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.
EEB MEMORANDUM TO THE LITHUANIAN PRESIDENCY

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INTRODUCTION

Lithuania takes over the Presidency of the European Union at a difficult time. The economic crisis that has dominated EU politics over the past few years, far from abating, has continued apace. While there is wide support at a rhetorical level for the concept of the green economy, in reality environmental issues continue to struggle for attention and priority in the political agenda. The Rio+20 Conference, which might have given a lift to the environmental dimension of sustainable development, has identified a number of possible avenues for further progress but has for the most part failed to result in decisive action.

This Memorandum reflects the issues that the EEB would like to see advanced during the Lithuanian Presidency. It is prepared in consultation with the EEB Board, which has representatives from 27 countries. The text on the Common Fisheries Policy was developed with the support of Seas at Risk. The most important issues are highlighted in the Ten Green Tests. These tests will be used to evaluate, at the end of December 2013, the performance of the Presidency in the six 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.

In the run-up to the Presidency, the Lithuanian Government has demonstrated an open approach and a willingness to enter into dialogue with the EEB and its member organizations. We look forward to continuing this dialogue throughout the Presidency and beyond.

Jeremy Wates
Secretary General
TEN GREEN TESTS FOR THE LITHUANIAN PRESIDENCY

1. Sustainable Development
   - Building on the European Council conclusions of October 2012 on the outcome of the Rio+20 Conference, maintain the pressure on the Commission to develop a new Sustainable Development Strategy and call on the Commission to assess the changes that are required in the Europe 2020 Strategy and its implementation;
   - Ensure that the EU plays a progressive role in the key international forums and processes which will carry forward the outcomes of Rio+20 such as the UN General Assembly, in the preparatory process for the next meeting of the UNEP Environmental Assembly and in the preparation of sustainable development goals;
   - Adopt Council Conclusions at the December Environment Council as input to the 2014 European Semester process, which call for a systematic shift of taxation from labour to resources, phasing out harmful subsidies and a greater alignment with environmental policy priorities including water and waste.

2. Stop climate change
   - Play a leadership role to ensure progress in the negotiations towards an international agreement that will ensure that emission reduction pathways to 2050 are based upon 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; and to annul surplus credits from the first commitment period of the Kyoto Protocol;
   - Lead the negotiations on the revision of the F-Gas Regulation to a successful conclusion in order to ensure an effective market shift to climate-friendly alternatives and market leadership for European companies;
   - Prevent the use of the most climate-damaging biofuels by amending the Commission’s proposal so as to use the proposed indirect land use change (ILUC) emission factors in both the Renewable Energy Directive (RED) and Fuel Quality Directive (FQD) for compliance purposes, not only reporting, and support the cap on land-based biofuels;
   - Take effective steps to rescue 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.

3. Save energy
   - Facilitate a constructive discussion on a 2030 EU climate and energy policy framework to ensure that binding energy saving targets are central to an ambitious, legally binding framework including targets for emissions reductions, sustainable renewable energy and energy savings;
   - Reach an agreement on the Energy Tax Directive that leads to significantly higher minimum tax levels, especially for diesel (at least €470/1000 litres by 2018), maintains the CO2 component proposed by the Commission and removes tax exemptions;
- 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.

4. **Improve the Environmental Impact Assessment Directive**
- Swiftly resume the discussions on the revision of the codified EIA Directive (2011/92/EU), cooperate with the European Parliament to secure a progressive outcome with a view to reaching agreement on an improved instrument before the end of 2013;
- Ensure as far as possible that such discussions lead in the direction of a meaningful strengthening of the Directive, including by ensuring its conformity with the spirit and letter of the Aarhus Convention, mandatory requirements to consider meaningful project alternatives, a broader scope for the Directive to cover inter alia climate change and ecosystem services, post-EIA monitoring linked to measures and sanctions and measures to prevent any project starting without development consent based on a valid EIA.

5. **Marine protection in the Baltic Sea**
- Promote an implementation of the Baltic Sea Regional Strategy that will support achieving key environmental objectives set by the Water Framework and Marine Strategy Directive.
- Give the proposed Directive on Maritime Spatial Planning and Integrated Coastal Management (MSP-ICM) environmental protection as its one and only legal base.
- Ensure that EMFF funding will be conditional upon compliance with the CFP and IUU regulations, and that EMFF investments will not continue to drive overfishing e.g. through the support of engine replacement, modernization of vessels, temporary cessation of activities, or the construction of new vessels. Member States should have the flexibility to allocate more resources to control and enforcement measures and data collection.

6. **Protect high environmental standards at international level**
- Ensure that bilateral trade negotiations between the EU and Canada and the US will lead to an upward harmonization of environmental standards and take the form of a regulatory floor, and not a ceiling;
- Oppose the inclusion of an investor state dispute settlement mechanism, as Australia successfully did in its recent trade deal with the US, which would make the EU and national governments liable to expensive lawsuits for passing environmental legislation.
- Ensure that environmental sustainability is central to all external dimension policies funded by the EU budget, along with a significant increase in financial support for sustainable development in the least developed countries.

7. **Protect the public from hazardous chemicals**
- Encourage the development of an EU-wide nano register on manufactured nanomaterials as well as ensure that the amendment of REACH annexes will properly address manufactured nanomaterials.
• Strengthen the Rotterdam, Stockholm and Basel Conventions on chemicals and wastes in order to reduce human and environmental exposures to hazardous chemicals, especially Substances of Very High Concern (SVHC) according to the REACH Regulation.

• Ensure that the Council conclusions on the REACH EDCs review (according with article 138(7)) are properly taken under the Environment Council and acknowledge that substances with endocrine disrupting properties cannot be adequately controlled.

• Encourage the Commission to accelerate its work on the EU Strategy on EDCs.

• Promote substitution of hazardous chemicals by safer alternatives as a driver of sustainable innovation and green economy.

8. Support the development of an ambitious air package

• Start discussions with Member States and the Council on the revised Thematic Strategy on Air Pollution with the clear and only objective of achieving by 2030 "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 for 2020, 2025 and 2030, including 2020 levels going significantly beyond those of the revised Gothenburg Protocol and the 2005 TSAP;

• Support the inclusion of harmful air pollutants in the scope of the NEC Directive, in particular PM2.5, mercury, methane and black carbon;

• Support the introduction of EU-wide source control measures to limit emissions from transport, with a particular attention to shipping and non-road mobile machinery, from domestic sources and the agriculture sector;

• Ensure better coherence between the objectives of the different pieces of EU air legislation (e.g. NEC and Ambient Air Quality) with the aim of achieving the EU’s 6th EAP objective in the shortest time possible;

• Support action to reduce emissions of black carbon, methane and ozone since these air pollutants are also responsible for climate change;

• Support the continuous enforcement and strengthening of EU ambient air quality limit values, based on the latest scientific evidence and WHO recommendations.

9. Conserve nature and biodiversity

• Achieve an agreement on the proposal for a Regulation on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (ABS regulation).

• Push for a new legislative proposal on invasive alien species to be adopted by the Commission during Lithuanian Presidency and make an increased effort to achieve significant progress in defining the position of the Council by the end of the Presidency.

• Following deals made under the Irish on the EU budget, including the LIFE Regulation, support national level programming of EU funds to give priority to biodiversity conservation, to cover in particular the financing needs of the N2000 network.
10. **Promote better environmental governance**

- Call on the Commission to come forward with a new proposal for a Directive on Access to Justice, building on and strengthening the 2003 proposal;
- Encourage the Commission to make good progress with the preparation of a horizontal EU law for Environmental Inspections aiming at the publication of the draft before the end of 2013;
- Ensure effective follow-up to the Commission’s 2012 Communication on better implementation;
- Counter the growing tendency for the economic crisis to be used as an excuse to push for deregulation in the environmental sector.
1. EUROPEAN COUNCIL

1.1. EUROPE 2020 STRATEGY AND EU SUSTAINABLE DEVELOPMENT STRATEGY

In 2011 and 2012, the Europe 2020 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 has focussed political attention on budgetary discipline at the expense of wider economic and sustainability issues.

On the positive side, the Commission has brought forward a significant 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.

The EU Sustainable Development Strategy (SDS), adopted in 2001 and renewed in 2006, was due to expire in 2012. So far there has been little sign of intention by the Commission to extend or renew the SDS. On the contrary, the Commission has clearly signalled that it considers the Europe 2020 Strategy to be in effect a sustainable development strategy. However, the focus of Europe 2020 is competitivity, growth and jobs. The fact that the growth is supposed to be smart, sustainable and inclusive does not make Europe 2020 a sustainable development strategy.

Last year’s UN Conference on Sustainable Development (Rio+20) has implications for both the Europe 2020 Strategy and the EU SDS. The Rio+20 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…”

The European Council conclusions of 25 October 2012 on the follow-up to Rio+20 called 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.

The Lithuanian 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. 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.

The EEB therefore calls upon the Lithuanian Presidency to:

- Call on the Commission to prepare for the review and revision of the Europe 2020 Strategy and other relevant policies, strategies and programmes to take account of the Rio+20 outcomes;
- Involve the Council of Environment Ministers in the review and implementation of the Europe 2020 Strategy, in particular by adopting Council Conclusions as input into the 2014 Semester process;
- Acknowledge that the Europe 2020 Strategy does not amount to a substitute for the EU Sustainable Development Strategy and maintain the pressure on the Commission to start preparations for the renewal of the SDS;
- Adopt Council Conclusions at the December Environment Council as input to the 2014 European Semester process, which call for a systematic shift of taxation from labour to resources, phasing out of harmful subsidies and a greater alignment with environmental policy priorities including water and waste;
- 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 and green public procurement;
- Call upon the Commission to provide more systematic guidance and coordination through, inter alia, a roadmap for the removal of environmentally hazardous subsidies.

1.2. TOWARDS A STRONGER CLIMATE AND ENERGY POLICY

The debate on a post-2020 climate and energy policy began during the Irish Presidency with the goal to reduce emissions in line with long-term commitments while achieving a substantially higher share of renewables and a strong framework to enhance energy savings. These long-term options must be backed by taking action now to close the ambition gap, to set the correct incentives to invest in renewable energy and energy efficiency measures, in the first place by fixing the Emissions Trading System (ETS) and aligning the Energy Tax Directive with Europe’s climate goals, and to address short-lived climate forcers and super greenhouse gases.
The EEB therefore calls upon the Lithuanian Presidency to:

- Play a leadership role to ensure progress in the negotiations toward an international agreement that will ensure that emission reduction pathways to 2050 are based upon 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, and to solve the issue of surplus credits from the first commitment period of the Kyoto Protocol;
- Ensure that the EU takes action and commits to meet at least a 30% greenhouse gas reduction by 2020 through domestic action;
- Support ambitious and binding targets on emissions reductions, energy savings and renewable energy for 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 by taking further the Commission's proposals for long-term 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 a successful agreement on the revision of the F-Gas Regulation is concluded in order to ensure an effective market shift to climate-friendlier alternatives by means of placing-on-the-market bans on HFC equipment as soon as feasible and by providing incentives to move away from these super greenhouse gases in favour of a strong European alternatives industry;
- Request the Commission to prepare measures for the elimination of black carbon in the EU by 2020;
- Reach an agreement on the Energy Tax Directive that leads to significantly higher minimum tax levels, especially for diesel, maintains the CO2 component proposed by the Commission and removes tax exemptions;
- Prevent the use of the most climate damaging biofuels and ensure that the proposal to address indirect land use change (ILUC) emissions properly accounts for these when calculating carbon footprints.

1.3. SUPPORT STRONG ENVIRONMENTAL STANDARDS AT INTERNATIONAL LEVEL

The United States and the European Union are set to begin negotiations on a “trade” and investment agreement, a proposed Trans-Atlantic Free Trade Agreement (TAFTA), also referred to as a Transatlantic Trade and Investment Partnership (TTIP).

In their announcements, both parties noted that trade tariffs in the United States and European Union are already low, and that the proposed deal will focus in particular on "regulatory issues and non-tariff trade barriers”. The process leading to the launch of TAFTA negotiations has been dominated by attempts to eliminate regulatory distinctions for the sake of narrow business interests. Industry representatives, organized since 1995 as the Transatlantic Business Dialogue, recently renamed the Transatlantic Business Council, have pushed for “harmonization” of divergent standards and elimination of “trade irritants” with the singular goal of easing their commercial activities. This framework not only threatens to weaken critical consumer and environmental safeguards, but 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 the democratic process, even when doing so results in divergent standards that businesses may find inconvenient.

As a general principle, the EEB believes that aiming for regulatory convergence can only be acceptable if it requires high standards of consumer and other protections and related compliance, and establishes a regulatory floor rather than a ceiling. This means that a free trade deal must not limit the United States and the EU and its member countries from adopting and enforcing standards that provide higher levels of consumer, worker, and environmental protection than those required by a potential agreement, in response to emerging consumer demands and unforeseen crises. To impose a regulatory ceiling through this deal would land policymakers with the impossible task of anticipating all of tomorrow's policy challenges today.

Perhaps most importantly, a potential agreement between the United States and EU must not include investor-state dispute resolution. Investors should not be empowered to directly challenge sovereign governments over public interest policies in off-shore tribunals 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. 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 Australia and the US in their recently signed trade agreement did not include such a provision.

Whereas the EU-US negotiations are at a very early stage, negotiations on a free trade agreement between the US and Canada are at a much more advanced stage, and in those negotiations it has been proposed to include a provision on investor-state dispute resolution, which is a matter of great concern.

The EEB therefore calls upon the Lithuanian Presidency to:

- Ensure that bilateral trade negotiations between the EU and Canada and the US will lead to an upward harmonization of environmental standards and take the form of a regulatory floor rather than a ceiling;
- Oppose the inclusion of an investor state dispute settlement mechanism in any trade agreements, as Australia recently and successfully did in their trade deal with the US, which would make the EU and national governments liable to expensive lawsuits for passing environmental legislation.

1.4. EFFECTIVE FOLLOW-UP TO RIO+20

While the outcome of the 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. Among its main outcomes, which were endorsed in July 2012 by the UN General Assembly, were:
- A commitment to set up an inclusive participatory process to develop sustainable development goals;
- Agreement to strengthen UNEP and establish a high-level political forum on sustainable development to replace the UN Commission on Sustainable Development;
- Recognition of the importance of the green economy as a tool to promote sustainable development, to be reflected in action in priority areas, such as poverty eradication, sustainable agriculture, water, sustainable energy, decent work for all, oceans and fisheries, and sustainable consumption and production;
- Agreement to develop options for an effective Sustainable Development Financing Strategy.

The European Council conclusions of 25 October 2012 under the Cyprus Presidency 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”.

Following a public consultation, the Commission issued a Communication in February 2013 which addressed both the Rio+20 follow-up process and the post-2015 development framework. This reflected growing support in Europe for the notion that it does not make sense to have one set of sustainable development goals on the basis of the Rio mandate and a second set as successors to the Millennium Development Goals (MDGs).

Under the Irish Presidency, the June Council emphasised the importance of ensuring that the environmental dimension is properly reflected in the post-2015 framework, and also underlined the need to integrate the MDGs review and the work on Sustainable Development Goals in one single set of goals reflecting the three dimensions of sustainable development in a balanced manner.

The EEB supports the goal of a single overarching framework for the Post-2015 Agenda that sets targets and timetables, with accountability and review mechanisms for all countries. Agenda 21, the Johannesburg Plan of Implementation (JPOI), the Rio+20 outcome document and the Millennium Declaration should serve as key reference documents for the framework. The principles, objectives and targets of the overarching Post-2015 agenda should also inform the Europe 2020 strategy in the long term as well as the review of the SDS (see section 1.1 above).

The elaboration of 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 sees it as crucial that the Post-2015 Agenda will be pushed for and implemented by the high level political forum being established as the successor to the Commission on Sustainable Development, which should be given adequate authority and resources.

The Lithuanian Presidency will now have the task of putting some shape on the resolve for an ambitious Rio+20 follow-up expressed under the Cyprus Presidency and further promoted under
the Irish Presidency. It should seek to ensure that the EU, as well as renewing its commitment to sustainable development through domestic actions (see section 1.1 above), promotes a strong pro-sustainability agenda though its participation in the international follow-up processes.

The EEB therefore calls upon the Lithuanian 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:
  - Continuing to push for the strengthening of UNEP to ensure its eventual parity with the international bodies responsible for dealing with trade, health, labour etc;
  - Engaging in the process of drawing up sustainable development goals with a view to producing goals that are 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;
  - Supporting the merging of the SDG and post-2015 processes while ensuring that the environmental sustainability element is respected throughout;
  - Promoting a concept of green economy 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;
  - Promoting greater transparency and accountability as an integral component of sustainable development in various contexts, including in the new upgraded UNEP, in the high-level political forum on sustainable development and in the process of developing SDGs, as well as through strengthening the international legal framework promoting Principle 10 of the 1992 Rio Declaration;
  - Promoting the aforementioned eleven principles for stakeholder participation adopted by the major groups and stakeholders in February 2013 in the new arrangements for stakeholder participation under UNEP and seeking to ensure that environmental NGOs enjoy increased recognition as a principal partner for UNEP rather than as a sub-group of one of nine major groups;
2. ECONOMIC AND FINANCIAL AFFAIRS COUNCIL

2.1. ENERGY TAX DIRECTIVE

The Energy Tax Directive is of tremendous importance in the promotion of key EU policies, including climate, energy and fiscal policies. The revision of the Energy Tax Directive must contribute to real reductions of greenhouse gas emissions and of energy use in general. The tax levels must reflect the currently unincorporated environmental costs of energy use. The existing directive is in urgent need of revision, not least because the lack of adjustment to inflation since 2003 and the fiscal advantages granted to diesel in the past years have significantly reduced the levels of energy taxation. It is also extremely important to put an end to the current absurd situation where energy taxes very often go against Europe’s energy and climate objectives, and where the EU requires Member States to exempt some of the most polluting transport modes, such as aviation, from taxation.

The EEB supports the proposed mandatory split of the energy taxes with one part based on energy content and the other on CO₂ emission, and the equal treatment for all fuels. Another positive feature in the proposal is the expansion of the tax scope to all heating fuels and for all transport fuels. This provides a fair and environmentally sound level playing field, for all heating fuels for example.

The Commission should not compromise on these plans.

We are concerned however that the minimum tax rates laid down in the proposed Directive are not high enough to have a sufficient disinceptive effect on environmentally damaging behaviour. Furthermore, the adjustment mechanisms built into the Directive to increase these rates will not be sufficiently flexible. We also have concerns about the assumption that biofuels do not produce CO₂, which is, on a life-cycle basis, not the case. Exemptions must be minimised and preferably accommodated with targeted social compensatory measures.

The EEB therefore calls upon the Lithuanian Presidency to:

- Conclude the negotiations on the revised Energy Tax Directive and seek agreement on the key elements of the proposed revision including:
  - A CO₂ component and an energy component to minimum tax rates which enables the Directive to work well alongside the ETS;
  - Significantly higher minimum levels, in particular for diesel (at least €470/1000 litres by 2018);
  - No exemptions and higher minimum tax rates for domestic fuels;
  - No mandatory exemption on biofuels and bioliquids;
  - Abolishing the mandatory tax ban for aviation and shipping fuels (including with respect to fisheries).
3. COMPETITIVENESS COUNCIL

3.1. REDUCE ROAD TRAFFIC NOISE

Road traffic noise disturbs the lives of millions of Europeans. It is estimated that 44% of Europeans (over 210 million people) are regularly exposed to road noise levels considered potentially dangerous to health.

According to the World Health Organisation (WHO), Europeans lose at least one million healthy life-years each year due to disability or disease caused by traffic noise. Examples of health impacts resulting from noise exposure include cardiovascular disease (heart attacks, stroke, raised blood pressure) and sleep disturbance. Traffic noise is also shown to hinder children’s learning. In total, vehicle noise is associated with 50,000 premature deaths per year and 250,000 cases of heart disease. This makes noise the second biggest environmental health problem in Europe after air pollution.

The total cost of traffic noise to society, including health costs, is estimated to amount to at least €40 billion per year in the EU. This could be avoided in a very cost-effective way by cutting road traffic noise at source. This would enable national governments, local authorities and society at large to enjoy benefits which would outweigh costs by a factor of more than thirty to one, saving around €89 billion per year. This includes cutting health-related costs caused by noise, but also enabling local and national governments to avoid expensive measures such as installing noise barriers or insulating individual homes.

The Commission’s proposal for a Regulation on the noise level of motor vehicles was adopted on 9 December 2011. The proposal was badly needed since the standards have not been updated since 1996, despite increasing traffic, and the current limit values have failed to have the intended effect. However, the timetable for implementation proposed by the Commission is painfully slow. Even if the standards had been adopted in 2012, they would only be fully implemented after 2017 for new types of vehicle and would only apply to all new vehicles sold after 2019. Given the urgency of the problem and its health effects, this is far too late.

Discussions in the European Parliament and the Council have not been much more ambitious, with some proposals for changes which could end up making the new rules even weaker than the existing 20-year-old standards. We therefore ask the Lithuanian Presidency to firmly reject any weakening of the Commission’s proposal and to push for a rapid entry into force of new, ambitious standards. Any proposal to delay entry into force would come at a cost to public health and budgets of local authorities.

The EEB therefore calls upon the Lithuanian Presidency to:

- Firmly reject any attempt to weaken the Commission’s proposal and support noise limits which will lead to the significant improvement of people’s health in the most cost-effective way;
- Ensure the adoption of a faster timetable for the entry into force of the proposed standards, with step 1 to be implemented one year after the Regulation’s entry into force and step 2 two years after the Regulation’s entry into force;
- Set out a pathway for further noise reductions to enter into force, with a 3-decibel reduction compared to step 2 for vans and cars and a 4-decibel reduction compared to step 2 for lorries;
- Ensure that noise testing is representative of real world noise emissions;
- Ensure the adoption of stricter limits for harmful peak levels of noise, for example when an engine is revved.
4. AGRICULTURE AND FISHERIES COUNCIL

4.1. TOWARDS A NEW COMMON AGRICULTURAL POLICY

The EEB believes that the Common Agricultural Policy (CAP) must move away from its current logic of dependency and compensation to one of public goods delivery based on a new contract between farmers and society. Unfortunately, despite the previous reforms, the CAP is still not delivering; on the contrary, it is incentivizing unsustainable farming and livestock practices based upon monocultures and over-dependence on pesticides, fertilizers and feed imports, leading to water overuse and soil degradation.

The Commission proposed a timid greening of the future CAP in October 2011, but the European Parliament and especially the Council have tried hard to make it even weaker mainly for the sake of flexibility, effectively giving farmers a blank cheque.

The Irish Presidency tried hard to strike a deal at any cost and at the expense of a meaningful green reform. It managed to close the political deal by the end of its Presidency at the expense of the environmental aspects of the reform and of a Parliament’s position that was slightly better than the Council’s in some respects.

Whereas the Parliament’s Agriculture Committee adopted a report in early 2013 that aimed to bring the Policy back on previous reforms (by scrapping half of cross compliance requirement, endorsing double funding and a meaningless greening), the plenary that followed in March did reverse some of the worse outcomes and for instance endorsed as a general rule a package of compulsory measures to be respected by all farmers in return for part of their direct payments. The Parliament also secured minimum spending for the environment of 25% in Pillar 2 and extended the scope of cross compliance to the Sustainable Use of Pesticides Directive (SUPD). Overall it strongly rejected the possibility to pay farmers twice for the same measure under Pillar 1 greening and Pillar 2 agri-environment Measures.

This position slightly countered the Council’s one which by contrast endorsed double funding and therefore validated an illegal concept that goes against the very first objective of the reform which was to green both pillars by raising the baseline in Pillar 1. The Council also sought to weaken general rules around greening by including a mechanism based on equivalence of benefits, which would not only weaken the greening objectives but also increase the administrative costs. It did not secure 25% minimum spending compulsory for the environment in Pillar 2 even though this valuable Pillar is reduced. It furthermore included dangerous measures such as income stabilization tools and refused to include the SUPD in cross compliance.

Unfortunately the political deal represented a further step towards a “de greening” of the Policy. The greening initially proposed by the Commission got weakened in three ways. First, the content of the measures became meaningless, then the number of exemptions were multiplied (minimum threshold increased leading to situations where 35.5% of EU farmland would be exempted from having to maintain ecological focus areas (EFAs), exemption for permanent crops, etc) and finally a dodgy mechanism of equivalence for greening was introduced.

Additionally to a watered down greening under Pillar 1, the final deal also weakens the environmental delivery of Pillar 2 by introducing measures that have nothing to do with the
environment such as investment measures and less favoured areas within the only safeguard for the environment in this pillar: the so called minimum spending. This minimum spending has been raised up to 30% and made compulsory in the final deal but the extension to the measures above mentioned could fully negate its positive effects for the environment.

Cross compliance was also seriously weakened compared with the Commission’s initial proposal and important pieces of legislation such as the Water Framework Directive and the Sustainable Use of Pesticides Directive were removed from cross compliance as well as the very important new Good Agricultural and Environmental Conditions (GAEC) measure protecting carbon rich soils and wetlands.

Protecting the natural resources that farming depends on, and which are essential to ensure its medium and long term economic viability, has to be part of the solution and in view of the final deal only a few options are left over to do so.

It is therefore paramount to ensure that in the coming months, the implementation phase will be able to correct or at least adjust several of the negative outcomes of the political deal.

Delegated acts and implementing acts on crucial elements such as the weighting of the EFAs should not be misused to overweight some elements that do not have a strong ecological value and should on the contrary be used to underweight some of these (such as crops areas).

It is also crucial that the transitional rules ensure that there will be no double funding in Pillar 2 in the next CAP and that there will be a clear adaptation of the baseline for agri-environmental measures when the new direct payments regulation kicks in 2015.

Finally, some issues relating to the Multi annual Financial Framework will still be up for discussion in the months to come and one priority should be to ensure that as little money as possible is transferred from Pillar 2 to Pillar 1.

The EEB therefore calls upon the Lithuanian Presidency to:

- Ensure that transitional rules establish the non double funding principle by referring to a clear baseline in agri-environmental measures (the baseline should be the greening in Pillar 1);
- Ensure that the delegated and implementing acts strengthen the environmental potential of some measures such as ecological focus areas and do not erode further the greening with additional use of the equivalence possibility;
- Ensure that reverse modulation (transfer of funds from Pillar 2 to Pillar 1) is limited to 5% and only for those Member States below 90% average direct payments as initially suggested by the European Commission;
- Secure 100% EU co-financing for money being shifted from Pillar 1 to Pillar 2.

4.2. GMO CULTIVATION

There are very serious ongoing issues related to the risk assessment of genetically modified organisms (GMOs) in the EU. Some initiatives have come out of the EU institutions and Member States in the last few years but little real progress has been achieved. In spite of this, some
European Commission officials recently made statements about the need to proceed with new authorisations of GM crops for cultivation.

The EEB believes that in the current situation, any new authorisations would be unacceptable. The work of the European institutions, especially the Presidency, the Council and the Commission, has to be directed towards achieving meaningful progress in the area of GMOs: regarding the risk assessment, regarding the broader impact on society and the environment and regarding the right of Member States to take decisions about the cultivation of GM crops. First of all, the approval system has to be improved. There has been no real improvement despite the fact that the Environment Council in December 2008 demanded the strengthening of the GM crops approval system in order to make it compatible with EU law.

Meanwhile, several ongoing issues have even increased in importance. First, it is necessary to set up a risk assessment capable of assessing the long-term health impacts of GM crops, since, as the debate around the Seralini study proves, there is no agreement on how to design protocols and methodologies to carry out long-term assessment of potential health impacts. Second, it is necessary to ensure that the assessment of herbicide-tolerant crops includes the changes in agricultural practices that they cause, following the evidence of an increase of herbicide use and development of herbicide-resistant weeds, as well as the risks for non-target organisms from GM insect-resistant plants. These risks have to be properly studied and assessed before any authorisations.

Furthermore, the socio-economic impacts of GM crops must be assessed and properly addressed. There is mounting evidence of socio-economic impacts; an example is the costs related to the prevention of GM contamination which are currently borne by non-GM producers and companies and indirectly by EU consumers and taxpayers.

In spite of the considerable improvement of the European Food Safety Authority’s (EFSA’s) new draft guidelines for the environmental risk assessment of GMOs, there are still weaknesses which should be improved. EFSA should fully consider independent peer-reviewed scientific literature in their opinions and apply the same standards for industry data as for independent scientific literature. Member States and the European Commission should deliver a new regulation for minimum standards for environment risks assessments and this regulation should be followed by rigorous implementation and substantial improvement of EFSA’s assessments and scientific opinions in practice.

The Presidency should also formulate a clear proposal for giving Member States the right to decide about the cultivation of GM crops, based on strong legal grounds, and thus substantially improve the legal initiative of the previous Presidency.

The EEB therefore calls upon the Lithuanian Presidency to:

- Work to resolve serious ongoing issues in the risk assessment and regulation of GMOs, especially strengthening the EU authorization system (socio-economic impacts of the cultivation of GM crops, proper assessment of herbicide- and insecticide-resistant crops, developing further stricter environmental assessment of GMOs as demanded in 2008 by the Environmental Council etc);
- Ensure the right of Member States to decide about the cultivation of GM crops, on clear and strong legal grounds;
- Strongly oppose any new authorisation for the cultivation of GM crops until these open issues are resolved, so as to prevent risks to environment and human health.
5. ENERGY AND TRANSPORT COUNCIL

5.1. TOWARDS STRONGER CLIMATE AND ENERGY POLICIES

(See also section 1.2.)

Energy savings and the sustainable use of renewable energy must be prioritised by EU strategies in order to achieve Europe’s 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 some Member States have demonstrated remarkable success in increasing renewable energy use, the progress is more modest in others. Moreover, with half the renewable energy coming from biomass which is increasingly likely to be increasing 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.

The EEB therefore calls upon the Lithuanian Presidency to:

- Ensure that the EU takes action and commits to meet at least a 30% greenhouse gas reduction by 2020 through domestic action;
- Build upon the milestones for 2030 and 2040 outlined in the 2050 Low Carbon Roadmap and support ambitious post-2020 targets, in accordance with the no-regret scenario based on decarbonisation, high renewables and energy efficiency choices that are in line with reaching emissions reductions of at least 95% by 2050;
- Specifically, facilitate a constructive discussion on a 2030 EU climate and energy policy framework which includes legally binding targets for emissions reductions, sustainable renewable energy and energy savings;
- Take effective steps to rescue the ETS, 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;
- Ensure that the energy strategies build upon the full potential for energy savings, including reaching the 20% energy savings objective for 2020, and request the Commission to propose a binding energy savings target for 2030 to fully tap into the cost-efficient savings potential;
- Encourage the Commission to table ambitious renewable energy targets for 2030, with a view to drawing most of EU energy supply from renewables in 2050;
- Prevent the use of the most climate-damaging biofuels and ensure that the proposal to address indirect land use change (ILUC) emissions properly accounts for these when calculating carbon footprints;
- Press for ambitious implementation of the Renewable Energy Directive including sustainability criteria for biomass as described in the following section;
- 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.
5.2. BIOMASS

The Renewable Energy Directive (RED)\(^1\) sets an overall target of 20% renewable energy for the EU which has then been divided between the EU Member States. On average biomass is expected to contribute to 50% of that target.

Under EU accounting rules, burning biomass feedstock is considered to be “carbon neutral”, even though on a life-cycle basis there are net greenhouse gas (GHG) emissions, certainly in the short and medium term. The best available scientific evidence however shows the carbon and other GHGs emissions of many bioenergy options may be high. Bioenergy causes carbon loss from vegetation and soils when biomass is harvested. Biofuels cause losses of carbon to the atmosphere when land is converted — either directly or indirectly — to meet the increased demand for agricultural crops it is triggering. In order to understand whether the use of biomass for energy is better or worse than the fossil fuel system it replaces, one has to compare the emissions saved from not using fossil fuels with the change in carbon stocks in vegetation and soils.

The RED 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\(^2\).

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\(^3\), 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

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\(^3\) 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
cap on food-based biofuels set at 5%. This would prevent Member States from using more than 5% food-based biofuels (sugar, cereals, oilseeds) to meet their 10% target; it would not however prevent fuel suppliers from using food-based biofuels under the Fuel Quality Directive to meet their 6% emissions reduction and only proposed to make ILUC factors part of a reporting exercise without including them into the emissions reductions obligations under the sustainability criteria.

Serious improvements are therefore needed during the co-decision process if we want to ensure that we truly stop subsidising biofuels that exacerbate climate change and cause other environmental damage.

The Parliament has started its work and the main committees’ rapporteurs such as ENVI and ITRE have presented their reports.

The report of the ENVI Committee seemed to be going in the right direction as it includes ILUC factors in the lifecycle analysis under the sustainability criteria with a grandfathering clause. It was not the same for the ITRE report which was even refusing to acknowledge there is a problem. The ITRE report was voted on 20 June and proposed the removal from the European Commission’s proposal of any meaningful tool to tackle ILUC and seriously undermined the limit for food based biofuels. It also proposed to increase the cap on food-based biofuels eligible to count towards targets from 5% to 6.5%.

For the sake of the environment, the industry and the EU’s credibility as regards its ability to meet climate targets, it is of paramount importance that the RED and the FQD are wisely revised and set a clear framework for future investments. Biofuels that instead of decreasing emissions increase them compared to fossil fuels are not part of the solution but part of the problem and the future policy needs to reflect that. ILUC factors need therefore to be introduced to differentiate between the “good” and the “bad” biofuels and the right incentives need to be given to sustainable next generation biofuels. Other alternatives such as renewable electricity and energy efficiency also need to be promoted and overall no transport target needs to be set post 2020. The logic for post 2020 should be the one of the FQD, meaning a GHG emissions approach (not a volume target).

It is therefore important that the Council follows the direction of the main Committee report, namely the ENVI report, and secures ILUC factors, a cap including energy crops and sustainable safeguards for next generation biofuels when the trialogue starts in the autumn.

The situation regarding biomass for energy is more problematic because the Commission has decided against developing legally binding sustainability criteria. At this moment, it has put forward recommended sustainability criteria for solid and gaseous biomass sources which can be adopted by Member States, but they are not binding. On top of that, more and more scientific studies demonstrate that the assumed carbon neutrality for biomass is uncertain at best and that time gaps need to be taken into account as in the short and medium term certain biomass for energy use can increase GHG emissions compared to fossil fuels.

A proposal on binding sustainability criteria keeps being postponed against the legislative mandate. Such a proposal is urgently needed to stop the burning of whole trees in EU co-firing plants. It needs to at least ban some feedstocks such as whole trees from the 20% target and add sustainable management criteria. Another priority should be to get the science right on carbon debt as well as cascading use. Any additional delay should not come at the expense of
our climate and environmental policies. The development of renewable energy capacities needs
to take full account of the physical limits of the environment.

The EEB therefore calls upon the Lithuanian Presidency to:

- Ensure that straight after the vote in Plenary, the Council will agree to a position in
  support of a lowered mandate of 5% covering all land based biofuels including energy
crops and also including ILUC factors for compliance purposes;
- Ensure that the proposal on ILUC is maintained under the triilogue in order to have ILUC
  factors from different biofuel crops in both the RED and FQD;
- Ensure that waste- and residues-based biofuels are carefully covered by sustainability
  standards;
- Put pressure on the Commission to develop and propose mandatory sustainability
  criteria for biomass that also tackle the issue of carbon debt.
6. JUSTICE AND HOME AFFAIRS COUNCIL

6.1. IMPROVE ACCESS TO DOCUMENTS

The Lisbon Treaty states in Article 10, subpoint 3, that “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.” This article places the recast of Regulation 1049/2001 on Access to EU Documents in a new light. Access to information is fundamental to transparency and one of the democratic rights of European citizens and their organisations, being a precondition for their meaningful participation in the democratic life of the EU.

In 2008, the Commission tabled a first proposal for a recast of the Access to Documents Regulation. The EEB was concerned that some of the Commission amendments actually represented a step backwards, instead of improving access to documents, and was therefore pleased to note that at least some Nordic countries and the European Ombudsman shared this opinion. It also welcomed the European Parliament’s amendments to redress the situation and further improve access to documents. Regrettably, disagreements between the Council and the Parliament on the admissibility of some of the Parliament’s amendments literally blocked the process for several months.

A second Commission proposal bringing it into line with the broader scope required by the Lisbon Treaty further delayed the Parliament’s work. Originally the Regulation applied only to EU documents from the European Commission, European Parliament and Council of Ministers, whereas Lisbon requires that this be extended to all EU bodies, offices and agencies in addition to the three institutions. Unfortunately the Commission did not use this opportunity to revise some of its original retrogressive amendments. During its December 2011 plenary, the European Parliament adopted the amended regulation on access to documents with an overwhelming majority. The amended text aimed to improve the public’s access to documents and lay down the principles for granting access to documents and applying the possible exceptions. The matter was subsequently taken up under the Danish Presidency and went into trilogue negotiations. The compromise texts that the Presidency put forward proposed only minor improvements on some issues and included at the same time several points that would have led to considerable restrictions. The Danes were ultimately unable to conclude the negotiations under their Presidency and thus the matter was referred to the Cyprus Presidency, which did not however work on the issue. The Irish Presidency did not make progress on this dossier either.

Transparency is important both for the credibility and accountability of EU institutions and bodies and to enable EU citizens to play an active part in the EU’s democratic processes. It is therefore important that the Lithuanian Presidency seeks to strengthen the weak text which resulted from the negotiations under the Danish Presidency and drawing as far as possible on the positive elements of the European Parliament’s text in order to have the Regulation on Access to Documents finally adopted in Council under the Lithuanian Presidency.

The following aspects are of particular importance to the EEB:
A broad definition of "document": In the Commission proposals, the definition of a
"document" is more restrictive than in the original regulation. For the EEB, this is deeply
regrettable, being neither in the spirit of the regulation nor of the Lisbon Treaty;
A restrictive interpretation of the exceptions in line with the approach under the Aarhus
Convention and recent case law: Exceptions with reference to national law should not be
possible and more generally, exceptions should only be granted on the basis of reasons
given for the particular case;
Access to documents related to infringement proceedings should be covered by the
regulation. Citizens and NGOs that have filed a complaint should be able to follow the
discussion between the Commission and the relevant authority, in order to give input as
a third party and to comment on the responses from both sides;
Strict implementation of the time limits laid down in the Regulation: The EEB is against
any extension of the 15-day deadline for the Commission to reply to conformity
applications. We have experienced considerable delays in getting responses. The
Council should seek ways to clarify penalties for violation of time limits.

The EEB therefore calls upon the Lithuanian Presidency to:

Seek a mandate to resume the trilogue negotiations on the recast of the Access to
Documents regulation;
Cooperate with the Parliament with the aim of strengthening the regulation by improving
access to documents and making progress with a view to adopting the regulation under
the Lithuanian Presidency;
In any case, refuse any weakening of Regulation 1049/2001 and ensure that there is no
doubt that the text is in compliance with the Lisbon Treaty;
In particular, refuse any restriction of the definition of "document";
Ensure compliance with the Aarhus Convention and consistency with Regulation
1367/2006 on the application of the provisions of the Aarhus Convention, and include
explicitly the requirement for a restrictive interpretation of exceptions;
Ensure that access to documents related to infringement proceedings is covered by the
Regulation and require more openness concerning documents under the Commission's
control during infringement and EU legislation conformity cases;
Press for greater respect for deadlines from the side of the authorities;
Update the Regulation in the light of decisions of the European Court of Justice by
including references to relevant case-law.
7. ENVIRONMENT COUNCIL

7.1. GREENING THE EUROPE 2020 STRATEGY

In section 1.1, we have underlined some requirements for the Europe 2020 Strategy to become a green development strategy. The EEB considers it essential that the Environmental Council plays an active role in the debates with the Commission and with the evaluation of the national reform programmes as well as the budget stabilisation programme.

The EEB therefore calls upon the Lithuanian Presidency to:

- Put a discussion on the Commission’s assessment of the 2013 Country Specific Recommendations on the Council agenda and ensure the December Council will adopt Council Conclusions as input to the 2014 Semester process which call for a systematic shift of taxation from labour to resources, phasing out of harmful subsidies and a greater alignment with environmental policy priorities including water and waste;
- Ensure that the Council maintains the pressure for a swift and ambitious roll-out of the Resource Efficiency Roadmap.

7.2. SUPPORT STRONG ENVIRONMENTAL STANDARDS AT INTERNATIONAL LEVEL

As described in section 1.3 above, the United States and the European Union are set to begin negotiations on a Trans-Atlantic Free Trade Agreement (TAFTA) which could have significant implications for regulatory standards pertaining to environment and health.

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 Lithuanian Presidency to:

- Put the issue of the Trans-Atlantic Free Trade Agreement on the agenda of the Environment Council with a view to ensuring that bilateral trade negotiations between the EU and the US will lead to an upward harmonization of environmental standards and take the form of a regulatory floor rather than a ceiling.

7.3. SUPPORT IMPLEMENTATION OF THE BIODIVERSITY STRATEGY

Biodiversity, the variety of life on Earth, is essential to sustaining the living networks and systems that provide us with health, wealth, food, fuel and the vital services our lives depend on. Continuing depletion of Europe’s stocks of natural capital and flows of ecosystem services will ultimately undermine Europe’s economy and erode social cohesion.
European governments renewed their commitment in March 2010 to halt the loss of biodiversity by 2020 but also extended the scope to include the need to restore biodiversity wherever possible. A long term vision for biodiversity for 2050 was drawn up. European governments also signed up to the new Convention on Biological Diversity (CBD) Strategic Programme until 2020, which guides strategic action to reach international biodiversity goals. During 2011, these commitments were translated into an action framework by the European Commission: “Our life insurance, our natural capital: an EU biodiversity strategy to 2020”, which has also been endorsed by the Council.

The achievement of the 2020 Biodiversity targets will also depend on how much Member States when planning the use of the MFF funds decide to allocate financially to biodiversity and ecosystem protection. As there is no single EU fund for biodiversity, apart from the very insufficient LIFE Nature and Biodiversity strand, the negotiations on the new Multiannual Financial Framework (MFF) 2014-2020 should have secured sufficient funds for biodiversity conservation through integration of biodiversity into funding streams of different EU policy sectors. Despite the attempts on delivering mandatory nature conservation financing at the EU level through integrating biodiversity in other EU funding streams largely failed, especially when it comes to CAP, we assess that Member States still have the opportunity to secure funding for biodiversity through putting sufficient emphasis on biodiversity and nature conservation in their Partnership Agreements and especially Operational Programmes. There are budget lines in several funds (most relevant are Cohesion policy funds, EAFRD) that can be used in the planning process to shift money to biodiversity conservation.

Increased efforts are needed to tackle the problem of invasive alien species (IAS) if the target defined by the 2020 Biodiversity Strategy is to be achieved. IAS are considered to be one of the main direct drivers of biodiversity loss at EU and global level. They negatively affect or eradicate native species by preying on them, competing with them for resources, inter-breeding, disrupting or destroying their habitat or introducing pathogens, parasites or diseases that weaken or kill them. As such they can also significantly degrade ecosystem services.

Alien species can bring benefits to specific sectors, such as agriculture and medicine and the trade in ornamental plants. However, in most – if not all – cases, short-term increases in economic profit and social welfare lead to long-term harm to natural ecosystems, as well as human health, infrastructure, food crops, aquaculture, timber stocks and waterways. In economic terms, the costs of IAS are significant. Total annual costs, including losses to crops, pastures and forests, as well as environmental damages and control costs, have been conservatively estimated to be in the hundreds of billions of dollars and possibly more than one trillion. In the EU IAS are estimated to cause around 12.5 billion worth of damage each year. Over and above these short-term impacts, there is considerable lack of knowledge around the negative long-term effect of biological invasions.

Although the challenges posed by IAS are common to many Member States there is currently no comprehensive EU framework to tackle the problem of IAS. The Council of the EU has as a response to the EU 2020 Biodiversity Strategy, and its target on IAS, identified ‘the need for an EU strategy on IAS including a dedicated legislative instrument on IAS by 2012, which should consider all aspects of the challenge posed by IAS, including their identification and

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4 Target 5 of the 2020 Biodiversity Strategy: By 2020, Invasive Alien Species (IAS) and their pathways are identified and prioritised, priority species are controlled or eradicated, and pathways are managed to prevent the introduction and establishment of new IAS.


6 IEEP (2010) Assessment to support continued development of the EU Strategy to combat invasive alien species.
prioritisation, control and eradication as well as management of their pathways’. Similarly, the EP has in its Resolution urged ‘the Commission to come forward in 2012 with a legislative proposal which takes a holistic approach to the problem of IAS to establish a common EU policy on the prevention, monitoring, eradication and management of these species and on rapid alert systems in this area’.

The Lithuanian Presidency should make a strong push for the expected new legislative proposal addressing the problem of IAS to be published during the first half of the Lithuanian Presidency and an increased effort to achieve significant progress in defining the position of the Council should be made by the end of the Presidency.

Progress should also be achieved in promoting green infrastructure as a way to redirect investments from expensive ‘grey infrastructure’ such as dams, levies and canals to ‘green infrastructure’ such as floodplains and interconnected natural areas. The Commission published its Communication on ‘Green Infrastructure (GI) — Enhancing Europe’s Natural Capital’ in May 2013, during this Irish Presidency. The Lithuanian Presidency should now ensure that Green Infrastructure Strategy outlined in the Communication receives a much deserved follow up and prominence in other policy area, not only environment. It needs to be recognised that investments in green infrastructure will deliver significant ecological and economic benefits. Adequate funding is however needed from EU Cohesion and Agriculture policies to get such projects started. National programming of the use of MFF funds should ensure that green infrastructure is integrated into the implementation of main policies from 2014 to 2020.

On the international level, the EU needs to show leadership and make progress with the implementation of agreements reached in Nagoya in 2010. The Presidency should conclude negotiations on the Commission’s proposal for a Regulation on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union (ABS regulation), which was published in October 2012, and thus enable EU Member States and the EU to ratify and implement the Nagoya Protocol on Access and Benefit Sharing of Genetic Resources.

The EEB therefore calls upon the Lithuanian Presidency to:

- Reflect on how the objectives of the Biodiversity Strategy can be achieved following the failure of the CAP Reform in particular and in this context support national level programming of EU funds to give priority to biodiversity conservation, to cover in particular the financing needs of the N2000 network;
- Push for a new legislative proposal addressing the problem of IAS to be adopted by the Commission during the Lithuanian Presidency and make an increased effort to achieve significant progress in defining the position of the Council by the end of the Presidency;
- Promote integration of Green Infrastructure in the implementation of the main policies from 2014 to 2020, including through discussion within the Council at the appropriate political level;
- Reach an agreement with the Parliament in first reading on the ABS regulation and urge the EU and Member States to ratify and implement the Nagoya Protocol on Access and Benefit Sharing soon after so as to enable the entry into force of the Protocol.

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7 Council Conclusions on 'EU Biodiversity Strategy to 2020: towards implementation' (19 December 2011).
8 EP resolution of 20 April 2012 on our life insurance, our natural capital: an EU biodiversity strategy to 2020 (2011/2307(INI)).
7.4. **TOWARDS A STRONGER CLIMATE POLICY**

(See also section 1.2.)

Fluorinated gases (F-gases), such as hydro fluorocarbons (HFCs), with a global warming potential hundreds or thousands of times higher than that of CO2, are the fastest growing source of greenhouse gas emissions in the EU. Failing to limit the growing use of these super greenhouse gases could cancel out Europe’s efforts to cut CO2 emissions and undermine the long-term decarbonisation objective. Bans on placing leaky HFC equipment on the market must be adopted to complement a robust economy-wide phase-down schedule in order to promote the uptake of climate-friendly alternatives in sectors where HFC-based equipment is no longer needed.

In the short-term, eliminating the emissions of black carbon is an efficient means to combat climate change. This is technically feasible, as there are already numerous providers of filter systems and low emissions vehicles in Europe. A requirement for exhaust gas treatments would benefit at the same time the climate, citizens’ health and the European market.

The EEB therefore calls upon the Lithuanian Presidency to:

- Play a leadership role to ensure progress in the negotiations towards an international agreement that will ensure that emission reduction pathways to 2050 are based upon 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, and to solve the issue of surplus credits from the first commitment period of the Kyoto Protocol;
- Ensure that the EU takes action and commits to meet at least a 30% greenhouse gas reduction by 2020 through domestic action;
- Support ambitious and binding targets on emissions reductions, energy savings and renewable energy for 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 ETS, including by taking further the Commission’s proposals for long-term 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 a successful conclusion of the revision of the F-Gas Regulation that will ensure an effective market shift to climate-friendly alternatives by means of placing-on-the-market bans on HFC equipment as soon as feasible while incentivising a strong European alternatives industry;
- Request the Commission to prepare measures for the elimination of black carbon in the EU by 2020;
- Reach an agreement on the Energy Tax Directive that leads to significantly higher minimum tax levels, especially for diesel, maintains the CO2 component proposed by the Commission and removes tax exemptions;
- 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.
7.5. SUPPORT DEVELOPMENT OF AN AMBITIOUS AIR PACKAGE

Although emissions of air pollutants have fallen over the past twenty years, the quality of the air we breathe has not significantly improved. Concentrations of ozone and particulate matter (PM), both very dangerous to human health, remain very high, having a significant impact on health and well-being and leading to nearly half a million premature deaths each year in the EU 27 Member States. This adds up to allergies and respiratory and cardiovascular diseases, which result in extra medication and hospitalisations as well as millions of lost working days. According to the European Environment Agency, between 80 and 97% of the EU’s urban population is exposed to levels of pollution which are above the World Health Organisation (WHO) guidelines for health protection.

Current EU air quality standards are still inadequate to protect our health. Compared to the WHO recommendations - and to standards in force in the United States - EU limits are lagging behind, in particular when it comes to fine particles (PM2.5). More stringent standards would deliver many benefits in the medium and long term. Attaining the WHO recommended limits for PM2.5 in 25 large European cities alone could provide savings of €31.5 billion annually, including savings on health expenditures, absenteeism and intangible costs such as well-being, life expectancy and quality of life. Despite all this evidence, most EU Member States continue to breach current standards, at a great cost for citizens and the environment. Air pollution also affects Europe’s nature and biodiversity with the deposition of acidifying and eutrophying substances still exceeding the critical loads of sensitive ecosystems in many places in Europe.

In October 2013, the European Commission is expected to come up with revised and/or new legislation to reduce air pollution in Europe. The package is expected to contain at least a proposal for a revised National Emissions Ceilings (NEC) Directive. The NEC Directive is the cornerstone of EU legislation on air pollution control. In the Commission’s 2005 Thematic Strategy on Air Pollution (TSAP), the revision of the NEC Directive was described as one of the key instruments to achieve the TSAP’s interim objectives for 2020. After six years delay, the NEC revision is expected to set new emission ceilings for 2020, and expand the number of air pollutants covered from four to at least five by adding ceilings for fine particles (PM2.5) and possibly methane, black carbon and mercury.

The NEC Directive has proven to be an effective tool to reduce air pollution and has been relatively well implemented by Member States. According to the latest reporting by national governments for the year 2011, 97 of the 108 ceilings have been met. Several of the 11 breaches are minor. Under business as usual, all 2010 ceilings are expected to be broadly met by 2020. The same applies to the 2020 commitments made by the EU and Member States under the revised Gothenburg Protocol, which shows even weaker ambition than the business as usual scenario. Meeting the Gothenburg Protocol targets will therefore not require any additional efforts by Member States, nor would it deliver any additional benefits in terms of air quality.

There are strong reasons to aim high for ambitious emission reduction commitments in the revised NEC Directive. The cost-benefit analyses prepared for the NEC Directive revision and for the Gothenburg Protocol revision show that the monetised health benefits alone significantly exceed the estimated costs, even for the highest reduction levels analysed. An ambitious NEC Directive is key to reduce the health and environmental damage caused by transboundary air pollution and thus to achieve the objectives of the EU’s 6th Environmental Action Programme and help improve air quality locally.
It is therefore crucial that the Lithuanian Presidency pushes for the adoption of ambitious binding emission reduction commitments for 2020, 2025 and 2030. The level of ambition for 2020 should go significantly beyond those of the revised Gothenburg Protocol and the 2005 TSAP. For 2030, the aim should be to have made significant progress to achieve the long term objectives of the 6th EAP, i.e. “levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment.”

In order to achieve this goal, the revision of the NEC Directive is crucial but not sufficient. It should be complemented by EU legislation in a number of sectors emitting high levels of pollution and for which EU regulation is non-existent, incomplete or inadequate. This includes the agriculture sector (ammonia, methane, primary PM), domestic solid-fuel combustion (PM, VOCs), small industrial combustion plants (NOx, SO2, PM), road vehicles (NOx, PM), non-road mobile machinery (NOx, PM), international shipping (SO2, NOx, PM) and solvent use (VOCs). Such sector-specific policies are key to improving air quality and achieving both ambient air quality standards and NEC ceilings. If no action is taken in these areas, additional efforts will have to be made elsewhere, for instance in local air quality management or in further reducing emissions from other already regulated sources which might be more difficult and/or costly.

Last but not least, EU ambient air quality legislation is a crucial instrument to protect people’s health against bad air quality and give citizens a right to cleaner air. In the past decades, EU-wide limit values for ambient air quality have proven to be a very effective tool to improve air quality and trigger local action. In fact, these limits have been the main driver for action in many places in the EU, in particular in urban areas.

The continuous enforcement and strengthening of air quality limits is therefore crucial for the protection of citizens’ health. It should remain an absolute priority for the EU as long as its citizens’ health is put at risk. The introduction of “flexibility” in the application of limit values, for example through the introduction of further time extensions or partnership agreements, could render limit values unenforceable and therefore meaningless. Instead, the review of the TSAP should focus on speeding up the implementation, enforcement and strengthening of EU-wide binding limit values and aim towards the alignment with the WHO recommended levels - especially for PM2.5 - in the shortest time possible.

The EEB therefore calls upon the Lithuanian Presidency to:

- Ensure the adoption of a revised strategy with the aim of achieving “levels of air quality that do not give rise to significant negative impacts on, and risks to human health and environment” by 2030;
- Support ambitious binding emission reduction commitments for 2020, 2025 and 2030, including 2020 levels going significantly beyond those of the revised Gothenburg Protocol and the 2005 TSAP;
- Support the inclusion of harmful air pollutants in the scope of the NEC Directive, in particular PM2.5, mercury, methane and black carbon;
- Support the development of new and/or updated source legislation, in particular:
  - Call for the introduction of EU-wide measures to limit emissions of ammonia, methane and PM from the agriculture sector;
  - Support the introduction of EU-wide measures to limit emissions from transport, with particular attention to shipping and non-road mobile machinery;
Call for the introduction of EU-wide measures to limit pollution from domestic sources, which is the biggest source of PM and black carbon emissions in the EU and is expected to increase;

- Support the continuous enforcement and strengthening of EU ambient air quality limit values, based on the latest scientific evidence and WHO recommendations;
- Ensure better coherence between the objectives of the different pieces of EU air legislation (e.g. NEC and Ambient Air Quality) with the aim of achieving the EU’s 6th EAP objective in the shortest time possible.

7.6. 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. The regulation is foreseen to be reviewed in 2013. 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 will be applied from April 2014.

A political agreement was reached in June 2013 between European Parliament and Council on banning cadmium from cordless power tools by end of 2016 and mercury from button cell batteries 21 months after entry into force, under the review of the Batteries directive, initially intended only for cadmium in cordless power tools. The directive is foreseen to be completed in the autumn after it goes to Plenary, and eventually adopted by the Council.

Work related to mercury use in dental amalgam is also ongoing. After the EC-commissioned study 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, two opinions are now awaited from the EU scientific committees on the direct health and also environmental effect from dental amalgam.

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 flag, 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 its EU Mercury 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 forthcoming revision of the NEC Directive to be proposed in October 2013 is an opportunity for the EU to achieve one of the Strategy’s objectives. The inclusion of mercury ceilings 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 final text for the future Minamata Treaty on Mercury was agreed in January 2013, in Geneva. The Diplomatic Conference will now take place in October 2013 in Japan, where the treaty will be officially adopted and opened for signature. The new treaty is a mixture of mandatory and voluntary elements. While heading in the right direction, in our view the treaty not far-reaching enough, nor will it move fast enough to address the spiraling 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 couple of years 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 of 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 has been co-leading the global Zero Mercury Campaign and the international Zero Mercury Working Group (ZMWG) since 2004. The ZMWG has participated actively in all relevant UNEP Governing Council, pre-negotiation, and INC meetings. The ZMWG will now be preparing to attend the Diplomatic Conference in October 2013 in Japan.

At the global level, the EEB urges the Lithuanian Presidency to:

- Continue the EU leadership role at the Diplomatic Conference of the UNEP Mercury Treaty to ensure that resolutions are adopted which mandate the necessary work during the interim period, including arrangements to convene and support the INC, provide secretariat services (preferably UNEP), and enable NGO participation in this process;
- Take all necessary steps to ensure that the EU can sign the treaty by October 2013, and encourage as many individual EU Member States to do so by then;
- Continue working collaboratively with NGOs as the process moves forward to foster quick EU and developing countries' ratification and eventually effective implementation of the treaty;
- Ensure that the EU supports both financially and technically the existing international work through the UNEP Global Mercury Partnership (or other) on areas such as:
  - Development of mercury inventories and national implementation plans in developing countries during the interim period to better allow implementation of the treaty measures after the treaty enters into force;
  - Supply and storage, by supporting closure of the mercury mine in Kyrgyzstan and encouraging other regions/governments to adopt mercury export bans;
Demand reduction activities, as in artisanal and small scale gold mining, mercury-containing products production/use and other areas;

At the EU level:

- Promote further legal actions such as but not limited to:
  - Phasing down with the goal to phase out mercury in dental care since safe mercury-free alternatives are available;
  - Phasing out the use of mercury in the chlor-alkali industry before 2020, including adoption of best available techniques (BAT) conclusions after finalisation of the relevant revised BAT reference document (BREF);
  - Adopting BAT conclusions with Associated Emission Levels (AELs) that will require a reduction in emissions from coal-fired power plants, since this is the largest source of mercury emissions in the air in Europe and globally;
  - Including a national emission ceiling for mercury while reviewing the relevant directive;
- Launch relevant work in preparation for the review of the EU Mercury Export ban regulation foreseen for 2013, mainly addressing the possibility of expanding the export ban to products containing mercury which have been banned at EU level;
- Launch relevant work in preparation for the ratification of the Mercury treaty;
- Promote rapid ratification of the Mercury treaty for the EU and individual member states.

7.7. SHIP DISMANTLING

The Lithuanian Presidency will be in charge of the second reading discussion with regard to the better ship recycling regulation and responsible for ending this legislative file. As it stands today, this new Regulation may be in contradiction with existing European waste legislation and it will also have a negative impact on European Union maritime policies seeking to strengthen the EU Member States’ ship registers.

Taking note that many of the proposals made by the EU co-legislators are useful to strengthen the implementation of existing legislation, there is still a need for substantial widening of the scope and strengthening of the enforcement mechanisms. The EU should aim at affecting a much larger share of the shipping industry without discriminating against its own fleet, and include lessons learnt on waste policy such as the need for economic instruments and independent control.

In addition, the proposal does not set ambitious aims in the long term that could effectively alter current practices. Worse, because of the extremely limited scope and weak enforcement mechanisms, the EC proposal, if not strengthened, will in effect rid the EU of its responsibility – and its opportunity – to provide solutions to the ship breaking crisis.

The EEB therefore calls upon the Lithuanian Presidency to:

- Enlarge the scope of the regulation through a financial mechanism reflecting the polluter-pays principle beyond the mere EU flagged vessels. In that perspective, the EEB asks the Lithuanian Presidency to support a binding commitment to adopt a financial incentive based on individual producer responsibility in order to internalise the costs for proper ship
recycling and the management of hazardous wastes; discourage the reflagging of end-of-life vessels to avoid European regulations; implement an individual ship owner responsibility scheme to encourage the shipping industry to procure green ship design and pre-clean ships during operational use;

- Require that safe and environmentally sound ship recycling be included as a prerequisite for allowing Member States to grant state aid to ship owners operating out of Europe;
- Improve enforcement through high standards and controls of dismantling facilities through introducing means to conduct obligatory on-the-ground checks of the conditions at ship recycling yards – especially those outside the EU, and mentioning clearly a refusal of sub-standard beaching practices in the legal text;
- Ensure the legality of the proposed regulation with regard to the Basel Convention, as stressed by several studies on the subject, including the legal services of the Council.

7.8. GMOs AUTHORISATION

In December 2008, the Environment Council unanimously concluded that the EU GMO authorisation system had to be substantially strengthened in order to meet the requirements of EU law. However, there has been little serious improvement in the approval system and major gaps remain. EEB believes that the Commission should not start authorising new GM crops before the Council conclusions have been fully implemented.

Governments in Europe, scientists and broad parts of civil society have identified major gaps in how the environmental impacts of GMOs have been assessed. An example of such a gap is the wider impacts on ecosystems, for example how the removal of weeds from fields with herbicide resistant crops impacts on insects that depend on them and their role in pest control.

The Commission is still working on a new regulation for the environmental risk assessment of GMOs, on the basis of a draft prepared by EFSA. Four years after the Council conclusions, the Commission has still not presented a new proposal to the public for discussions. Choosing the right methodology for the risk assessment of GMOs is scientifically controversial. As a supposedly neutral EU agency, EFSA should have acknowledged this. However, in its guidelines, EFSA mostly adopts the methodology favoured by scientists who work closely with the agrobiotech industry. If the draft EFSA guidelines are not substantially improved by legislators, this would give priority to quick and easy market approval by ignoring the need for a high level of protection for consumers and the environment.

The approval of GMOs does not only require strict environmental risk assessment, but also risk management, as well as the correct implementation of all aspects of EU legislation. As risk managers, the European Commission and EU governments must act on scientific uncertainty and apply the precautionary principle. Furthermore, an assessment of the socio-economic impacts of GM crops must be firmly included in the authorization process, alongside environmental risk assessment. This regime should address the quality and amount of data to be presented by the applicant company, as well as how these data are assessed. The material produced by the company should undergo a much more comprehensive quality check before being used in EFSA assessments. Full and free access to data should be provided.

A rigorous, comprehensive and mandatory testing regime should also be set up for immunological testing as well as toxicity and anti-nutrition tests. Monitoring and general surveillance should take into account all levels of complexity, interactions and possible effects.
regarding human health and environment. The opinions presented by the GMO panel of EFSA should reflect all open questions and uncertainties without prejudice. Finally, the precautionary principle should be applied in such a way that uncertainties regarding safety are seen as entailng an obligation for further investigations and precluding the filing of a positive opinion by EFSA.

The adverse effects on the environment and the consequences for consumer choice, as well as the impacts on farmers and the food sector, must be fully assessed before the EU authorises any new GM crops. Unless and until the Commission has substantially strengthened the EU authorisation procedure in line with EU legal requirements and the 2008 Environment Council conclusions, no authorisations for cultivating GM crops should be forwarded.

The EEB urges the Environment Council to stand firm on the position that the European Commission must ensure a full implementation of EU law and to reject any proposals to cultivate GM crops in the EU in the current situation.

Therefore, the EEB calls upon the Lithuanian Presidency to:

- Work to put in place a rigorous, comprehensive, coherent and mandatory regime for the risk assessment of GMOs, especially long-term health impacts and assessment of herbicide-tolerant GM crops, and ensure that socio-economic impacts become part of the authorisation process;
- Strongly oppose any new authorisation for GM crops until the new regime is in place, so as to prevent risks to environment and human health.

7.9. **SOIL FRAMEWORK DIRECTIVE**

With numerous scientific reports and studies demonstrating the critical importance of soil protection for climate change mitigation and adaptation, food security, biodiversity, the delivery of ecosystem services and public health, as well as the dire state Europe’s soils are in, it is critical that the progress on adopting a binding legal framework at the EU level ensuring soil protection is achieved. The Irish Presidency was successful in ensuring within the 7th EAP a commitment from the EU and its Member States to address soil quality issues within a binding legal framework.

The EEB therefore calls upon the Lithuanian Presidency:

- To prepare for a restart of Council negotiations on the proposed Soil Framework Directive.

7.10. **APPLICATION OF THE AARHUS 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. From an early stage, NGOs had concerns about whether the Regulation was fully in line with the Convention, and 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 ‘measure[s] of individual scope’ was not compatible with the Convention.

The General Court ruling was subsequently appealed by the Commission and the Council so the matter will now be decided by the European Court of Justice. However, the appeals do not have suspensory effect, i.e. until they are heard, the General Court rulings should be applied. This has prompted DG Environment to take the first steps towards preparing a proposal to amend Regulation 1367/2006.

The EEB has welcomed this but believes that the process of amending Regulation 1367/2006 should also be used to correct other deficiencies in the Regulation than the one identified by the General Court in a comprehensive manner, rather than dealing with those deficiencies in a piecemeal way in response to successive findings of the ECJ. Those deficiencies include problems with the information pillar 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 (see also section 6.1 above on Access to Documents).

ClientEarth, Justice + Environment and the EEB are preparing a critique of the Aarhus Regulation vis-à-vis the requirements of the Aarhus Convention, which forms the basis for our demands for a comprehensive review and revision of the Regulation in order to render the EU institutions more transparent and accountable with respect to environmental matters.

The EEB therefore calls upon the Lithuanian Presidency:

- To lead the Council in calling on the Commission to prepare a proposal for revision of Regulation 1367/2006 which does not only address the specific issue addressed by the General Court but contains a comprehensive set of amendments that address as a minimum all potential incompatibility with the Aarhus Convention.

7.11. 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 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 improve opportunities for the public and environmental citizens’ organisations to insist on respect for environmental law. For many years, the Environment 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). The EEB did a survey on implementation of the Aarhus Convention in 20 Member States. It included a question to environmental organisations on whether an EU Directive on Access to Justice was needed. The answer was clearly ‘yes’. These two surveys confirm the EEB’s conviction 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.

There are two particular reasons why it is timely to revisit this issue under the Lithuanian Presidency.

The first concerns recent jurisprudence of the European Court of Justice, notably a ruling in a case concerning Slovakia (C-240/09), issued in March 2011. 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).

Second, in March 2012, the Commission published a Communication on improving implementation and enforcement of environmental law. The Communication identifies 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. Clearly one of the more effective means of achieving better implementation is by empowering citizens to challenge perceived violations of the law. 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.

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 taken the first steps in the preparation of a new legislative proposal.

The EEB would be 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.

Therefore, the EEB calls on the Lithuanian Presidency to:

- Call on the Commission to prepare without delay a new proposal for a directive on access to justice, building on and strengthening the Commission’s 2003 proposal.
7.12. IMPROVE IMPLEMENTATION AND ENFORCEMENT

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”9 – a view that is fully shared by the EEB. Striving for better enforcement has always been an essential part of the EEB’s activities covering both better enforcement of the EU acquis by the competent authorities and creating the right conditions for citizens to play an active part in the EU decision making processes (see 6.1, 7.10 and 7.11). It gave the Commission’s Communication on implementing European Community Environmental Law COM(2008) 773/4 a critical welcome10 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.11 In a time of economic crisis, the EEB appreciated that the Commission referred in the related press release to an estimated €50 billion per year in health and environmental costs 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 it is time to fully implement it to derive all of the benefits.

The 2012 Communication points to possible steps forward in certain areas, notably with respect to access to justice and environmental inspections, but stopped short of explicitly recommending specific measures that the EEB considers important such as reviving discussions on the proposal for an Access to Justice Directive (see 7.11 above) and introducing a horizontal EU law (Directive or Regulation) on Environmental Inspections. The EEB was pleased to see that both were included in some form in the Commission’s proposal for a 7EAP, and even more to learn that the Commission has taken steps to prepare legislative proposals in both areas.

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. Despite this, 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. Recently, inspection requirements have been included in some sectoral laws and therefore have a binding character. The EEB believes however that an EU law establishing minimum standards for environmental inspections horizontally would be more efficient and lead to a more harmonised application of EU environmental law and requirements. This would help to uphold the rule of law, would be positive for the environment and would also contribute to more harmonised business conditions.

EU politicians repeatedly claimed that better enforcement is a top priority but progress is extremely slow. 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

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11 Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (COM(2012)95).
to the environment and harm to citizens’ health. As mentioned above, the EU also misses an opportunity to reduce costs and create jobs. Thus it fails to regain EU citizens' trust and get them again more interested in the EU, which is even more important now in view of the up-coming EU elections.

The EEB therefore calls upon the Lithuanian Presidency to:

- Use the 2012 Communication on better implementation and the better enforcement initiatives in the 7EAP as the basis for a broad and transparent debate on improving implementation and enforcement of EU environmental law;
- Give its full support to an EU directive establishing minimum standards for environmental inspections and encourage the Commission to make quick progress with the preparation of the legislative proposal and table the draft before the end of the year;
- 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;
- Encourage Member States to use modern information technology to make information available in a rapid way, with limited costs and easily accessible, 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.

7.13 REVISION OF THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

The EEB very much welcomed the adoption of the EIA Directive back in 1985 as it introduced rules, criteria and procedures to assess the environmental impact of projects before a development permit was granted. The public should be informed and have the opportunity to give its opinion. However, the application of the Directive never fully delivered what it had been designed for, as there were too many loopholes, margins for (mis)interpretation and lack of clear assignment of tasks.

The EEB was therefore pleased to see that the Commission proposal for a revision of the Directive issued in October 2012 addresses many of these shortcomings, providing clear instructions for reporting obligations, requiring the assessment of valid alternatives and the justification of the project version that was chosen, requiring the use of recent information and foreseeing the extension of the scope of the EIA, thus addressing new challenges, for example by including a reference to climate change, ecosystem services and the risk of natural and manmade disasters. It also introduces provisions to prevent so-called ‘salami slicing’, i.e.
splitting up of projects to avoid an EIA. Strengthening the process of assessing the environmental consequences of a project already during the planning phase will not only be beneficial for the environment but also increase its acceptance with the public, leading to a smoother running of the approved projects and creating a more level playing field for economic developments. The EEB also welcomes the proposed introduction of mandatory post-EIA monitoring of significant adverse effects. The competent authority is required to ensure that the development consent includes the appropriate measures. This will create an additional incentive to prepare a good environment report as any assessment falling short of the real environmental impact of the project will be discovered at a later stage.

The EEB regrets however that the Commission missed the opportunity to include timely public information requirements, establish public participation during the screening process and provide for injunctive relief when project-related court rulings are pending. It also regrets that the proposal does not express in a clear manner that a project cannot be started before the EIA is finished and that a permit or development consent cannot be issued without a valid EIA. This seems obvious but practice shows that the contrary happens quite frequently. It is therefore important to have a clear wording which prevents this. The requirement of proven qualifications of experts preparing the environmental impact statement is in the EEB’s view not sufficient. A national pool of experts would be a better guarantee for good quality reports. A central publication on the web of all EIAs could also lead to improvements through more transparency.

In the months since the Commission’s proposal was published, it has been somewhat discouraging to see that while Member States purport to agree on the need for improvement, most of the specific proposals to change the Commission proposal would lead to weakening it, with virtually none addressing its shortcomings. Far more positive signs have come from the Parliament.

The EEB therefore calls upon the Lithuanian Presidency to:

- Swiftly resume the discussions on the revision of the codified EIA Directive (2011/92/EU) and cooperate with the European Parliament to secure a progressive outcome with a view to reaching agreement on an improved instrument before the end of 2013;
- Support the Commission proposals insofar as they close loopholes, give clearer instructions and widen the scope of the Directive adapting to environmental and political developments in the field of the environment;
- Strengthen the public information, participation and appeals provisions of the Directive, ensuring conformity with and building upon the Aarhus Convention requirements, inter alia by introducing provisions for public participation in screening procedures, for access to justice in screening and scoping procedures and for time frames required for meaningful public participation;
- Support measures to improve the quality of the Environmental Impact Statements, including guarantees for a transparent process and electronic access to the reports;
- Support the introduction of mandatory requirements to consider meaningful project alternatives; including the base-line option and a reasoned decision for the chosen option and, if the most environmentally friendly one was not selected, the reasons for its rejection;
- Support the introduction of monitoring measures and the elaboration of a monitoring programme already as part of the EIA procedure; and at the same time introduce corrective/remedial action where monitoring shows unforeseen impacts and/or insufficient mitigation measures;
• Support the Commission proposal for a wide range of project characteristics to be considered during the EIA (Annex III);
• Based on the EU’s precautionary principle, for Member States where shale-gas exploitation is not banned, ensure that those projects have to undergo an EIA taking into account the still limited knowledge on this technique and the high risk level associated;
• Introduce clear wording to prevent a project starting before the screening process is completed and, for those that require an EIA, before a permit or authorization has been granted based on a valid and finalized EIA.

7.14. 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 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 identified in section 1.4 above. This is particularly so in relation to the future of UNEP and the newly established UN Environmental Assembly, where Environment Ministers will take the lead.

In November 2012, the UN General Assembly approved the text of the Rio+20 outcome document pertaining to the partial upgrading of UNEP (para. 88) without amendment and in December agreed that UNEP would have universal membership, effectively leaving the further elaboration of the new mandate to UNEP itself.

In February 2013, the UNEP Governing Council held its first meeting since the decision to partially upgrade it and establish universal membership. Among the challenges on the agenda was the question of how to ensure more effective stakeholder participation in the new UNEP, pursuant to paragraph 88h of the Rio+20 outcome document. On this issue, despite constructive efforts by the European Union delegation, the conclusions of the Governing Council did little more than reiterate the relevant elements of the Rio outcome document and set 2014 as a deadline by which procedures for enhanced stakeholder involvement should be in place, without specifying how those procedures should be developed. In order to make progress on this issue, it will be important to establish a transparent, participatory process in which representatives of civil society can exchange views and seek consensus with government experts on the future modalities of stakeholder participation, taking into account inter alia the eleven principles that were adopted by the major groups and stakeholders present in Nairobi on the eve of the Governing Council meeting.

This and other issues will be taken up at the first meeting of the United Nations Environmental Assembly (UNEA) in June 2014, the preparations for which will largely take place in the framework of the Committee of Permanent Representatives. Although it is almost a year until the UNEA meeting, the Lithuanian Presidency should endeavour to ensure that the EU and its Member States play a constructive and progressive role in the preparatory process. In relation to the issue of stakeholder participation, it should have regard to the obligations on the EU and its Member States arising under article 3, paragraph 7, of the Aarhus Convention, which require Parties to promote the application of the principles of the Convention in international environment-related forums.
Therefore the EEB calls on the Lithuanian 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 preparatory process for the meeting of the United Nations Environmental Assembly which will take place in June 2014 and in the preparation of sustainable development goals;
- Ensure that the EU promotes strong stakeholder participation in international forums in line with the Aarhus Convention.
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