that could be strengthened to help Europeans benefit from cleaner water, while ensuring affordability of and access to water and sanitation services. The revised UWWTD should also enable the achievement of other environmental objectives, including those set in the Water Framework Directive.

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

- **Ensure that the expansion of the scope of the Directive** (to cover agglomeration from 1000 p.e.) **allow for the use of well-designed and managed individual systems and decentralised solution** that achieve the same level of protection as centralised collection and treatment;
- **Support the proposed integrated urban wastewater management plans and strengthen them with a legally binding target for sewer overflows.** Encourage the use of the plans as a means to future-proof cities for a changing climate with potential to not only make cities more resilient for increased heavy rain and drought events but also to avoid (huge) costs related to urban flooding. Draw on experience from Member States that have national targets for sewer overflows (despite varying climatic conditions within the country);
- **Strengthen the proposal to minimise remaining sources of untreated wastewater** by requiring monitoring and reporting of sewer leakages and ask the European Commission to develop a target with the aim to minimise the problem;
- **Support the provisions to abate pollution at source and upgrade selected wastewater treatment plants to remove micropollutants,** as well as the extended requirements for selected wastewater treatment plants to remove nutrients;
- **Support the Extended Producer Responsibility (EPR) scheme that would require producers to cover the cost to remove from wastewater harmful substances** related to

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the products they bring to the market. Ensure that the EPR becomes effective by rejecting the exemption for products put on the market below 2 tonnes per year;

- **Support the proposed updates and deadlines as a minimum framework** to bring EU rules on urban wastewater treatment up to date and fit for the next two decades, including the energy neutrality target;

*For more details, see the [NGO analysis of the European Commission's proposal for a revised UWWTD](#).*

## 5. Greening the European Semester

The EEB welcomes discussions on greening the European Semester to deliver on EU environmental, economic and social objectives. Current efforts such as the integration of the Sustainable Development Goals (SDGs) into the European Semester have largely failed and it remains short-term focused. The EU Semester should be aligned with new policy directions that put the environment and social aspects front and center.

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

- **Push for country-specific recommendations (CSRs) to better account for EU environmental and sustainable objectives** and are formulated in a way that makes progress measurable.
- **Better connect economic governance to environment, energy and climate governance** – for example, by steering the phasing out of environmentally harmful subsidies to improve the quality of public finance and free up fiscal space for the just transition.
- **Support the integration of a Social Imbalances Procedure (SIP) into the European Semester** process by complementing and improving existing monitoring frameworks and indicators. This would help detect and address social imbalances early before they turn into prolonged crises.
- To facilitate future evolutions, **the European Semester should be separated from the Stability and Growth Pact and have its own dedicated regulation.**

## 6. Directive on Empowering Consumers for the Green Transition

The EEB welcomed the Commission's proposal Empowering consumers for the green transition. Whilst it contains many important elements, the proposal could be tightened to truly provide the safety net against greenwashing and unfair practices that it intends to. Although officially anchored in consumer law and discussed in the Competitiveness Council, this file has obvious relevance for environmental dossiers and we are therefore including it here as we believe it is highly relevant for members of the Environment Council to be aware of and support an ambitious outcome of the negotiations.

***We therefore encourage Ministers to:***

- **Support a ban of environment- or climate-related neutrality claims.** These types of claims (such as “carbon neutral” or “climate positive”) are factually wrong and are misleading consumers into wrongly believing their purchases have no impact on the environment;
- **Ensure claims related to future environmental performance are better corroborated** by requiring a detailed and realistic implementation plan including intermediary targets (and not allowing to reach them through the acquisition of offsets);
- **Prohibit environmental claims with the effect of promoting fossil fuels.** Activities driving climate change need to be reduced and should not be allowed to be promoted as environmentally friendly;
- **Strengthen the definition of certification schemes** ensuring they meet minimum requirements to make them robust and trustworthy, such as independently developed criteria and third-party verification;
- **Introduce a pre-approval procedure for sustainability labels and sustainability information tools at EU level** which will ensure only ambitious and robust sustainability information is available on the EU market to inform people’s purchase choices;
- **Prohibit early obsolescence practices** since these are both very unfair for consumers as well as extremely environmentally damaging;
- **Support an effective ban of practices preventing repair** or otherwise reducing products’ lifespan.

For more information, see the [NGO Open Letter: Protecting consumers against unfair commercial practices and greenwashing](#)

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. It will also 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,



Patrick ten Brink  
Secretary General, European Environmental Bureau (EEB)

## Annex 1: Full details on the Revision of Directive 2010/75/EU on industrial emissions

- **Reject the extended ‘transition periods’ that delay progress towards the zero pollution targets and put current EU standards into question. Set a maximum 4-year deadline for enforcing improved BAT performance.**

The Swedish Presidency text states (recital 43) that in order to ensure legal certainty, there is a need to have a fixed date by when the provisions should be complied with at the latest. We believe that a firm deadline of maximum 4 years after entry into force should be set. Delaying permit updates by up to 16 years and only referring to revised BREFs published 2 years after entry into force of the revised IED, is not only disrespectful to people expecting progress on industrial pollution reduction but also a waste of efforts and resources put into the elaboration of the IED BREFs during the 2010-2026 period. This significant weakening is putting into question the added value of the revised IED and is to be firmly rejected.

Any transition period should refer to the publication date of the BAT-C that have been already published under the current IED. BREF reviews take in average 6 years from its reactivation to publication. The uptake of the most effective techniques and thus the reduction of harmful pollution based on existing BAT Conclusions would be legally undermined. Listing Art. 15(1) in the transition period will also undermine pollution prevention at source for urban wastewater treatment plants. IED BAT conclusions present a sound basis for the implementation of most provisions and have thus received a positive vote. They provide authorities and operators with the highest legal certainty since known in all EU languages since their publication in the EU official journal. Future BAT Conclusions will anyway be subject to a maximum 4-year implementation deadline pursuant to Article 21(3), a further transition period is thus redundant and legally unsound. Countries wishing to use General Binding Rules (GBR) may be granted a further permit review time provided the GBR provides an equivalent level of environmental and human health protection e.g., the national limits reflect best 10% / mid-point BAT performance levels.

- **Refer to strictest technically achievable / possible emission limit values.**

The compromise Article 15(3) text proposed by the Netherlands and Belgium is considered as reasonable. The counter proposal of Germany – besides referring to “achievable” instead of “possible” strictest permit limits - is to be firmly rejected, especially the reference for consideration of the entire range of emission levels. Such an approach will result in business as usual and implementation complications. It is preferable that considerations are focused on analysing the feasibility of meeting the strictest end of the BAT-AEL range, and demonstrating the best performance that installations can achieve by applying BAT.

- **Reject regulatory backtracking on list of pollutants subject to permitting limits.**

With the cross link in Article 14(1) to Annex II pollutants of the Industrial Emissions Portal Regulation and the deletion of Annex II of the IED, a considerable amount of substance

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groups will simply disappear from permit requirements (more information). Option A: add under Article 14(1) ***“The list of polluting substances of Annex II of Directive 2010/75/EU shall apply for the purpose of this article, pending their inclusion and entry into effect of Annex II of the Portal.”*** Option B: keep IED Annex II.

- **Bring justice to citizens and provide meaningful sanctions.**

Legal requirements will only be effective if it is more costly to breach them. The COM proposal of a compensation right for individuals suffering from human health damages in Art. 79a is the bare minimum and needs to be improved. It should be clarified that a causality link may be presumed from a wide range of information, including but not limited to epidemiological studies and statistical evidence. Member states' legal systems can easily accommodate such a rebuttable presumption. To remedy information asymmetry between affected individuals and operators, the compensation right should allow courts to order disclosure by operators of evidence in their control, once the victim has provided reasonably available facts. The clear enforcement deficit due to non-dissuasive penalties should be remedied. The amount of the fines in Art. 79 should be set up to a minimum 10% of the operator's annual global turnover.

- **Apply IED obligations to livestock installations with more than 150 livestock units (LSU), including cattle. Require a full permitting regime as of 300 LSU.**

The LSU for cattle should not exceed 150 LSU, as proposed by the COM. That level will only 'cover' 12.5% (Eurostat 2020, 10% from impact assessment) of the cattle farms, yet such tiny minority is responsible for 60% of the ammonia and 43% of methane emissions. Adopting a 150 LSU threshold is estimated to provide 5.5 billion euro annually in health and environmental benefits. Lowering such a threshold to 100 LSU would drastically increase those benefits to 7.5 billion. Weakening to 200 LSU will however reduce the share of covered farms to just 7.4% and an LSU of 300 would mean an insignificant coverage of barely 4.6%. The coverage is also just theoretical since the real requirements for the sector are yet to be defined in the Operating Rules in a second step not occurring before 2028, to which industry will also participate. A full permitting regime should be required as of 300 LSU.

- **Strengthen the IED capacity to tackle climate change (Articles 1, 9, and Annex III).**

Whilst a mild improvement on the COM's proposal, the Presidency's text is still too timid and ultimately ineffective in ensuring that the IED effectively contributes to accelerating the decarbonisation of the largest Greenhouse gas (GHG) emitters. The Council's position should include a clear pathway to ensure the climate neutrality goals are reached e.g. through dedicated and robust provisions in the transformation plans. The Council should also consider amending Article 9(1) so that operators are not allowed to exceed the GHG performance levels of the best performing EU ETS installations. Delete Article 9(1) as fallback.

- **Improve reporting, access to information and justice requirements, via integration of reporting to Industry Portal.**

Whenever a reference is made to reporting environmental performance related information pursuant to the IED, an explicit cross link to the Industrial Emissions Portal (2022/0105COD) should be made. Add under Article 5, Article 14(1), and Article 24): *"Information generated under this provision, including the permit conditions in force, shall be comparable at sector and Union level and made available to the public, through direct electronic reporting and integration within the Portal [OP please insert link/ reference to adopted Regulation establishing the Industry Portal] under the shortest technically possible timeline."*

- **Improve public participation & access to justice provisions.**

The Aarhus Compliance Committee has found shortcomings in relation to the effective public participation in decision making relating to IED activities. Article 24 (2) should thus explicitly refer to *"reconsideration or updating of permit conditions"*. Article 25 on access to justice should refer to any decisions, acts or omissions subject to *"this Directive"* and not be limited to a subset of listed cases.

- **Ensure policy consistency with safeguarding Environmental Quality Standards (EQS).**

Article 3(6) on EQS needs to explicitly refer to plans and programmes such as the National Air Pollution and Control Programmes, National Energy and Climate Plans, the World Health Organisation's air quality guidelines and the climate target of 1.5°C under the Paris Agreement. The COM proposal is too restrictive by referring only to what is anyway required by Union Law. Protection should be higher for zones in need of specific protection. The provision ensuring that EQS are not put at risk needs to be improved so to clarify what actions are expected, in particular in relation to substances with very harmful properties.

- **Improve substitution at source of hazardous chemicals.**

The Presidency text proposal regarding the provisions on environmental management systems (EMS -Art 14a (2)) would improve substitution measures to be taken at the source regarding the reduction of use and emissions of hazardous substances, including substances of very high concern/restricted substances, and should be supported. The counter proposal of the German government should be firmly rejected, not only because it would significantly weaken the COM proposal (many environmentally relevant and intermediates substances would be left out) but also because it falls short behind what the German industry is anyway required under national and EU law for the protection of workers.

See also the [letter](#) addressed to the Ministries on 13 February, as a response to the on-going IED co-decision negotiations in the Council Working Party for the Environment.