INCLUDING THE 10 GREEN TESTS

EEB MEMORANDUM TO THE LATVIAN PRESIDENCY

JANUARY 2015
The European Environmental Bureau (EEB) is a federation of over 140 environmental citizens’ organisations based in most EU Member States, most candidate and potential candidate countries as well as in a few neighbouring countries. These organisations range from local and national, to European and international.

EEB’s aim is to protect and improve the environment by influencing EU policy, promoting sustainable development objectives and ensuring that Europe’s citizens can play a part in achieving these goals. EEB stands for environmental justice and participatory democracy. Our office in Brussels was established in 1974 to provide a focal point for our members to monitor and respond to the EU’s emerging environmental policy.
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INTRODUCTION

Latvia takes over the Presidency of the European Union at the start of a new cycle for the Commission and Parliament. Following a year of transition for the Commission and Parliament in 2014 and some resulting interruption of the legislative process, the Latvian Presidency is faced with a number of important issues on its agenda.

Notable among these are the EU Energy and Climate Framework for 2030, which if sufficiently ambitious can send an important signal to the UNFCCC CoP-21 and thereby catalyse progress in the global negotiations; the air package, which if appropriately strengthened offers the opportunity to prevent hundreds of thousands of Europeans dying prematurely from air pollution each year; and the circular economy package, which in turn provides the opportunity for Europe to take a big step towards the zero waste society and tackle Europe’s over-dependency on costly imports of resources while offering multiple opportunities to create new jobs.

Aside from the work on these and other important files, the Latvian Presidency should attempt to set a positive tone for the incoming Commission and Parliament by emphasising the need to put sustainability centre-stage in the next five-year cycle. It is important, during a period in which the EU is participating in global negotiations on a set of universal Sustainable Development Goals, to start discussions on the greening of the Europe 2020 Strategy and a renewed EU Sustainable Development Strategy. The Presidency needs to send the message that taking shortcuts on environmental protection is not a sustainable way out of Europe’s economic difficulties, and that Europe should rather seek to address the issue of competitiveness in a global marketplace through championing innovation and placing itself in the forefront of a global transition to sustainability.

This Memorandum reflects the issues that the EEB would like to see advanced during the Latvian Presidency. It elaborates and expands upon the Ten Green Tests which were prepared in consultation with the EEB Board, which has representatives from 29 countries. These tests will be used to evaluate, at the end of June 2015, the performance of the Presidency in the months to come. While the Memorandum is directly addressed to the Presidency, we recognise that progress depends upon the cooperation of the European Commission, the European Parliament and other Member States. However, Presidencies can often make a difference if they invest their political and technical capacities into the right issues and if there is sufficient political will.

We look forward to engaging in constructive dialogue with the Latvian Government throughout the Presidency and beyond.

Jeremy Wates
Secretary General
TEN GREEN TESTS FOR THE LATVIAN PRESIDENCY

1. **Defend and develop EU Environmental Policies**
   - Insist on full and ambitious implementation of the 7th Environmental Action Programme which was agreed between the three institutions, including by standing up to the Juncker Commission’s anti-environment and deregulation agenda;
   - Call on the Commission to speed up the process of presenting a new proposal for a Directive on Access to Justice, building on and strengthening the 2003 proposal; and once issued, swiftly convene Council working group meetings to make good progress on this directive;
   - Encourage the Commission to make good progress with the preparation of a horizontal EU law for Environmental Inspection;
   - Ensure that work in the framework of REFIT aiming at the reduction of administrative burden will not be misused to lower environmental standards or weaken environmental laws;
   - Support a reform of the EU standardisation system to make it more transparent and ensure effective participation by stakeholders.

2. **Reform trade policies**
   - If put to a vote, reject the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada that was finalised in May 2014 as it is understood to include a highly problematic and fundamentally undemocratic Investor State Dispute Settlement (ISDS) mechanism, which the Sustainability Impact Assessment commissioned by the European Commission advised not to include, and which could expose the EU and national governments to expensive lawsuits for passing environmental legislation;
   - Oppose the inclusion under the Transatlantic Trade and Investment Partnership (TTIP) of an ISDS mechanism, of any type of regulatory cooperation provisions, or other types of provisions which could restrict the present level of environmental and health protection or the freedom of the EU to legislate to protect public health and the environment.

3. **Clean air**
   - Insist that negotiations will continue on the entire proposed air package with a view to strengthening it in line with the objective of the 7th Environmental Action Programme by 2030, i.e. to attain “levels of air quality that do not give rise to significant negative impacts on and risks to human health and environment”;
   - Support ambitious binding emission reduction commitments (ERCs) for 2020, 2025 and 2030, including 2020 levels going significantly beyond those set under the revised Gothenburg Protocol and the 2005 TSAP, with ceilings for mercury included and those for methane to start in 2020; and ensure in particular that the Environment Council remains in full control over negotiating the revised NEC on behalf of the Member States;
   - Support the introduction of EU-wide source control measures to reduce air pollution, with particular attention to medium scale combustion plants, as well as domestic heating, shipping, non-road mobile machinery, and the agriculture sector;
In the case of medium scale combustion plants (MCPs), ensure that emission limit values are aligned with what is achievable by the use of best available techniques (BAT), that the deadline for compliance is brought forward and that the proposed permitting, monitoring and reporting regimes are strengthened.

4. **Fight climate change**

- Ensure that the EU takes global leadership to secure progress in the negotiations towards an international agreement in Paris that will ensure that emission reduction pathways to 2050 are equitable and based upon the latest scientific information on keeping well below a 2°C rise, bearing in mind an emerging consensus that staying below a 1.5°C rise is more likely to be required, as well as upon global equity and justice; and to annul surplus credits from the first commitment period of the Kyoto Protocol;
- Take effective steps to improve the EU Emissions Trading System (ETS), including by taking further the Commission’s proposals for long-term solutions to match the EU ETS with the objectives of at least the 2050 decarbonisation roadmap, and ensure that ETS revenues are used to invest in climate action.

5. **Reform energy policy**

- Ensure that the upcoming Communication on Energy Union as well as the legal proposal to implement the Commission’s Investment Package and the Council discussions on this will give a central role to energy savings and sustainable renewable sources and expedite the required phase out of nuclear and coal;
- Support an ambitious legislative proposal to revise the EU Energy Labelling Directive and combine it with a strong Communication on the next Working Plan for 2015-2017 regarding the further implementation of the Ecodesign Directive;
- Ensure that a political agreement on biofuels and ILUC is reached that leads to a significant improvement of the Council’s first reading position by including ILUC factors in both the Renewable Energy Directive (RED) and the Fuel Quality Directive (FQD) for compliance purposes, not only reporting, support a cap on unsustainable land-based biofuels close to current consumption levels and set some strong safeguards for ensuring the sustainability of advanced biofuels;
- In the insufficient 2030 framework for climate and energy, support a limit on the share of unsustainable bioenergy within the target for renewable energy and the introduction of comprehensive carbon accounting.

6. **Biodiversity**

- Support a debate in Council that will underline the importance of the EU to double its efforts towards meeting the 2020 Biodiversity Targets as set out in the Biodiversity Strategy;
- In particular, send a strong signal to the European Commission that the planned fitness check of the Birds and Habitats Directive must be carried out objectively, be evidence based and that its conclusions should not be pre-judged as in the mandate letter of Commissioner Vella.
7. Circular Economy

- Insist that discussion in the Council will continue on the basis of the Commission proposal for a Circular Economy Package to ensure alignment of the EU product and waste policies with the 7th EAP and the Resource Efficiency Roadmap;

- Ensure that a 40% resource efficiency target for 2030, calculated as raw material consumption per GDP, is complemented by a more detailed resource efficiency dashboard at European, national and as possible priority sectors levels, encompassing quantitative indicators such as total material consumption, CO2, water and land use footprint;

- Grasp the potential of product policy, notably by supporting an ambitious Communication on the next Working Plan for 2015-2017 regarding the further implementation of the Ecodesign Directive. This should put special focus on creating the proper conditions for a circular economy by supporting in particular the development of minimum requirements for durability, reparation and recyclability of products, including the de-toxification of material as a crucial enabler for reusing and recycling of valuable components and materials cost-effectively;

- Make sure that the “Zero Waste Programme for Europe ” associated with the “Towards circular economy” Communication is not restricted to eliminating waste to landfill, but also addresses the waste to energy question and integrates provisions to avoid waste incineration that is not compatible with the material reuse and recycling.

8. Waste policies

- Insist that negotiations in Council will continue on the basis of the existing Commission proposal and support renewed ambition for a new waste framework policy aligned with the waste treatment hierarchy, notably the introduction of a binding waste prevention target on food waste, specific objectives for reuse and preparation for reuse activities, and a minimum 70% recycling target for municipal solid waste by 2030, calculated on a unique harmonised methodology at European level;

- Ensure the systematic introduction of economic instruments in all waste management plans to be notified to the Commission to support a proper implementation of the waste policy, such as reinforced extended producer responsibility, pay-as-you-throw schemes and the taxation of landfill and incineration of untreated waste;

- Support an update of the packaging and packaging waste Directive targets, making the best of this integrated product and waste legislation, boosting the overall level of recycling to over 80% by 2030 and revising the old-fashioned essential requirements set in 1994 to enhance prevention of over-packaging and incentivise reusable solutions;

- Support a ban on landfilling and incinerating of all the recyclable and compostable waste by 2020, and set a staged target on the maximum amount of residual waste per capita per year to be landfilled or incinerated.

9. Protect the public from hazardous chemicals

- Encourage the Commission to step up its work towards achieving the 7EAP’s goals in relation to chemicals by developing new EU tools to achieve the non toxic environment goal, for example to address nano materials, to develop and publish an endocrine-disrupting chemicals (EDCs) package and to extend information requirements for all carcinogens, mutagens and reproductive toxicants regardless of their production volume;
• Ensure that the Council conclusions on the REACH EDCs review are adopted under the Environment Council as opposed to the Competitiveness Council and acknowledge that EDCs cannot be adequately controlled and therefore need to be phased out as soon as practicable;
• Demand the Commission to consult with the European Council and the European Parliament on any attempt to modify the REACH authorisation process as the simplification and streamline proposal is not an implementing act but a major change of the REACH legal text;
• Insist that a European Commission proposal to increase transparency on nanomaterials in the EU to citizens should develop an EU wide register, the only valid tool that would close the knowledge gap of nanomaterials used, manufactured and imported in the EU;
• At EU level, promote further actions to address mercury including:
  ➢ Banning the export of mercury added products which are not allowed in the EU market;
  ➢ Phasing out mercury in dental care since safe mercury-free alternatives are available;
  ➢ Adopting ambitious BAT conclusions with Associated Emission Levels (AELs) in the new Large Combustion Plant Best Available Techniques Reference Document that require a significant reduction in emissions in the sector, since this is the largest source of mercury emissions in the air in Europe and globally;
• At global level, continue the EU leadership role on activities related to preparation for ratification and implementation of the Minamata Treaty on Mercury, and the collaborative work with NGOs.

10. Sustainable Development
• Building on the European Council conclusions of October 2012 on the outcome of the Rio+20 Conference, provide input to the review of the Europe 2020 strategy and seek a review of other relevant EU and national policies, strategies and programmes with a view to strengthening their environmental content, and maintain the pressure on the Commission to develop a new Sustainable Development Strategy, with a long term vision and as guiding framework for the EU2020;
• Strengthen the environmental component of the European Semester, including by adopting progressive conclusions in the Environment Council in advance of the forthcoming Annual Growth Survey;
• Ensure that the EU plays a progressive role in the negotiation of the post-2015 framework, including the drafting of sustainable development goals which put sustainable consumption and production at their core, and ensure that environmental sustainability is central to all external dimension policies funded by the EU budget.
1. EUROPEAN COUNCIL

1.1 EUROPE 2020 STRATEGY AND EU SUSTAINABLE DEVELOPMENT STRATEGY

With the Latvian Presidency following the arrival of a new Commission and Parliament, and coinciding with the negotiations towards global sustainable development goals, it is a timely moment to take a fresh look at the broad strategies which guide Europe’s model of development and to assess to what extent they are consistent with a path towards sustainability.

Europe’s most prominent high-level political strategy, the Europe 2020 Strategy on competitiveness and growth, has some significant elements relating to environmental sustainability. In 2011 and 2012, the Strategy was given shape through a series of Flagship Initiatives, EU budget proposals, the Annual Growth Surveys, Semesters, National Reform Programmes and national budget consolidation plans. At the same time, the worsening economic outlook and continued pressure on the Euro focussed political attention on budgetary discipline at the expense of wider economic and sustainability issues. On the positive side, the last Commission brought forward a number of political strategy papers on resource efficiency, biodiversity and ecosystems, climate and energy and transport which, if followed through with decisive action, will help put the EU on a clear pathway to a greener economy.

It is essential now that ongoing efforts to reduce deficits in government budgets will support these broader political strategies and especially the political instruments that underpin them. In particular, Member States should agree to an ambitious reform of their tax codes, moving taxation away from labour to resource consumption and pollution. One specific example of a fiscal reform which would yield considerable economic and environmental benefits and which could be promoted through the European Semester would be the removal of tax exemptions for company cars, which could save some €54 billion per year according to a Commission study. In addition to this, where existing policies such as the Water Framework Directive already require this, the introduction of pricing of resource consumption should be further accelerated.

Together with our other core partners in the Spring Alliance (Social Platform, European Trade Unions Confederation, CONCORD), the EEB will continue to push for Member States to agree, with strong involvement of civil society organisations, on National Reform Programmes that have clear environmental and social benefits.

Notwithstanding the possibility and indeed the necessity to achieve more under the Europe 2020 Strategy, it can hardly be considered to be a sustainable development strategy, given its clear focus on competitiveness and growth and lack of an external dimension. The fact that the growth is supposed to be smart, sustainable and inclusive does not make Europe 2020 a sustainable development strategy. In any case, the EU already has an official Sustainable Development Strategy (SDS).

Unfortunately, the EU SDS has never enjoyed the same level of prominence or priority as the Europe 2020 Strategy. Adopted in 2001, the SDS was reviewed and renewed in 2006, with a further review being carried out in 2009. The European Council was due to take a decision by the end of 2011 on when a comprehensive review should be undertaken. In fact, it was in October 2012 that the European Council returned to the issue.

The outcome of the 2012 UN Conference on Sustainable Development (Rio+20) provided external reasons to review and strengthen both the Europe 2020 Strategy and the EU SDS.
Its main outcome document, ‘The Future We Want’, states in paragraph 98 as follows: “We encourage regional, national, subnational and local authorities as appropriate to develop and utilize sustainable development strategies as key instruments for guiding decision-making and implementation of sustainable development at all levels...” Having endorsed such a recommendation, it would be to say the least odd for the EU to neglect its own sustainable development strategy.

The European Council did in fact respond positively to the Rio outcome in its conclusions of 25 October 2012 under the Cyprus Presidency. These broadly welcomed the Rio outcome and reaffirmed the “undiminished resolve of the EU and its Member States to an ambitious follow up to Rio+20 and to set in motion actions and initiatives to move forward and fully operationalize and implement all the commitments in “The Future We Want” at EU and Member States level”. The conclusions also call for the SDS to be reviewed “as soon as possible, at the latest in 2014” and for the commitments in the Rio+20 outcome document to be implemented through the SDS and the Europe 2020 Strategy. The conclusions also stress “the need to consider and review, as deemed necessary and on a case by case basis, all other relevant EU and national policies, strategies and programmes, and to implement through them the Rio+20 outcomes”.

Under the Irish Presidency, the European Council reaffirmed in June 2013 the importance of promoting an inclusive and equitable green economy in the context of sustainable development and poverty eradication through Europe 2020 and other relevant policies, in particular the EU Sustainable Development Strategy, mentioning in this context the need to respect planetary boundaries and tackle inter alia unsustainable use and management of natural resources, biodiversity loss and climate change.

Regrettably, the previous Commission resolutely ignored the Council’s call for a review of the SDS. It did however initiate the mid-term review of Europe 2020 by issuing a stock-taking report in March 2014 and then launching a public consultation in the summer which concluded in the autumn. However, the political content of whatever proposals come out of the review process is in the hands of the new Commission. Such proposals are expected in early 2015.

There were hopes that a new Commission might bring a new impetus to sustainability issues but these were swiftly dashed when President-elect Jean-Claude Juncker published his ‘Political Guidelines’ in July 2014 containing virtually no reference to environmental or sustainable development issues other than climate change. Juncker’s more detailed plan for the new Commission, including mandates for the new Commissioners, was unveiled in September 2014 and confirmed that a serious downgrading of environmental policy was envisaged on a scale not seen for decades. Under pressure from the Parliament and civil society organizations, a sustainability component was belatedly added into First Vice-President Timmermans’ mandate, though the first actions of the new Commission suggest that this was simply a ploy to gain the Parliament’s approval and that there is no real intention to put the EU on a sustainable path (see also section 3.1 below). Thus the role of the Member States in general and the Presidency in particular in ensuring that the principle of sustainable development enshrined in Article 3(3) of the Treaty on European Union is upheld will be all the more important.

The Latvian Presidency should maintain the pressure for renewal of the SDS, together with a review and revision of the Europe 2020 Strategy, to take account of the outcome of the Rio Conference and also having regard to the ongoing negotiations on a set of universal sustainable development goals which a revised SDS should serve to reflect and implement. Given that the Europe 2020 Strategy is likely to remain the dominant strategy for the time being, updating the SDS alone would not be sufficient. The Presidency should also press for a systematic review of
other policies, strategies and programmes in the light of the Rio outcomes as referred to in the 2012 October Council conclusions in order to guarantee policy coherence. It should also seek clarification on how Vice-President Timmermans will deliver on his sustainability mandate, as this was part of the balancing of the ‘package’ prior to the approval of the new Commission by the Parliament and Council.

The EEB therefore calls upon the Latvian Presidency to:

- Ensure that the Council rejects any proposed Commission Work Programme for 2015 which does not adequately reflect environmental considerations and thus flouts the principle of sustainable development in the Treaty;
- Call on the Commission to revise its Political Guidelines so as to fully integrate environmental sustainability considerations and to provide, through Vice-President Timmermans’ sustainability mandate, a strengthened role for environmental sustainability considerations in its internal impact assessment process;
- Urge the incoming Commission to develop a new EU Sustainable Development Strategy as the overarching strategic framework guiding Europe’s future, not least to ensure effective regional implementation of the sustainable development goals currently being negotiated;
- Building on the European Council conclusions of October 2012 on the outcome of the Rio+20 Conference, provide input to the review of the Europe 2020 strategy and seek a review of other relevant EU and national policies, strategies and programmes with a view to strengthening their environmental content to take account of the Rio+20 outcomes and the anticipated global sustainable development goals;
- Press for the inclusion in the Europe 2020 Strategy of a resource productivity target of 40% by 2030;
- Once the Commission issues its proposals for the mid-term review of the Europe 2020 Strategy, coordinate a robust and progressive reaction to these from Member States which puts environmental sustainability at the centre of the EU’s development model;
- Promote environmentally innovative national reform programmes, amongst other means through systematic application of the guidelines with regards to removal of environmentally hazardous subsidies, environmental tax reform, green national accounting and green public procurement.

1.2 **TOWARDS A STRONGER CLIMATE AND ENERGY POLICY**

With pressure building up in the run up to the 2015 COP in Paris, a new EU climate and energy policy with a 2030 time horizon was among a number of issues that topped the political agenda in 2014. The European Council finally adopted a position on the Commission’s proposal of a 40% reduction in domestic GHG emissions by 2030, an effectively non-binding EU wide renewables target of 27% and, belatedly following a review of the Energy Efficiency Directive in June 2014, an energy savings target of 30%, the latter being based on grossly inflated cost estimates.

Although the Barroso Commission proposal would already have been insufficient to having a realistic chance for the world to stay well below an average 2 degree rise in temperature, the Council position was even more sobering. Although it did agree to a 40% GHG reduction target as proposed by the Commission, it came at a high price, in particular for the Union’s policies on renewables and efficiency where it opposed the introduction of sufficiently ambitious binding
targets at national level. Furthermore, it sent a political signal to the new Juncker Commission that if the latter were to consider proposing something different to what the Council conclusions stipulate at this point, it could only do so after receiving unanimous support in another Council meeting.

The Juncker Commission since then has decided to not make any legal proposals for a new Climate and Energy policy for 2030 before the COP in Paris, other than further reforms to the ETS. Instead it has announced a Communication on Energy Union and on governance which it intends to publish soon in 2015.

Although the initiative on this issue during the Latvian Presidency lies primarily with the European Commission, the Presidency still has an opportunity to set an agenda that will allow for an upwards revision of the EU’s GHG reduction target in the run up to Paris, to keep the door open to a new EU climate and energy policy built on three sufficiently ambitious legally binding targets for GHG, energy savings and renewables, and to reform two key elements of existing climate and energy policy, the ETS and biofuels.

The EEB therefore calls upon the Latvian Presidency to:

- Play a leadership role to ensure that progress in the negotiations towards an international climate agreement draws from the latest scientific information to ensure that global warming is limited to well below a 2°C rise, bearing in mind an emerging consensus that staying below a 1.5°C rise is more likely to be required, and to solve the issue of surplus credits from the first commitment period of the Kyoto Protocol;
- Seek opportunities to build support for three legally binding targets that are consistent with staying below a 2°C rise, namely greenhouse gas (GHG) emissions reductions of at least 60%, end-use energy savings of at least 40% and at least 45% of energy coming from sustainable renewable energy by 2030 in line with achieving emissions reductions of at least 95% and sourcing most of the EU’s energy from renewables by 2050;
- Take effective steps to rescue the EU ETS, including adopting a long-term solution to match the ETS with the objectives of the 2050 decarbonisation roadmap, and ensure that ETS revenues are invested in climate action;
- Request the Commission to prepare measures to eliminate black carbon in the EU by 2020;
- Prevent the use of the most climate-damaging biofuels by ensuring a political agreement that limits their contribution to the 10% target close to current consumption levels, address indirect land use change (ILUC) emissions by properly accounting for them when calculating carbon footprints and set some strong safeguards for ensuring the sustainability of advanced biofuels.

1.3 REFORM TRADE POLICIES: TTIP AND CETA

Amidst calls from leaders such as Cameron and Merkel to speed up negotiations on the one hand and an ever growing public opposition on the other hand (illustrated by a self organised European Citizens Initiative against TTIP and CETA gathering over 1 million signatures in a record time of two months), negotiations on a proposed Trans-Atlantic Free Trade Agreement (TAFTA), also referred to as a Transatlantic Trade and Investment Partnership (TTIP), are progressing at a very slow pace.
Unlike other trade negotiations, focus in these negotiations is "regulatory issues and non-tariff trade barriers" which is also the main reason why large sections of society are concerned about the negotiations. What is a “trade irritant” to a firm that operates in different markets can at the same time be a vital legal safeguard for consumer and environmental protection for citizens. The purpose of these negotiations therefore to remove these ‘trade irritants’ in order to facilitate trade, at its core conflicts with the democratic principle that those living with the results of regulatory standards – citizens of our countries – should be able to set those standards through democratic process, even when doing so results in divergent standards that businesses may find inconvenient.

The EEB shares the widespread concerns about the possible inclusion of a number of mechanisms into this agreement which would drastically reduce the regulatory space of the EU to continue developing public interest policies including environmental policies.

First of all, a potential agreement between the United States and EU must not include an investor-state dispute settlement (ISDS) mechanism in whatever shape or form. Investors should not be empowered to directly challenge sovereign governments over public interest policies in off-shore private tribunals typically comprised of three private sector attorneys, skirting the well-functioning domestic court systems and robust property rights protections in the United States and European Union. The inclusion of such extreme provisions in prior trade and investment deals has enabled powerful interests, from tobacco companies to corporate polluters, to use investor-state dispute resolution to challenge and undermine consumer, public health and environmental protections. Investor-state tribunals have ordered taxpayers to compensate foreign corporations with billions of dollars for the domestic, non-discriminatory enforcement of such protections. Especially the last 10 years has seen the number of such cases increase significantly. If such an ISDS were to be included in the 4 major bilateral trade deals that are currently in the pipeline (TTIP, TPP, US-China, EU-China) 70% of global foreign direct investment would be covered by ISDS from 20% today. It would be hard to overstate the negative implications this would have for the ability of governments to continue to act in the public interest.

To avoid such overreaching procedural and substantive investor privileges, greater than those afforded to domestic firms in either the United States or the EU, any deal must exclude investor-state dispute resolution. It is noteworthy that an increasing number of countries, including Australia, Indonesia, Brazil and South Africa are seeking to end such provisions in bilateral treaties they are party to.

Another problematic element is a proposal for regulatory cooperation which foresees the development of a new system of governance and mechanisms that would give undue influence to industry on both sides of the Atlantic on how regulations are written. In addition to this, the Commission is considering this to be an open ended agreement with the option to add new elements to the deal through a fast track procedure, for example on issues that were deemed too controversial to include in the first round with public concern being as high as it is today.

Whereas the EU-US negotiations are at a relatively early stage, negotiations on a free trade agreement between the EU and Canada (CETA) are said to have been concluded at the beginning of the Italian Presidency and the text is understood to include a provision on investor-state dispute resolution. The EEB believes it is therefore essential that this agreement will be rejected by Member States and the European Parliament once it is published for approval.
The EEB therefore calls upon the Latvian Presidency to request:

- EU negotiators to provide full public access to all negotiating documents, and to ensure that a comprehensive Sustainability Impact Assessment is rapidly finalized and used as a basis for further negotiations, including a decision on whether to proceed with the negotiations at all;
- The European Parliament and EU Member States to firmly reject the recently agreed CETA deal with Canada which is understood to include an Investor State Dispute Settlement mechanism;
- The European Commission to work to ensure that any TTIP agreement excludes mechanisms for regulatory cooperation, investor state dispute settlement, fast track ratification as well as deeper forms of regulatory cooperation in the field of energy, climate, chemicals, agriculture and food, and other areas where environmental policy risks to be weakened;
- The European Parliament and Member States to stand ready to reject a final TTIP deal should the Commission fail to exclude any of the above contentious issues.

1.4 EFFECTIVE FOLLOW-UP TO RIO+20

While the outcome of the 2012 United Nations Conference on Sustainable Development, known as Rio+20, was widely regarded as a disappointment, the Conference did create a number of opportunities for making further progress.

One of these was the process to develop a set of sustainable development goals (SDGs). An Open Working Group (OWG) was established to do the preparatory work, which had 13 meetings for the drafting of Sustainable Development Goals (SDGs). The outcome of the OWG’s work, totally integrated in the Synthesis Report of the UN Secretary General, will now be negotiated and the outcome will be adopted by the UN General Assembly (UNGA) in 2015. A high level political forum on sustainable development (HLPF) was established to replace the Commission on Sustainable Development and will be responsible for the follow up, implementation and review of the Post2015 Sustainable Development Agenda (partly under the auspices of UNGA, and under the auspices of ECOSOC). The first session of the new United Nations Environment Assembly (UNEA) was held in 23-27 June 2014, and the agreements made need to be integrated fully in the EU policies. Last but not least, the Ten-Year Framework of Programmes for Sustainable Consumption and Production (10YFP for SCP) is taking shape, with concrete programmes and funding, where the EU also plays a crucial role. This needs to be concretised at European level, but also by supporting SCP implementation in developing countries, like through the Switch-Asia programme.

Being actively involved in the process, the EEB is becoming more and more concerned about the weakening of the environmental dimension in the SDG process, as the “traditional” development agenda is getting dominant. Putting HLPF mainly under ECOSOC structures will imply that trade and development ministers do the negotiations, while Ministers representing environmental and other relevant policy areas will be less actively involved. Also the modalities for civil society participation are still unclear and to be fought for.

The EEB stresses that the universality of the Post-2015 Sustainable Development Agenda means to set targets and timetables for Europe too, including accountability and review mechanisms. Those principles, objectives, targets and timetables should also be the basis for the Europe 2020 strategy in the long term as well as the review and renewal of the SDS, so they
are compatible and coherent with the commitment to implement the future SDGs (see section 1.1 above).

The elaboration of any future development goals should be based on recognition of and respect for planetary boundaries and should focus more on redistribution of wealth, opportunities, labour and use of natural resources. That means implicitly to start a discussion about limits in absolute use of energy and natural resources for the “over-consumers”. Europe has a special responsibility here: firstly to take the initiative to set such targets for its own economies, but also to show leadership in showing that achieving prosperity and well being is possible within the limits of a fair share of the planet’s carrying capacity. Accountability and review of the future SDGs is crucial for achieving the targets. A dashboard of indicators, focusing on several targets, has to guide policymaking, instead of solely the focus on growth in GDP.

The EEB welcomes the establishment of the HLPF and underlines the importance of it being given adequate authority and resources, with a board and a well funded secretariat and active participation modalities for the nine major groups and other stakeholders.

The role of the EU in securing a positive outcome to the Post-2015/SDG process will be critical. In this regard, the EEB welcomes a number of positive elements in the Council conclusions adopted under the Italian Presidency in December 2014, notably the emphasis on the universality of the agenda and the recognition that all countries should promote policy coherence for Sustainable Development at all levels, which needs to be reflected in the EU policies. Nevertheless the conclusions are still very vague and there are no clear commitments on how this will be realised; on the contrary, until now we see a weakening of the environmental and social concerns in favour of the own jobs and growth agenda.

The Latvian Presidency will now have the task to negotiate the synthesis report of the UN Secretary General, to agree on the Framework of the Post-2015 Sustainable Development Agenda, for an ambitious Rio+20 follow-up, building upon the positive conclusions of the Cyprus Presidency two years earlier (see section 1.1 above), and the recent council conclusions under the Italian Presidency. It should seek to ensure that the EU, as well as renewing its commitment to sustainable development through domestic actions on all goals and targets, promotes a strong pro-sustainability agenda though its active participation in the international follow-up processes.

The EEB therefore calls upon the Latvian Presidency to:

- Ensure that the EU plays a progressive role in the various fora responsible for the Rio+20 follow-up process, inter alia by:
  - Engaging in the process of the negotiations of a new framework on Post2015 and sustainable development goals with a view to producing goals that are universal, ambitious, concrete and measurable, and that address the need to substantially reduce over-consumption by the developed world and limit the environmental impact of the fast-growing emerging economies so that the poorest countries of the world may realise their right to develop;
  - Being fully engaged in the realisation of the first UNEA outcomes on European level;
  - Promoting the circular economy concept which recognizes the developed world’s (including Europe’s) responsibility to move swiftly to living within its ecological footprint, based on recognition of planetary boundaries and resource constraints and the principle of equity;
- Ensuring civil society participation, transparency and accountability as integral components of sustainable development in various contexts, including in UNEP/UNEA and in the HLPF, as well as through strengthening the international legal framework promoting Principle 10 of the 1992 Rio Declaration;
- Make a start on governance and policy structures for the future implementation of the SDGs.
2. ENERGY AND TRANSPORT COUNCIL

2.1 TOWARDS STRONGER CLIMATE AND ENERGY POLICIES

(See also section 1.2.)

Energy savings and the sustainable use of renewable energy must be prioritised in EU strategies in order to achieve the objectives of decarbonisation, security of supply and competitiveness. The scenarios developed in the EU Energy Roadmap for 2050 all show that energy savings and large increases in renewable energy will play a major part in reaching the EU’s commitment to reducing greenhouse gas emissions to 80-95% below 1990 levels in 2050 while lacking in ambition as they only assess the lower end of this spectrum. While some Member States have demonstrated remarkable success in increasing renewable energy use, the progress is more modest in others. Moreover, with half of the renewable energy coming from biomass which is increasingly likely to lead to higher emissions within the timeframe relevant to stopping climate change, measures will need to be taken to limit the overall use of biomass for energy purposes and ensure that only those types of biomass are used which lead to a progressive and ongoing reduction in emissions. As far as energy efficiency is concerned, a vast potential to reduce energy consumption remains untapped in particular in the field of EU product policies.

Although the Commission is not planning to prepare legal proposal on a 2030 Climate and Energy Policy, it will be publishing during the Latvian Presidency a Communication for a Strategic Framework for the Energy Union which is generally expected to be setting out the new Commission’s vision for new policy proposals that will most likely be published in 2016. This provides an opportunity for the Latvian Presidency to organise a debate on this in the Council and provide input to ensure that energy savings and renewables are given the highest priority, push back on expensive, obsolete and dangerous technologies like nuclear or avoid a frenzy for unconventional domestic fossil reserves such as shale gas. The importance of this latter point was underlined in a recent publication in Nature (‘The geographical distribution of fossil fuels unused when limiting global warming to 2°C’) which firmly places a further exploration of unconventional shale among fossil reserves that should not be touched.

The EEB therefore calls upon the Latvian Presidency to:

- Ensure that the EU prepares to move beyond the current level of ambition of at least 40% of domestic greenhouse gas emission reductions by 2030 as agreed in the European Council in October 2014, in order to put the EU in line with reaching emissions reductions of at least 95% by 2050;
- Encourage the Commission to move forward in preparing a robust and adequate legal framework to deliver the EU wide targets for renewable energy and energy efficiency by 2030, allowing and encouraging Member States to go beyond the unambitious targets agreed in the European Council in October 2014;
- Ensure that measures to put the use of bioenergy on a sustainable track in the 2030 framework for climate and energy are included by limiting the share of bioenergy within the target for renewable energy and by introducing comprehensive carbon accounting for all bioenergy;
- Take effective steps to rescue the ETS by ensuring that negotiations on the Market Stability Reserve will strengthen the Commission proposal and turn it into an effective step towards structural reform, including by proposing long-term solutions to match the
EU ETS with the objectives of the 2050 decarbonisation roadmap, and ensure that ETS revenues are used to invest in climate action;

- Support an ambitious legislative proposal to revise the EU Energy Labelling Directive and combine it with a strong Communication on the next Working Plan for 2015-2017 regarding the further implementation of the Ecodesign Directive. By reviewing and strengthening minimum energy performance standards (MEPS) in existing product group specific regulations and by investigating some new mass-market products, the full potential of energy savings for consumers can be availed of;
- Prevent the use of the most climate-damaging biofuels by ensuring that a political agreement with the European Parliament will limit their contribution to the 10% target close to current consumption levels, address indirect land use change (ILUC) emissions by properly accounting for them when calculating carbon footprints and set some strong safeguards for ensuring the sustainability of advanced biofuels;
- Do not allow shale gas, the exploration of which comes with high environmental and economic risks, to become a major distraction from more effective climate and energy strategies such as energy savings and renewables;
- Ensure that priority energy infrastructure projects respect the EU’s climate objectives.

### 2.2 BIO-ENERGY

Bioenergy can play a role in mitigating climate change by replacing fossil fuels, but it can also be a source of emissions and cause displacement of biomass use in other sectors. Whether the use of bioenergy – in transport, electricity and heating – contributes to efforts to combat climate change has become a vital question for energy policy in Europe.

Biomass from agriculture and forests is already a major source of renewable energy and will make up more than half of the renewable energy used in the EU by 2020 and almost the entire 10% target for the transport sector. The low level of ambition for climate and energy targets in 2030, notably in the case of renewable energy, means that even more scrutiny on the kind of renewables that will be supported is needed. In the meantime, it is also absolutely crucial to finalize the pending legal review on ensuring the sustainability of biofuels towards the 2020 targets.

The Renewable Energy Directive only sets one target for specific sectors or technologies: a 10% share of renewable energy in the transport sector to be achieved by all EU Member States by 2020 (Article 3.4). Although this target can also be met by increasing the number of electric cars on the road or using renewable electricity in railways, in practice the target acts as a major driver for increased biofuels production. This was confirmed by National Renewable Energy Action Plans, according to which Member States plan to meet 9.5% of their transport target with biofuels. 92% of these are expected to be from crop-based feedstocks.

The increased demand for biofuel crops is pushing agriculture into previously unfarmed land — often at the expense of forests, peatlands and other carbon-rich habitats and local communities — causing 'indirect land use change' (ILUC). Converting this land into fields and plantations causes millions of tonnes of carbon to be emitted into the atmosphere, wipes out rich and fragile biodiversity, exacerbates land-grabbing in developing countries, evicts local communities and
impacts food prices globally. Many scientific studies show that when ILUC emissions are factored in, some biofuels can actually increase emissions compared to fossil fuels\(^1\).

If we are to be sure that the biofuels promoted in the EU actually contribute to the fight against climate change, the current policy needs to be adjusted to include a proposal that adequately addresses ILUC. Under the sustainability criteria for biofuels, there is a list of “no go areas” (high biodiverse grasslands, etc) and a minimum emission threshold requirement but this only addresses direct emissions.

After a long delay\(^2\), the Commission finally published a proposal in October 2012 to tackle this issue. However while it was supposed to propose a correct methodology for ILUC, it failed to do so for the purpose of assessing compliance with the EU’s sustainability criteria and proposed a cap on food-based biofuels set at 5%. Serious improvements were therefore needed during the co-decision process to ensure that the EU stops subsidising biofuels that exacerbate climate change and cause other environmental damage.

Following adoption in the Parliament of its plenary position in first reading which maintained the ILUC methodology in the sustainability criteria and that set a cap at 6% for all land based biofuels and some incentives for next generation biofuels coupled with some environmental safeguards, Council only came to a common position under the Greek Presidency thereby opening the door to a second reading. This position only got officially approved several months later (causing a further delay in that file) on 9 December 2014 by the Energy Council. The official second reading is set to start with the January Plenary of the Parliament.

The Council first reading position proposes increasing the limit on food based biofuels to 7%, and would lead to more deforestation, which risks releasing up to 400 million tons of CO2 in the atmosphere. It also effectively rejects robust and uniform accounting for ILUC emissions from biofuels production by including a range in the ILUC factors for reporting purposes and additional weak wording around the science on ILUC.

For the use of solid biomass for energy, more and more scientific studies demonstrate that the assumed carbon neutrality of all biomass is flawed and that the growing demand for biomass is exceeding the limits of EU’s own sustainable supply. The EU nevertheless still lacks any kind of regulation to guarantee sustainable use of biomass for energy. Especially in the case of biomass from forests, a long time delay and severe uncertainties are related to the re-sequestration of carbon released in the burning of wood.

A recent study commissioned by the EEB estimates that the use of wood energy as predicted by the Commission by 2030 creates annual emissions between 100 – 150 Mt CO2eq that currently go ignored. Ignoring the ‘carbon debt’ created by burning of woody biomass means that real GHG savings are not really achieved within the time frame of the EU’s climate targets and puts the credibility of EU’s GHG savings target at stake.

Unsustainable use of bioenergy is constantly increasing across the EU. Subsidies for co-firing of biomass in old coal power plants leads to inefficient use of biomass that prolongs the life time of coal power plants and makes their use more profitable. The share of imported biomass keeps

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According to the Renewable Energy Directive, the Commission should have come with a proposal on ILUC and if appropriate a legislative proposal containing a methodology to tackle the issue.
growing with biomass imported from areas with insufficient regulation of forest management and with a risk of conversion of forest into plantations.

In the EU, use of more sustainable biomass feedstocks like agricultural residues and waste has been increasing slowly and the demand focuses on agricultural land and forests, already under increasing pressure. According to the studies commissioned by the EEB, the potential of additional land in the EU that could be sustainably cultivated with energy crops and wood directly from forests that could be used for energy with low environmental risks is significantly less than the predicted demand of the EU in 2030.

The EEB therefore calls upon the Latvian Presidency to:

- Ensure that a political agreement on ILUC and Biofuels is reached that leads to a significant improvement of the Council’s first reading position and contains important elements of the European Parliament first reading position. This agreement should include ILUC factors in both the Renewable Energy Directive (RED) and Fuel Quality Directive (FQD) for compliance purposes, not only reporting, support a cap on unsustainable land-based biofuels close to current consumption levels and set some strong safeguards for ensuring the sustainability of advanced biofuels;
- Put pressure on the Commission as part of the 2030 climate and energy framework to propose measures to limit the demand of bioenergy in line with EU’s sustainable supply as and to ensure that only the use of biomass with low environmental risks and climate impacts is incentivized by EU policies.

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3 INAS study on the sustainable potential for forest biomass in the EU and IEEP study on Space for Energy Crops in Europe
3. ENVIRONMENT COUNCIL

3.1 DEFEND AND DEVELOP EU ENVIRONMENTAL POLICIES

The first actions by the Juncker Commission after taking office on 1 November 2014 did little to address the widespread concern that environmental protection was facing an unprecedented attack from the new Commission (see section 1.1 above). On the contrary, the failed attempt by the new Commission to scupper a deal on measures to reduce pollution of plastic bags and the announcement in the proposed Commission Work Programme (CWP) for 2015 of the intention to withdraw two very recently tabled pieces of environmental law, the air and the waste packages, as well as the almost complete absence of environmental sustainability as such in the CWP leaves little room for doubt on the Commission’s intention.

The Italian’s Presidency response to the potential withdrawal of air and waste during the Environment Council on 17 December was an important political signal that now needs to be followed up by a more formal response by the European Council, just as the European Parliament is adopting a resolution on the matter.

This lack of action towards sustainable development and effectively tackling the ecological crisis Europe is facing compares poorly with the energy and speed with which the Juncker Commission is taking measures to deregulate. Symbolically, the re-appointment of Mr Stoiber as special advisor on ‘better regulation’ signals that at least when it comes to the Barroso Commission’s ‘better regulation’ the principle of political discontinuity does not apply and the only way in which Juncker will be different from Barroso is the rigour with which he will be pursuing a deregulatory agenda. Substance wise, the more important measure in this respect is the decision to transform the existing Impact Assessment Board into a new Regulatory Scrutiny Board that will include 2 external members who are not Commission officials and which is expected by some to be the first step towards the establishment of a new permanent independent body that will control the legislative work of the Council and European Parliament as advocated by a number of members of the Stoiber Group.

The Commission justifies this agenda on grounds of the conversation that then President-elect Juncker had with different political groups in June following the EP election and the political guidelines he drafted on the basis of those discussions. This however does not translate into a carte blanche to for example ignore legally binding commitments made under the 7th Environmental Action Programme or under international agreements such as in the area of biodiversity or transboundary air pollution. And the European Parliament has already expressed on several occasions its criticism of the Commission’s singling out of environmental protection in its crusade against ‘red tape’.

What has become clear now is that the future of EU environmental protection will depend on a strong, effective and consistent push back by the European Parliament as well as the Council. In response to a first wave of protest by the EP against the downgrading of environment by the Juncker Commission, first Vice President Timmermans has as mentioned above been given the responsibility for sustainable development. This should now be followed up by a number of initiatives that will give substance to this responsibility. It should also be a first step towards a deeper re-think of the deregulatory REFIT agenda and the development of a true sustainable development agenda.
The EEB therefore calls upon the Latvian Presidency to:

- Insist on full and ambitious implementation of the 7th Environmental Action Programme which was agreed between the three institutions, including by standing up to the Juncker Commission’s anti-environment and deregulation agenda;
- Ensure that work in the framework of REFIT aiming at the reduction of administrative burden will not be misused to lower environmental standards or weaken environmental laws;
- Support a reform of the EU standardisation system to make it more transparent and ensure effective participation by stakeholders.

3.2 GREENING THE EUROPE 2020 STRATEGY AND RENEWING THE EU SUSTAINABLE DEVELOPMENT STRATEGY

In section 1.1, we have underlined the need for the Europe 2020 Strategy to become a green development strategy and put forward proposals for the renewal of the SDS. The EEB considers it essential that the Environmental Council plays an active role in the debates with the Commission on these issues, and with the evaluation of the national reform programmes as well as the budget stabilisation programme. We welcomed the initiative of the Italian Presidency to put the issue of greening the Europe 2020 Strategy and the Semester on the agenda of the Informal Environment Council in July and adopt Council conclusions in October. The Latvian Presidency should follow up on this initiative by ensuring that the October Environment Council conclusions will be taken into account in preparing the Spring Council conclusions on the European Semester as well as in the response of the Spring Council to the revised Europe 2020 Strategy which the Commission is planning to publish in March. At the same time the Council should also reiterate its demand for a review of the SDS, for the reasons given in section 1.1, leading to renewal of the SDS and thereby send a clear signal to the incoming Commission to put this on its agenda.

The EEB therefore calls upon the Latvian Presidency to:

- Ensure that the October Environment Council Conclusions on Europe 2020 and the 2015 European Semester are taken into account in the adoption of the Spring Council conclusions;
- Ensure that the Council maintains the pressure for a swift and ambitious roll-out of the Resource Efficiency Roadmap;
- Ensure that the Environment Council calls for a new EU Sustainable Development Strategy as the overarching strategic framework guiding Europe’s future.

3.3 CHALLENGE THE THREAT COMING FROM TTIP AND CETA

As described in section 1.3 above, the EEB shares the widespread concerns about TTIP as well CETA, both of which could have very serious and negative consequences for the EU’s ability to further develop the environmental policies that are needed to address global problems such as climate change, ecosystem collapse and resource depletion.
It is essential that Environment Ministers and Ministries individually and the Environment Council per se play an active role in ensuring that environmental considerations are not marginalized in the respective negotiating processes, having regard to the points made in section 1.3 above.

The EEB therefore calls upon the Latvian Presidency to request:

- EU negotiators to provide full public access to negotiating documents, and to ensure that a comprehensive Sustainability Impact Assessment is rapidly finalized and used as a basis for further negotiations, including a decision on whether to proceed with the negotiations at all;
- EU negotiators to fully inform the Environment Council on environment-related aspects under TTIP;
- The European Parliament and EU Member States to firmly reject the recently agreed CETA deal with Canada which is understood to include an Investor State Dispute Settlement mechanism;
- The European Commission to work to ensure that any TTIP agreement excludes mechanisms for regulatory cooperation, investor state dispute settlement, fast track ratification as well as deeper forms of regulatory cooperation in the field of energy, climate, chemicals, agriculture and food, and other areas where environmental policy risks to be weakened;
- The European Parliament and Member States to stand ready to reject a final TTIP deal should the Commission fail to exclude any of the above contentious issues.

3.4 TOWARDS A STRONGER CLIMATE POLICY

(See also section 1.2.)

Following the agreement by EU leaders in October 2014 on an EU climate and energy policy for 2030, the initiative in this area during the Latvian Presidency lies primarily with the European Commission. Still the Presidency has an opportunity to set an agenda that will allow for an upwards revision of the EU's GHG reduction target in the run up to Paris, to keep the door open to a new EU climate and energy policy built on three sufficiently ambitious legally binding targets for GHG, energy savings and renewables. For the Environment Council, it is particularly crucial that ongoing negotiations on two key elements of the existing climate and energy policy, the ETS and biofuels, are brought to a satisfactory conclusion.

In the short-term, eliminating the emissions of black carbon is an efficient means to combat climate change. This can partly be achieved via the revised National Emissions Ceilings (NEC) Directive, e.g. by strengthening the requirements for Member States to monitor and reduce the emissions of black carbon. It is technically feasible as there are already numerous providers of filter systems and low emissions vehicles in Europe. Such action would benefit at the same time the climate, citizens’ health and the European market.

The EEB therefore calls upon the Latvian Presidency to:

- Play a leadership role to ensure progress in the negotiations towards an international climate agreement that will be based on latest scientific information on keeping global warming well below 2°C, bearing in mind an emerging consensus that staying below a 1.5°C rise is more likely to be required, and to solve the issue of surplus credits from the first commitment period of the Kyoto Protocol;
Keep the debate open for an EU 2030 framework for climate and energy policies that includes three legally binding targets that are consistent with staying below a 2°C rise, namely greenhouse gas (GHG) emissions reductions of at least 60%, end-use energy savings of at least 40% and at least 45% of energy sourced from sustainable renewable energy by 2030 in line with achieving emission reductions of at least 95% and sourcing most of the EU’s energy from renewables by 2050;

Ensure that the Commission includes measures to put the use of bioenergy on a sustainable track in the 2030 framework for climate and energy by limiting the share of bioenergy within the target for renewable energy and by introducing comprehensive carbon accounting for all bioenergy;

Take effective steps to rescue the ETS, among other options by adopting long-term structural solutions to match the ETS with the objectives of the 2050 decarbonisation roadmap, and ensure that ETS revenues are used to invest in climate action;

Ensure that the revised NEC Directive includes legally binding measures and targets that lead to the elimination of black carbon in the EU by 2020;

Prevent the use of the most climate-damaging biofuels and ensure that the proposal to address ILUC emissions properly accounts for these when calculating carbon footprints.

3.5 CLEAN AIR VIA AN AMBITIOUS NEW NATIONAL EMISSION CEILINGS DIRECTIVE

Poor air quality is responsible for over 400,000 premature deaths a year in the EU and was recently declared a leading environmental cause of cancer deaths by the World Health Organisation (WHO). More than 90% of Europeans living in urban areas are still exposed to levels of pollution deemed dangerous for human health. The health-related costs of air pollution are enormous, amounting to between €330 and €940 billion in the year 2010 alone.

In addition to health problems, air pollution causes harm to large areas of ecosystems and cropland as well as to buildings and monuments. Currently, two-thirds of the protected sites in the EU Natura 2000 network are under severe threat from air pollution.

On 18 December 2013, the European Commission adopted a package of proposals to improve air quality in Europe. The centrepiece of the package is a proposal to revise the National Emission Ceilings (NEC) Directive, the role of which is to limit emissions of air pollution and therefore protect human health and ecosystems.

The NEC Directive is a key instrument to improve the air we breathe by ensuring emissions reductions across Europe. Unfortunately, the Commission’s proposal is insufficient and fails to reach levels that would adequately protect our health and environment. In particular:

- **The proposed emission reduction commitments (ERCs) for 2020 are extremely weak.** In practice, the current proposal would even allow Member States to emit more pollution than what they are expected to emit under current legislation (so called ‘baseline scenario’). As a result of this, it is estimated that 340,000 Europeans would still die prematurely in 2020 and 65% of EU air quality zones would still breach the WHO recommended levels for PM2.5, even after full implementation of the Commission’s proposal.

- **For 2025, no legally binding targets are proposed.** This will result in further delays to cut air pollution, with all additional efforts being postponed to 2030.
• The proposed ERCs for 2030, which were initially designed for 2025, are both too late and too weak to solve the EU’s air pollution problems. The European Commission’s concept of a 67% “gap closure” between the baseline and the maximum of what is currently technically feasible (MTFR) is very narrow. It excludes a whole range of technical and non-technical measures which could take the EU far beyond what is perceived as ‘technically’ feasible, and often at lower cost. For instance, energy efficiency measures are not part of the scenarios used, despite the fact that they would reduce air pollution at a very low cost. The proposed 2030 ERCs leave more than half of today’s problem unaddressed: if the Commission’s proposal were to be adopted as such, over 260,000 premature deaths would still occur in 2030.

• The Commission missed the opportunity to propose emission reductions for mercury, a global pollutant with severe adverse impacts on human health and the environment. The inclusion of mercury into the NEC Directive is the only way to ensure overall mercury emission reductions and address transboundary mercury air pollution in the EU. The inclusion of mercury commitments in the NEC Directive would be in line with the EU’s 2005 Community Strategy on Mercury and the recently adopted Minamata Convention on Mercury. It would bring high benefits for human health, ecosystems, wildlife populations and the environment.

There are strong reasons to aim for a much more ambitious NEC Directive. Even in the most ambitious policy scenario considered by the Commission, the health benefits would still exceed the costs by €8 - 157 billion in the EU. It should be noted that those estimates do not include benefits such as decreased chronic effects of ozone on mortality, reduced damage to health arising from less NO\textsubscript{2} emissions, reduced damages to ecosystems due to less eutrophication, acidification and ground-level ozone; nor do they include benefits from reduced damage to historic buildings and cultural heritage. In practice, benefits are therefore likely to be substantially higher. Moreover, a recent new NEC Directive impact analysis prepared for the European Parliament show that the adoption in October 2014 of new EU climate and energy targets for 2030 will mean that considerably less efforts and costs will be needed to achieve the proposed NEC Directive targets, and that there are strong reasons to significantly raise the level of ambition, as compared to that proposed by the European Commission.

The biggest threat right now however to improving air quality in Europe appears to be the new European Commission which, on grounds of ‘political discontinuity’, has questioned the need to pursue the recently tabled proposal for a revised NEC and in its final presentation of its Work Programme for 2015 has chosen to create a lot of confusion about its intentions as regards the revised NEC. Withdrawal of the current proposal, even if coupled with promises of new proposals to follow, will not serve the objective of tackling air pollution in Europe but will cost more lives through further delays. Given the considerable work that went into developing the current proposal, involving much detailed analysis and consultations not only with the Parliament and Member States but with a wide range of stakeholders, its peremptory withdrawal by the Commission would represent a shocking bureaucratic and regulatory inefficiency. Nothing prevents the introduction of improvements to the current proposal through the normal co-decision process.

The only thing that seems to be certain is that the chance for Europe’s air quality to significantly improve over the next decade or so will be primarily dependent on the ambition and political will of both the European Parliament and the European Council. In order for the European Council to secure a high level of ambition and improvement on the Commission’s proposal, the
forthcoming EU Presidencies, starting with Latvia, have a key role to play. In particular they will need to concentrate their efforts in ensuring that compromise position in Council will not be a reflection of the lowest common denominator, as happened during the Italian Presidency on the Medium Scale Combustion Plant Directive, but on the contrary ensure a high quality outcome that will ensure that by 2030 “levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment” as stated in the 7th Environmental Action Programme;

The EEB therefore calls upon the Latvian Presidency to:

- Maintain vigorous opposition from the Council to any withdrawal of the NEC Directive proposal;
- Support 2020 emission reduction commitments (ERCs) going beyond the Gothenburg Protocol’s levels in order to improve air quality in the coming years (including for methane);
- Support 2025 and 2030 ERCs that will achieve by 2030 “levels of air quality that do not give rise to significant negative impacts on, and risks to, human health and the environment” as stated in the 7th Environmental Action Programme;
- Support additional legally binding ERCs for 2025 (including for methane);
- Support the introduction of ERCs for mercury for 2020, 2025 and 2030;
- Support the introduction of EU-wide measures aimed at attaining the EU’s long term objectives by 2030, with a focus on the most problematic sources of pollution including domestic heating, road, non-road, shipping, agriculture and solvents;
- Ensure better coherence between the objectives of the different pieces of EU air legislation;
- Include an express right of access to justice for citizens and NGOs;
- Call upon the alignment of EU ambient air quality limit values with the latest WHO health guidelines.

3.6 CUT AIR POLLUTION FROM MEDIUM SCALE COMBUSTION INSTALLATIONS

The Council adopted a common position on 17th December 2014 under the Italian Presidency on the Commission proposal. The EEB is seriously concerned about the introduction by the Council of derogations and unjustified flexibility schemes which significantly undermine the required ambition level to protect EU citizen’s health and the environment. The Latvian Presidency aims to reach a quick agreement with the European Parliament on this key proposal, addressing a major source of polluting emissions in the EU (according to 2010 data, the annual contribution to air pollution by Medium Combustion Plants (MCP) is estimated at 554 kt for nitrogen oxides (NOx), 301 kt for sulphur dioxide (SO2) and 53 kt for particulate matter (PM)). Emissions of NOx, SO2 and PM are particularly harmful to health but also damage ecosystems, crops and materials.

Many Member States already regulate emissions from MCPs through permit systems or emission limit values. The impact assessment shows that EU-wide application of the most stringent emission legislation now used in some Member States (for the different fuel types and size classes) would reduce emissions of NOx, SO2 and PM by 79, 88 and 94 per cent respectively from 2010 to 2025. The Impact Assessment clearly indicates that the benefits (from cleaner air through already feasible standards) clearly outweigh the costs (to the polluters
operating MCPs under outdated standards) even without taking into account the wider monetary benefits provided by eco-system services due to avoided pollution burden.

The claimed administrative or compliance cost burdens by some industry or Member States are unfounded: the Commission Proposal differentiates the stringency levels of ELVs and compliance deadlines according to the size categories of MCPs, further providing more lax ELVs for installations operating under a certain number of hours per year (peak load derogation) and full exemptions for emergency plants. Existing installations would be given a long transition period, up to 2025 for the larger (5–50 MW) plants and up to 2030 for the smaller ones. The Commission’s proposal sets emission limit values (ELVs) for just three pollutants. The proposed ELVs differ not only significantly according to the size category and the type of installations (existing/new installations, boilers-engines and turbines) but also according to the type of fuel used.

The proposed Directive does not even require permits but a simplified registration scheme. Monitoring and reporting obligations have also been set at a minimal level, only requiring periodic measurements once every three years for the smaller (up to 20 MW) plants and annually for the bigger plants. The ELVs proposed by the Commission are clearly not in line with what can be achieved by applying best available techniques (BAT). For example, comparing the ELVs proposed by the Commission with the benchmark values of Annex III of the proposal shows a significant discrepancy between the proposed ELVs and the benchmark values. The NOx benchmark values are much stricter for boilers (by a factor of 3 for solid biomass, factor 6.5 for other solid fuels, factor 5 for heavy fuel oil, and more than 2 for gaseous fuels). The same applies to PM benchmarks for boilers (a factor of 3 for the different fuels used in the 1-5 MWth category and a factor of 6 for the different fuels used in the 5-50 MWth category). For combustion engines and turbines, the NOx benchmarks are stricter by up to a factor of 12 depending on the fuel used.

The proposed further weakening by the Council is unacceptable since it sends the wrong signals to those operators that already comply with technically and economically viable ELVs, such as those proposed in Annex III (benchmark values), thus rewarding the laggards in the sector in the EU with further costs to human health and social welfare. Furthermore, the mere fact that an installation is covered by the Industrial Emissions Directive (IED) does not mean that the ELVs of the MCP Directive should not need to be met, rather the MCP Directive should act as a safety net for those installations (as Annex V of the IED for the LCPs exceeding 50MWth) to bring a harmonized approach and level playing field. In particular refineries or operators using unsustainable fuels would benefit most from derogations or transition periods introduced by the Council.

We therefore call upon the Latvian Presidency to:

- Put all its efforts into taking forward the progressive Member States’ positions within the Council to reach agreement with the European Parliament for an improved MCP Directive that lives up to the legitimate expectations of EU citizens for cleaner air and improved environmental protection. The proposed “derogations à la carte” and complex transition periods are in direct contradiction to the better regulation objective and should be rejected by the EU decision makers;
During the negotiations with the European Parliament, the Presidency should inter alia:

- Support alignment of the emission limit values with what is achievable by the use of best available techniques (BAT), as indicated by the benchmark values in Annex III;
- Agree to accept deletion of any derogations and exemptions proposed in the Council common position (scope exclusion in Article 2(2), exclusion and delay of ELVs to 2030 of MCPs located on islands in Article 5, upfront exclusion of installations covered by the IED);
- Instead of upfront exclusion of installations covered by the IED, introduce a “safety net complementary approach” of the maximum MCP Directive ELVs with ELVs set in permits in accordance with the IED Chapter II, in particular for refineries;
- Support bringing forward the deadline for compliance with the emission limit values for existing plants to 2020 and make sure that all new plants are required to comply as from the date of entry into force of the Directive;
- Reject the opt out derogation for MCPs greater than 5MWth and advance the compliance deadline to 2025 for those less than 5MWth and reduce operation hours to 2,500 hours (5 years peak operation) with the inclusion of start up and shut down period;
- Reject any increase of the ELVs for SO2, NOx and dust proposed by the Commission for fossil fuels (e.g. heavy fuel oils). The ELVs in Annex II should be aligned to what is achievable with BAT (i.e. <200mg/Nm³ for NOx and <10mg/Nm³ for dust), footnotes with derogatory ELVs for fossil fuels should be deleted (i.e. part 1a no 6 and 8, part 1b no 11, 13, 14; part 1c no 1a and 1b, no 7 and part 2a no 2 and 4);
- Support the introduction of a permitting regime for plants bigger than 20 MW;
- Provide an ex ante verification procedure by the competent authority to ensure compatibility of the proposed ELVs with air quality standards compliance;
- Strengthen the emissions monitoring regime.

3.7 PROTECT THE PUBLIC FROM HAZARDOUS CHEMICALS

The EU’s 7EAP Priority objective 3 aims “to safeguard the Union’s citizens from environment-related pressures and risks to health and well-being” by developing by 2018 a Union strategy for a non-toxic environment that is conducive to innovation and the development of sustainable substitutes including non-chemical solutions, building on horizontal measures to be undertaken by 2015 to ensure:

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

However, the European Commission has invested very little resources on this important goal and the path for progress is still very slow, in spite of the 7EAP commitment to present concrete measures by 2015.

REACH foresaw a review by 1 June 2014, where the Commission had to evaluate whether to extend or not the obligation to perform and document a chemical safety assessment for all carcinogens, mutagens or reproductive toxicants (CMRs), regardless of their production volume,
since these are acknowledged substances of very high concern for humans and for most of them no safe exposure level can be established. Chemical safety assessments being developed for all CMRs are extremely important to close the knowledge gap on chemical risks and encourage companies to switch to safer chemicals. The outcome of the review is delayed.

The European Commission is also delaying its work on the endocrine disrupting chemicals’ (EDCs) package (strategy, criteria and REACH review) which was only partially released in June 2014 with an impact assessment announced for the rest. It is key that work on this package is accelerated instead of further delayed, and that the outcome of this package will support the 7th EAP’s goals of minimizing the exposure to EDCs by 2015 and protecting not only the environment but also promoting the health and quality of life of Europe’s citizens, especially the most vulnerable ones, such as women and children.

Finally major concerns exist about the way the authorization process under REACH currently takes place, in particular as regards the transparency of the process and the requests from industry for exemptions and easier and cheaper authorizations to be granted for a number of substances of very high concern based on economic factors and disregarding the protection of human health and environment from the exposure to these chemicals. Moreover, the European Commission is drafting an implementation act in order to simplify and streamline the authorisation process that in fact fundamentally changes the legal text and undermines its goal of protection of health and environment and the substitution principle.

Since commercial applications began in the early 2000s, nanotechnology has expanded exponentially in different industrial sectors such as pharmaceuticals, electronics, food, cosmetics and chemicals. The number of citizens exposed to nanomaterials has therefore risen sharply in recent years, as well as health and environmental concerns; between 500 and 3,000 different nanomaterials (NMs) are estimated in the European market. However, after 20 years of intense research and expansion of NMs, very little is still known on NMs used and produced in the EU market.

Nanomaterials are therefore virtually unregulated in Europe. In spite of persistent calls from the European Parliament and a substantial number of Member States, together with environmental, worker and consumer organizations, the European Commission has persistently delayed any action with regard to NMs.

However, while a number of Member States are developing their own NM registers, the Commission has started an impact assessment on the possible measures to be taken to increase the traceability of NMs in Europe, particularly in consumer products. It is hoped that this study will bring about a mandatory European wide nano register, as a first step for increasing transparency and an essential measure to protect citizens and the environment from the risks posed by nanotechnology.

On the other hand, the Commission still delays the proposal for amendment of the REACH Regulation annexes, despite concrete proposals submitted by some Member States. Meanwhile, only nine NMs have been registered under REACH as such.

The EEB therefore calls upon the Latvian Presidency to:

- Encourage the Commission to step up its work towards achieving the 7EAP’s goals in relation to chemicals by developing new EU tools to achieve the non toxic environment goal,
for example to address nano materials, to develop and publish an endocrine-disrupting chemicals (EDCs) package and to extend information requirements for all carcinogens, mutagens and reproductive toxicants regardless of their production volume;

- Encourage the Commission to bring out all outstanding elements of the EDC package, ensure that the Council conclusions on the REACH EDCs review are adopted under the Environment Council as opposed to the Competitiveness Council and acknowledge that EDCs cannot be adequately controlled and therefore need to be phased out as soon as practicable;

- Guarantee that the draft amendments of the EU Toy Safety Directive to be reviewed by Council and Parliament will ensure that children are not exposed to EDCs, as well as any other hazardous substance;

- Demand the Commission to consult with the European Council and the European Parliament on any attempt to modify the REACH authorisation process as the simplification and streamline proposal is not an implementing act but a major change of the REACH legal text;

- Insist that a European Commission proposal to increase transparency on nanomaterials in the EU to citizens should develop an EU wide register, the only valid tool that would close the knowledge gap of nanomaterials used, manufactured and imported in the EU.

3.8 GLOBAL MERCURY TREATY AND EU STRATEGY

Mercury and its compounds are highly toxic, can damage the central nervous system and are particularly harmful to foetal development. Mercury bioaccumulates up through the food chain, especially in certain predatory fish, and presents a human exposure risk. This neurotoxin is widely diffused through the atmosphere and has contaminated global food supplies at levels which pose a major risk to human health, wildlife and the environment.

At the EU level, a Regulation for an EU mercury export ban and the storage of surplus mercury (mainly from decommissioned chlor-alkali plants) was adopted in October 2008. In April 2011, a sales ban on mercury fever thermometers and on other mercury-containing measuring devices for consumers entered into force. Further restrictions in these devices for industrial and professional uses have been applied since April 2014.

In November 2013, the Council approved the revised Batteries directive which included a ban on cadmium from cordless power tools by end of 2016 and mercury from button cell batteries by 1 October 2015, although this review was initially intended only for cadmium in cordless power tools.

Work related to mercury use in dental amalgam is also ongoing. The EC-commissioned study which proposed that a ban on the use of mercury in dentistry, together with improving enforcement of the EU waste legislation regarding dental amalgam, would be the most effective way to tackling the problem. The final opinion of the Scientific Committee on Health and Environmental Risks (SCHER) was published on 14 March 2014. A public consultation had been carried out in autumn 2013. While the SCHER report underestimates and appears not able to assess environmental impacts from most pathways, particularly from cremation, it confirms that under certain conditions dental mercury can methylate - forming the most toxic form of mercury, methylmercury - and that “the acceptable level in fish is exceeded... concluding that a risk for secondary poisoning due to methylation cannot be excluded.” It notes that this risk
occurs at much lower methylation rates than previously thought. In August 2014, the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) recommended, for the first time, mercury-free alternatives in place of dental amalgam for children’s primary teeth and in pregnant patients.

These and other developments have reduced the use of mercury in Europe as well as the supply to the global market, thereby strengthening the position of the EU vis-a-vis the international debate.

With the EU Mercury Strategy as its flagship, the EU has so far played an important role, pressing for global legally binding solutions to achieve adequate control and reduction of mercury use, supply and demand. It is therefore imperative that the EU continues to implement the Strategy, following up ongoing work and also by taking into consideration the Minamata Treaty (see below). This is necessary not only for the protection of EU citizens but also to ensure that the leadership role of the EU is maintained at the global level and in view of the ongoing discussions towards a rapid ratification and effective implementation of the mercury treaty.

The Commission’s proposal for a revised NEC Directive provides an opportunity for the EU to achieve one of the Strategy’s objectives. The inclusion of mercury ceilings by the EP and Member States would help reduce overall emissions of mercury into the air independent of future economic developments. These benefits can be achieved through the adoption of cost effective measures addressing the relevant sources.

At the global level, the Minamata Treaty on Mercury was adopted in Minamata/Kumamoto, Japan. It has already been signed by 128 countries and ratified by nine. The new treaty is a mixture of mandatory and voluntary elements. While heading in the right direction, in the EEB’s view the treaty is not far-reaching enough, nor will it move fast enough to address the spiralling human health risks from mercury exposure. For instance, new facilities will not be required to have mercury pollution controls for 5 years after the treaty enters into force, with existing facilities given 10 years before they begin their control efforts. Yet there are bright spots in the treaty. These include provisions to reduce trade, prohibit the primary mining of mercury, and phase out mercury in most products containing it, like thermometers, measuring devices and batteries. Some of these steps were unthinkable just a few ago. Now, alternatives exist for most products containing mercury. The treaty sends the right market signal and will eventually lead to less exposure worldwide.

With ongoing international action being a top priority for the EU in the coming years, the most effective way that the EU can participate in the global discussions is by continuing its leadership concerning mercury policies and proceeding rapidly with ratification and effective and meaningful implementation of the treaty requirements. Furthermore, in this crucial interim period (until the treaty enters into force), it is important that the momentum is not lost. Therefore the EU should be looking into possibilities for providing assistance in all forms to developing countries and regions towards rapid ratification and focusing on work which leads to direct reductions in mercury use and emissions in those countries.

The EEB therefore calls upon the Latvian Presidency to:

- At EU level, promote further actions to address mercury, including:
  - Banning the export of mercury-containing products which are not allowed in the EU market;
Phasing out mercury in dental care since safe mercury-free alternatives are available;
Adopting ambitious BAT conclusions with Associated Emission Levels (AELs) in the new Large Combustion Plant Best Available Techniques Reference Document that require a significant reduction in emissions in the sector, since this is the largest source of mercury emissions in the air in Europe and globally;

• At global level, continue the EU leadership role on activities related to preparation for ratification and implementation of the Minamata Treaty on Mercury, and the collaborative work with NGOs.

3.9 CIRCULAR ECONOMY PACKAGE

The circular economy package that was presented in July 2014 includes a series of policy proposals and other initiatives that are meant to deliver on the political objectives set out in the Resource Efficiency Flagship Initiative and Roadmap as well as on the recently agreed 7EAP.

Beyond a legislative part that is addressed elsewhere in this memorandum, the package sets out a number of proposals that the EEB believes are crucial to follow up on. The Commission proposal for a 30% resource productivity target by 2030 is an important first step to start measuring and addressing Europe’s overconsumption of natural resources. In its current form however, it is primarily an economic target that answers to an economic imperative. With material costs at almost 60% of total production costs of EU manufacturing, compared to little more than 2% coming from energy and 18.5% from wages, achieving the 30% resource productivity target by 2030 will have first of all important economic benefits. Whether it will also deliver environmental benefits through an absolute decoupling between material consumption and growth is highly uncertain. The EEB therefore believes that, in addition to including this in the revised Europe 2020 Strategy and increasing the ambition of the resource productivity target from 30 to 40% to 2030, this headline target needs to be complemented by a set of more detailed resource efficiency dashboard indicators at European, national and where possible priority sector levels, encompassing quantitative indicators such as total material consumption, CO2, water and land use footprint.

Finally the EEB also welcomes the Commission’s intention to explore and grasp the potential of EU product policy to help reduce Europe’s overconsumption of natural resources. In particular the Ecodesign directive has been highly effective in putting new products on the market that deliver the same services while consuming less energy and causing less carbon emissions and it is essential that this success will now be replicated so that products will become more durable, easy to repair and to recycle including through the elimination of hazardous chemicals.

The EEB therefore calls upon the Latvian Presidency to:

• Facilitate a constructive discussion in the Council on a Circular Economy Package to ensure aligning the EU product and waste policies with the 7th EAP and the Resource Efficiency Roadmap;
• Ensure that a 40% resource efficiency target by 2030, calculated as raw material consumption over GDP, is complemented by a more detailed resource efficiency dashboard of indicators at European, national and where possible priority sector levels, encompassing quantitative indicators such as total material consumption, CO2, water and land use footprint;
• Grasp the potential of product policy, notably by supporting an ambitious Communication on the next Working Plan for 2015-2017 regarding the further implementation of the Ecodesign Directive. This should put special focus on creating the proper conditions for a circular economy, bearing in mind that 80% of the environmental impact of electric and electronic appliances are determined at the design stage. Therefore the new Ecodesign Working Plan should support in particular the development of minimum requirements for durability, reparability and recyclability of products, including the de-toxification of material as a crucial enabler for reusing and recycling of valuable components and materials cost-effectively;

• Make sure that the “Zero Waste programme for Europe ” associated with the “Towards a circular economy” Communication does not only restrict waste going to landfill, but also addresses the waste to energy question and integrates provisions to avoid waste incineration that is not compatible with material reuse and recycling which is at the heart of the circular economy.

3.10 REVIEW OF WASTE POLICY AND LEGISLATION

The European Commission published in July 2014 the results of a comprehensive review of EU waste legislation. This review looks at the key targets from three pieces of legislation: the Waste Framework Directive, the Landfill Directive and the Packaging & Packaging Waste Directive. Alongside this review, the EC is also preparing an ex-post evaluation (“fitness check”) of five of the EU Directives dealing with separate waste streams. The legislative proposal based on this assessment aims both to improve the implementation of existing legislation and to move towards a more ambitious waste management policy.

In the European Union we throw away 2.7 billion tonnes of waste a year. On average only 40% of our waste is reused or recycled, the rest is going to landfill and incineration. The demand for raw materials is expected to dramatically increase in the coming years. This review of waste targets is a significant point for European waste and resources policy and will have important implications for years to come. With wide variations in waste generation across Europe and similar variations in the implementation of existing waste Directives, the challenge for Europe will remain that of seeking to drive Europe forward in its ambitions for greater resource efficiency and reduced environmental impacts of waste alongside the economic and demographic challenges faced by many Member States.

The review objectives are set out in the Roadmap to a Resource Efficient Europe and are included in the strategic planning of the 7th EAP. By reducing waste generation, eliminating landfilling, setting maximum feasible reuse and recycling targets and limiting energy recovery from waste to non-recyclable and non-compostable waste, Europe would not only protect the environment and human health, but also ensure safe and sustainable access to raw materials, reduce Europe’s carbon footprint, reduce pollution and boost job creation.

The EEB sees it as crucial that the new Waste Framework Directive introduces an improved, ambitious and binding waste management hierarchy. This requires reinforcing the targets for prevention, reuse and recycling, harmonisation of calculation methods and terminology, and a broadly accepted life-cycle thinking (LCT) methodology for the application of the waste treatment hierarchy.

As with the proposed NEC Directive, the biggest threat right now to improving waste management in Europe appears to come from the new European Commission which, on
grounds of ‘political discontinuity’, has announced in its proposed Work Programme for 2015 its intention to withdraw the proposals for a revised waste policy that were launched as recently as July 2014. Arguments made late on by the Commission that the withdrawn proposals would be replaced by more ambitious proposals are thoroughly unconvincing in the light of the new Commission’s overall approach to environment and sustainability, and seem to have been little more than a ploy to divide the strong opposition that emerged from both Member States (as reflected in the December Environment Council) and MEPs following the announcement of the withdrawal. Again, as with the air package, nothing prevents the introduction of improvements to the current proposals through the normal co-decision process.

The only thing that seems to be certain is that the chance for Europe’s waste management to improve, resource use to become more efficient and sustainable jobs to be created will primarily depend on the ambition and political will of both the European Parliament and the European Council. In order for the European Council to secure a high level of ambition and improvement on the Commission’s proposal, the forthcoming EU Presidencies, starting with Latvia, have a key role to play. In particular they will need to concentrate their efforts in ensuring that compromise position in Council will not be a reflection of the lowest common denominator, as happened during the Italian Presidency on the Medium Scale Combustion Plant Directive, but on the contrary ensure a high quality outcome that will ensure that Europe will remain a global leader in resource efficiency, eco-innovation and crucially reduce its dependence on natural resources.

The EEB therefore calls upon the Latvian Presidency to:

- Maintain vigorous opposition from the Council to any withdrawal of the proposed revised waste legislation;
- Support a renewed ambition for waste framework policy aligned with the waste treatment hierarchy, notably the introduction of a binding waste prevention target on food waste, specific objective for reuse and preparation for reuse activities, and a minimum 70% recycling target for municipal solid waste by 2030, calculated on a unique harmonised methodology at European level;
- Ensure the systematic introduction of economic instruments in all waste management plans to be notified to the Commission to support a proper implementation of the waste policy, such as reinforced extended producer responsibility, pay-as-you-throw schemes and the taxation of landfill and incineration of untreated waste;
- Support an update of the Packaging & Packaging Waste Directive targets, making the best of this integrated product and waste legislation, boosting the overall level of recycling to over 80% by 2030 and revising the old-fashioned essential requirements set in 1994 to enhance prevention of over-packaging and incentivise reusable solutions;
- Support a ban on landfilling and incinerating of all the recyclable and compostable waste by 2020, and set a staged target on the maximum amount of residual waste per capita per year to be landfilled or incinerated.

3.11 EU SOIL POLICY

Soil provides an array of services, such as water purification, waste decomposition and climate mitigation and as such it should be regarded as a natural resource of strategic importance for the EU. Yet quantitative and qualitative degradation of soil in Europe is accelerating and threatens greatly our food security and our ability to tackle climate change and prevent the loss
of biodiversity. It is critical therefore that progress on adopting a binding legal framework at the EU level affording soil the deserved level of protection is achieved swiftly. Although the Commission has recently withdrawn the 2006 Soil Framework Directive proposal, the Union and its Member States still have a commitment through the 7th EAP to ‘reflect as soon as possible on how soil quality issues could be addressed using a targeted and proportionate risk-based approach within a binding legal framework’.

The EEB therefore calls upon the Latvian Presidency to:

- Follow up on the 7th EAP commitment and initiate an extensive discussion on a political level on how to address soil degradation issues in a binding legal framework at the EU level and ensure that a clear message on the need to propose such a framework as soon as possible is sent to the Commission.

3.12 APPLICATION OF THE AARHUUS CONVENTION TO THE EU INSTITUTIONS

When the European Union became a Party to the Aarhus Convention, it adopted Regulation 1367/2006 on the application of the provisions of the Aarhus Convention to the EU institutions (known as the Aarhus Regulation). From an early stage, NGOs had concerns about whether the Regulation was fully in line with the Convention, and some of these concerns were vindicated in June 2012 by two rulings of the EU General Court which found, in two similar cases, that the limitation of the type of measures which could be challenged under the access to justice provisions to ‘measures[s] of individual scope’ was not compatible with the Convention. The Advocate General reached a similar conclusion on this point. However, in early January 2015, the General Court rulings were overturned by the European Court of Justice (ECJ) following appeals by the Commission, Council and Parliament. The ECJ considered that the relevant provision of the Aarhus Convention (Article 9(3)) was not sufficiently precise or unconditional to preclude the limitation to ‘measures of individual scope’.

This is a surprising and controversial ruling which will undoubtedly now be looked at closely within the framework of the compliance mechanism of the Aarhus Convention and it remains to be seen what the eventual legal outcome will be. However, aside from the legal aspect, the immediate political impact of the judgment is damaging to the democratic image and credentials of the EU. The ruling suggests that only a very limited range of decisions may be challenged under the Regulation, possibly limited to decisions on permits for placing on the market of genetically modified organisms and chemical products under REACH regulation on chemicals. By severely restricting access by NGOs and the public to the EU courts, the ruling reinforces the already widespread impression of EU institutions which are insufficiently accountable to the public. It prolongs the grotesquely unfair situation whereby private companies whose activities have a destructive impact on the environment have easy access to the EU courts to defend their commercial interests whereas public interest organizations have very limited access to argue on behalf of the environment and the wider public interest.

It is important to emphasise that the decision by the EU institutions to limit the types of acts that may be challenged to ‘measures of individual scope’ was a political decision, not based on any legal imperative. There is nothing in the Aarhus Convention that requires this limitation.

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Strengthening the democratic accountability of the EU institutions, including its judicial component, is a crucial element in maintaining public confidence in the EU. Notwithstanding the outcome of the court case, the EU should adopt a set of strengthening amendments to the Aarhus Regulation not only to remove the limitation of the administrative acts that may be challenged to ‘measures of individual scope under environmental law’ but also to address problems in relation to the information provisions of the Aarhus Regulation, which could have been corrected in the recast of the Access to Documents Regulation (Regulation 1049/2001, which is cross-referred to in Regulation 1367/2006) but are now unlikely to be, due to the poor progress in the negotiations on the recast of Regulation 1049/2001.

The EEB therefore calls upon the Latvian Presidency:

- To lead the Council in calling on the Commission to prepare a proposal for revision of Regulation 1367/2006 to remove the limitation of the administrative acts that may be challenged to ‘measures of individual scope under environmental law’ and address the potential incompatibility of the information provisions of the Regulation with the Aarhus Convention.

### 3.13 RE-LAUNCH DISCUSSIONS ON AN ACCESS TO JUSTICE DIRECTIVE

The EEB believes that there is an urgent need to re-launch negotiations on an EU Directive on Access to Justice, taking into account the proposal originally tabled by the Commission in 2003. The preparation of a new legislative proposal on access to justice by Commission services was at an advanced stage under the previous Commission, following the withdrawal of the 2003 proposal under REFIT, but regrettably the new proposal was not released before the expiry of the mandate.

The necessity for such a Directive has been repeatedly stressed not only by civil society organisations in the EU Member States but also by judges and other experts in the legal professions. On different occasions, EU Member State judges have supported the idea of a Directive to help implement the third pillar of the Aarhus Convention on access to justice in environmental decision-making. A number of cases have been brought by civil society organisations before the Compliance Committee of the Aarhus Convention concerning failures of EU Member States to properly apply the access to justice pillar of the Convention.

The draft Directive on Access to Justice that was published by the European Commission in 2003 aimed to set certain minimum standards for access to justice in environmental matters. It was intended to implement the ‘third pillar’ of the Aarhus Convention in EU Member States, which would help to improve opportunities for the public and environmental citizens’ organisations to insist on respect for environmental law. For many years, the Council declined to discuss the proposal, due to the resistance of a number of Member States that do not view this issue as an EU responsibility.

In 2006, the Commission launched a study of the practices on access to justice in environmental matters in the (then) 25 Member States. The results showed a clear deficit in at least 15 of the 25 Member States (with only Denmark fulfilling the expectations laid down in the Aarhus Convention). This confirms the view that adoption of a Directive on this topic is important to set minimum standards for the implementation of the right to access to justice in environmental matters as the Aarhus Convention requires.
The jurisprudence of the Court of Justice of the European Union, notably a ruling in a case concerning Slovakia (C-240/09) issued in March 2011, provides a further reason why it is important to revive discussions on a directive. The Court found on the one hand that access to justice in environmental matters in the sense of Article 9(3) of the Aarhus Convention falls within the scope of EU law, and on the other that Article 9(3) needed a uniform interpretation within the EU in order to “forestall different interpretations” by Member States (paras. 40 and 42).

In March 2012, the Commission published a Communication on improving implementation and enforcement of environmental law. Clearly one of the more effective means of achieving better implementation is by empowering citizens to challenge perceived violations of the law. The Communication identified the need to provide greater certainty for national courts and economic and environmental interests in respect of access to justice, mentioning the option of defining at EU level the conditions for efficient and effective access to national courts in respect of all areas of EU environmental law. The idea was also taken up in the Commission’s proposal for a 7th EAP, which commits to ‘ensuring that national provisions on access to justice reflect the case law of the Court of Justice of the European Union’.

Strengthening access to justice at the national level is also in line with the principle of subsidiarity, enabling matters to be more often resolved through national procedures without the Commission being unnecessarily burdened with complaints.

In 2013, the Irish Presidency hosted a discussion on access to justice at the Working Party level at which the Commission was able to present the findings of its latest studies on the issue and its plans to come forward with a new proposal and obtain feedback from Member States. DG Environment is understood to have used this feedback in taking the first steps in the preparation of a new legislative proposal.

Progress towards reviving the negotiations on an access to justice directive appeared to suffer a setback in early October 2013 when the 2003 proposal was formally withdrawn by the Commission under REFIT, the Regulatory Fitness and Performance Communication, without any firm commitment to replace it with a new legislative proposal. The EEB would have been happy to see negotiations proceed on the basis of the Commission’s 2003 proposal. However, taking into account the number of Member States that have joined the EU since then and the increased experience with implementation of the third pillar of the Convention, we would also find it acceptable to proceed on the basis of a new proposal provided this does not lack any of the positive elements of the 2003 proposal. The latter approach would also provide the opportunity to prepare a more ambitious proposal that takes account of the positive amendments to the 2003 proposal made by the Parliament as well as the many problems encountered by members of the public seeking access to justice in recent years.

Following the REFIT Communication, the then Environment Commissioner and DG ENV remained adamant that the decision-making process leading towards a new legislative proposal was at an advanced stage. However, it is understood that lack of support from the Commission President and Secretary General dashed the prospects of the proposal being issued under the Barroso II mandate, leaving it in the hands of the new Commission.

Given the overall hostility of the Juncker Commission to environmental initiatives and the specific screening process that has been put in place to prevent any new initiatives that do not fit with the priorities of Juncker’s political guidelines, the prospects for such a proposal being brought forward may seem bleak. Nonetheless, the role of access to justice in promoting better implementation of existing legislation and thus promoting the rule of law is an important
consideration which is in line with those priorities, as is the positive impact on the functioning of the internal market of an instrument that promotes a more level playing field for business.

Therefore, the EEB calls on the Latvian Presidency to:

- Call on the incoming Commission to publish as soon as possible a new proposal for a directive on access to justice, building on and strengthening the Commission’s 2003 proposal, with a view to delivering on the 7EAP commitment to ensure that national provisions on access to justice reflect the case law of the Court of Justice of the European Union.

3.14 IMPROVE IMPLEMENTATION AND ENFORCEMENT

EU politicians repeatedly claim that better implementation and enforcement is a top priority but at the same time oppose (or fail to support) the very measures which can deliver better implementation and enforcement. By not pursuing the non-respect of EU law in a more efficient way, the EU loses credibility for its inability to uphold the rule of law and fails to prevent often irreversible damage to the environment and harm to citizens’ health. It also misses an opportunity to reduce costs and create jobs. Finally, it fails to regain the trust of European citizens and get them again more interested in and supportive of the EU.

In its 2007 Communication on the application of EU law, the European Commission wrote that “Laws do not serve their full purpose unless they are properly applied and enforced”\(^5\). Striving for better enforcement should embrace both improving enforcement of the EU acquis by the competent authorities and creating the right conditions for citizens to play an active part in supporting enforcement efforts. The EEB gave the Commission’s Communication on implementing European Community Environmental Law COM(2008) 773/4 a critical welcome\(^6\) outlining several aspects it considered as shortcomings.

These earlier Communications were followed up by the publication in March 2012 of a new Communication on better implementation of EU environmental measures.\(^7\) The Commission referred in the related press release to an estimated €50 billion per year in health and environmental costs in a time of economic crisis due to the failure of implementation of environmental legislation and mentioned that in the waste sector alone, full implementation would generate an additional 400,000 jobs. These are just two examples of the costs of failure to take action and of the fact that environmental protection can create jobs. The EU cannot afford to continue not taking seriously the enforcement of environmental law. It has an impressive environmental acquis jointly adopted with the Member States and Parliament and it is time to fully implement it to derive all of the benefits.

Several elements from the 2012 Communication were then taken up in the 7EAP, adopted in November 2013, which noted the high number of infringements, complaints and petitions in the area of the environment and committed to giving ‘top priority’ to ‘improving the implementation of the Union environment acquis at Member State level’. Specifically, the 7EAP states that efforts

\(^7\) Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (COM(2012)95).
in the period up to 2020 will focus on delivering improvements in four key areas, which may be summarised as follows:8

- Improving the way that knowledge about implementation is collected and disseminated;
- Extending requirements relating to inspections and surveillance to the wider body of Union environment law, and further developing inspection support capacity at Union level;
- Improving where necessary the way in which complaints about implementation of Union environment law are handled and remedied at national level;
- Ensuring effective access to justice in environmental matters and effective legal protection for EU citizens.

As the 7EAP is a binding document that has been agreed between the three institutions, these are important commitments and it is essential that they are honoured by all the institutions, featuring where relevant in documents such as the Commission annual work programmes. The second and fourth elements clearly lend support to the tabling of legislative proposals on environmental inspections and access to justice, discussed in sections 3.15 and 3.13 respectively. The Presidency in particular should play a key role in ensuring that the 7EAP is respected and encouraging the Commission to come forward with appropriate proposals. The fact that First Vice-President Timmermans has responsibility both for sustainability and for the rule of law should in theory mean that his ‘filtering’ role is not an obstacle to new proposals which will improve implementation of environmental law, despite the overall deregulatory approach of the new Commission.

The fact that Member States face difficulties in implementing EU laws has sometimes too hastily been used to argue that there are too many EU laws, without first considering whether the absence of those laws, even if poorly complied with, would lead to a better society and environment. The EEB regrets the general slow-down in presenting new laws and the tendency to replace binding law by communications or recommendations and guidelines. The EEB considers that in the long run only a solid harmonised environmental acquis can provide the conditions for a healthy sustainable economy.

The EEB therefore calls upon the Latvian Presidency to:

- Remind the Council, Commission and Parliament of their joint commitment under the 7EAP to give top priority to improving implementation of the EU environment acquis at Member State level and call on the Commission to come forward with specific proposals to deliver on that commitment, drawing on elements of the 2012 Communication as appropriate;
- Encourage and support Commission initiatives to deal with its enforcement obligations in a transparent and timely manner, and to increase transparency in relation to the implementation performance of Member States;
- Increase public involvement through improved access to documents, including in relation to the infringements process, and access to justice as required by the Aarhus Convention and confirmed by ECJ rulings;

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• Encourage Member States to use modern information technology to make information available in a rapid way and easily accessible, with limited costs, recognizing that doing it in a harmonized way will in the end also result in administrative burden reduction;

• Support the Commission’s proposals to improve national complaint handling;

• Emphasize in its discussions with Member States the need for appropriate bodies and structures at EU level to improve transposition and application of EU law, such as an EU agency coordinating environmental inspections, and seek Member States’ support for such an agency;

• Call on the Commission to ensure that any legal proposal (revision or new law) be in line with Aarhus requirements and includes references to recent case law, in order to facilitate correct implementation, contribute to reducing the number of complaints and thus save work (resources) in other sectors;

• Oppose any attempt that work in the framework of REFIT aimed at the reduction of administrative burden is misused to weaken environmental law or put the level of environmental standards at risk.

3.15 DRAFT LAW ON ENVIRONMENTAL INSPECTIONS

The divergence in the quality of national inspection and enforcement regimes across Member States is evident and has been acknowledged in many official EU documents. The former Commission was at an advanced stage in the preparation of a legislative proposal on environmental inspections which would have address this problem but unfortunately it failed to issue the proposal before the expiry of its mandate. Regrettably, though perhaps not surprisingly in light of its overall priorities and determination to give a message of discontinuity, the new Commission failed to include it in its draft Work Programme for 2015.

In the past, Member States opposed the European Parliament’s efforts to have an EU directive on environmental inspections with the result that the only progress that was made horizontally was the adoption of the non-binding 2001 recommendation on minimum criteria for environmental inspections. Thereafter, inspection requirements have been included in some sectoral laws and have a binding character. The EEB believes however that an EU law establishing minimum standards for environmental inspections horizontally, without in any way hampering or weakening existing environmental inspection provisions in sectoral law, would be more efficient and lead to a more harmonised application of EU environmental law and requirements. Such a law should also be fully in line with the Aarhus Convention, as participation of a well informed public will improve an efficient application of a new inspections law. This would help to uphold the rule of law, would be positive for the environment and would also contribute to more harmonised business conditions.

The EEB therefore calls upon the Latvian Presidency to:

• Having regard to the 7EAP commitment to extend requirements relating to inspections and surveillance to the wider body of Union environment law, give its full support to an EU legal instrument establishing minimum standards for environmental inspections;

• Encourage the Commission to make quick progress with the preparation of the legislative proposal and table the draft as early as possibly during the Latvian Presidency.
3.16 FOLLOW UP TO RIO+20

While the European Council should take the leading role in relation to sustainable development issues, the Environmental Council as well as individual Environment Ministers, as well as Ministers for International Cooperation, Agriculture and Social Affairs, have a crucial role to play in shaping the EU’s role in and input to the Rio+20 follow-up process with a view to promoting the outcomes of the Sustainable Development Goals process.

In the coming months, special attention is required on the negotiating process of the Framework of the Post 2015 Sustainable Development Agenda and the SDGs, with the synthesis report of the UN Secretary General as base. It will be crucial to maintain high ambitions on the environmental dimension, as well as the access for information and participation for civil society in this process.

We applaud the efforts made by the EU Commissioners for Environment and Development to present joint communications on the post2015/SDG agenda and the joint Council Conclusions (Dec 2014). Nevertheless bold messages and concrete ideas, especially about the external dimension and negative impacts of EU trade and agriculture policies, are still lacking, and the EU hardly takes a lead in this process at UN level.

Therefore the EEB calls on the Latvian Presidency to:

- Ensure that, having regard to the recommendations referred to in section 1.4 above, the EU plays a progressive role in the key international forums and processes which will carry forward the outcomes of Rio+20, in particular in the concretisation of sustainable development goals, the HLPF and the post-2015 sustainable development agenda, as the environmental dimension is at stake;
- Ensure that the EU promotes strong and active stakeholder participation in international forums in line with the Aarhus Convention and Agenda 21;
- Ensure an active process on EU level with stakeholders to prepare the concrete implementation and review mechanism, with capacity building actions and funding possibilities.
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