THE EEB’S ASSESSMENT OF THE ENVIRONMENTAL RESULTS OF THE LITHUANIAN PRESIDENCY OF THE EU
July – December 2013

Based on the EEB’s Ten Green Tests for the Lithuanian Presidency released in July 2013

“Good on biodiversity, bad on climate”

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SUMMARY

The environmental performance of the Lithuanian Presidency has been a mixed one. The Presidency did well on biodiversity issues, getting the discussions on the Commission’s legislative proposal on invasive alien species off to a good start and putting the financing of biodiversity and green infrastructure in the political spotlight. Its role in the negotiations on the revision of the Environmental Impact Assessment Directive has also been constructive, even if the outcome thus far is less than hoped for. However, on climate issues the Presidency performed poorly: by siding with the Member States taking the least progressive positions in the F-gas negotiations, it missed the chance to explore potential bans on these super greenhouse gases and to deliver a better deal for the climate; and similarly with biofuels, where no deal was reached but the Presidency’s proposals if accepted would have allowed an increase in the share of harmful biofuels in transport beyond current consumption levels.
INTRODUCTION:

This is an assessment of the Lithuanian Presidency by the European Environmental Bureau (EEB), the largest federation of environmental citizens’ organisations in Europe. The EEB’s mandate encompasses all environment-related issues, a broad agenda comprising ‘traditional’ environmental issues as well as sectoral and horizontal policies with a direct or potential environmental impact, sustainable development and participatory democracy.

The EEB views six-month Presidencies as convenient periods over which progress on the EU’s environment-related policy and legislation can be measured. We appreciate that a Presidency cannot make decisions on its own. It needs the cooperation of the European Commission, European Parliament and other Member States. But the Presidency still has a special impact and influence, for example through the way in which it chairs discussions, prioritises practical work and gives a profile to specific issues.

The EEB’s assessment is not an overall political assessment of the Presidency’s performance. We are not assessing its role on foreign affairs issues, internal security matters or migration policies, for example. On the other hand, nor is the assessment limited to the activities and outcomes of the Environment Council; it covers all Council configurations to the extent that they deal with topics that affect the environment. Our assessment is based on the Ten Green Tests we presented to the Lithuanian Government at the start of its Presidency in July 2013.

At the outset, the EEB wishes to acknowledge and express its appreciation of the open and cooperative approach adopted by the Lithuanian Presidency. This was reflected inter alia in a very productive meeting in Vilnius between the EEB Board and the Lithuanian Environment Minister in May 2013, prior to the start of the Presidency.

On the Lithuanian Presidency’s performance against the Ten Green Tests, item-by-item, the EEB reached the following conclusions:

1. Sustainable Development

The test

- 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.

1 For the assessment of the test on fisheries, we acknowledge the support and input provided by Seas at Risk.
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.

The verdict: Negative

The Lithuanian Presidency has not been prominently calling for the development of a new Sustainable Development Strategy for the EU or review of the Europe 2020 Strategy. For example, there were no Council conclusions on this topic equivalent to those adopted in October 2012 under the Cyprus Presidency. It might be said that given the current Commission’s apparent conviction that the Europe 2020 Strategy is adequate as a sustainable development strategy, this would have achieved little and is more an issue to raise with the next Commission. However, the Presidency could have done more to encourage the Council to send a message that economic recovery must be founded on full respect for the environment and to emphasise the potential in the creation of green jobs. In fact, the main messages about economic recovery emerging from the Council under this Presidency have had little environmental content.

The EU has continued during the Lithuanian Presidency to use positive rhetoric in relation to the post-Rio processes, e.g. calling for a worldwide transition towards a green economy at the 68th UN General Assembly. However, the Presidency does not appear to have done anything to counter the increasing domination of the process at all levels by development interests as opposed to environmental ones, e.g. through scheduling a discussion within the Environment Council.

The Presidency also chose not to adopt conclusions at the December Environment Council that would feed into the Spring Council conclusions in response to the Commission’s Annual Growth Survey.

2. Stop Climate Change

The test

- 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-friendlier 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.

The verdict: Negative

The Warsaw COP19 did not lead to any significant breakthroughs towards a new international climate agreement that will reduce emissions to safe levels. However, it was agreed that countries should submit their contributions to the new agreement by the first quarter of 2015.

The Lithuanian Presidency put the topic of Warsaw and climate change negotiations on the agenda of the informal Environment Ministers’ meeting in July to kick-start preparations for the EU position for Warsaw. But as regards the EU’s own commitments, discussions on the post-2030 climate targets did not get properly underway during the Lithuanian Presidency as the Commission’s White Paper was delayed to January 2014.

One of the important pieces of climate legislation that the Lithuanian Presidency had prioritised during its 6-month term is the F-Gas Regulation. A compromise agreement was reached between the lawmakers just in time for the Christmas break, which strengthened the Commission’s proposal with some additional bans on equipment and products using HFCs. However, a more ambitious outcome was within reach in order to further incentivise a market transition away from harmful HFCs and other F-gases. Rather than seeking support among member states for more progressive proposals, the Presidency allowed a blocking minority of member states to dictate the Council position. This meant that the potential of the bans was not fully explored even though ample evidence exists that cost-efficient, technically feasible and energy-efficient alternatives are available. As a result, the compromise does not realise the full emissions reduction potential of the Regulation.

Instead of improving the Commission’s initial proposal on biofuels and Indirect Land Use Change (ILUC), the Presidency proposal for a Council Common Position moved away from the most needed revision of the biofuels policy and manifestly ignored all scientific warnings about the environmental and social problems of land-based biofuels. This was in contrast to the European Parliament which slightly improved the Commission’s initial proposal on carbon accounting by including ILUC factors in the sustainability criteria of biofuels in the Fuel Quality Directive, and by including all land based biofuels under the cap.

The Presidency proposal would have in particular increased the share of harmful biofuels in transport beyond current consumption levels. An increase of food-based biofuels from 5 to 7% is equivalent to food for almost 69 million people at a time when we are trying to fight hunger. Moreover, such an increase would have probably led to more deforestation, which risks releasing up to 400 million tons of CO2 into the

atmosphere. It would have rejected robust and uniform accounting for ILUC emissions from biofuels production. The inclusion of a range in the ILUC factors for reporting purposes, increases uncertainty.

This compromise then got rejected in the Council of Energy Ministers on 12 December 2013. Several countries found it too weak and could not support it because it would fail to properly address the sustainability issues linked with biofuels. Those the Presidency tried to satisfy by weakening the Commission’s proposal during the negotiations also voted against the proposal because they still found it too ambitious.

Although CO2 and cars was not part of the 10 tests for the Lithuanians since a deal was reached during the Irish Presidency, we consider it relevant to address the highly unusual developments that took place during the first months of the Lithuanian Presidency when, under pressure from Germany, the deal was not put to a vote in Council until Germany had successfully coerced and bought support from other Member States to form a blocking minority against the deal and succeeded in further weakening emissions standards for cars.

3. Save energy

The test

- 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.

The verdict: Mixed

The discussion on a 2030 framework for climate and energy policies did not really start under the Lithuanian Presidency as the Commission’s White Paper was delayed until early 2014. Nevertheless, energy ministers discussed the results of the public consultation on the related Green Paper during their informal meeting in September. More problematic has been the invitation by the Lithuanian Presidency to the director of BusinessEurope to address the September Competitiveness Council arguing that climate policy will hinder economic recovery.

Shale gas exploration and exploitation remained a hotly debated topic during the Lithuanian Presidency, with a particular strong lobby from the UK supporting shale gas in anticipation of the Commission’s forthcoming proposal. The Lithuanian Presidency organised a lunchtime exchange on the topic between environment ministers during their informal meeting in July.
Progress on the Energy Tax Directive continued at a slow pace without coming to an agreement, with the CO2 component of the future directive being the main stumbling block. Despite a statement from the Commission during the Lithuanian Presidency that it would withdraw its proposal if it did not contain a CO2 component, it was not possible to find unanimity in favour of this.

4. Improve Environmental Impact Assessment

The test

- **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.**

The verdict: Positive

The Presidency inherited a very difficult dossier from the Irish Presidency which had severely weakened the Commission proposal, deleting many of the improvements introduced by Commission and Parliament. The Lithuanian Presidency played an important and active role, preparing swiftly a new Presidency draft reintroducing amendments previously deleted by the Irish Presidency, convening Council working group meetings and organising four triilogue meetings.

The Presidency acted as a strong broker and, despite the opposition and critical positions of many Member States, it managed to make progress on the file, reintroducing or safeguarding many important improvements which will lead to a better quality of EIAs. Partly as a result, the package agreed at the 4th triilogue meeting (18 December 2013) contains some welcome improvements compared to the current directive. These include better provisions with regard to information and public participation, even though not during the entire EIA process and arguably still not bringing it into line with the Aarhus requirements. They also include a broader scope of the directive through references to sustainability, climate, soil, habitats, land and biodiversity; provisions for monitoring and penalties; and an explicit requirement that Member States ensure that mitigation and compensation measures are implemented. Other welcome improvements are the requirement for complete and sufficiently high quality information as well as the requirement to use qualified and competent experts. The EEB also welcomes the requirement for the description of reasonable alternatives and an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario).
On the other hand, the package agreed at the 4th triad meeting is considerably worse than the draft proposed by the Commission and further improved by the European Parliament. For example, the EEB deeply regrets that some Member States threatened to block the negotiations if any changes were made to Annex I and II and consequently projects involving hydraulic fracking and gold mines using processes involving cyanide ponds were not added to Annex I. Furthermore, the repeated references to “sustainable growth” and to reporting on the financial costs of preparing EIAs skew the directive in favour of development and away from the core function of EIA, which is the protection of the environment and human health.

It is regrettable that the text lost a lot of its much needed clarity and strength at the hands of the Member States but the role played by the Presidency was for the most part positive and contributed to preventing a worse outcome.

5. Marine Protection in the Baltic

The test

- 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 European Maritime and Fisheries Fund (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.

Verdict: Negative

Marine issues featured high on the Lithuanian Presidency agenda with a major conference organised on the Baltic early October. Discussions on the proposed MSP-ICM Directive also progressed but in the wrong direction with both Council and the European Parliament undermining an already weak Commission proposal. Particularly problematic has been the fact that the general affair Council has been put in the lead on this without much input from Environment Ministers. As a consequence, there is a serious risk that the final Directive will end up undermining crucial pieces of existing legislation, such as the Marine Strategy Framework Directive, and the Birds and Habitats Directive.

As regards EMFF funding, triad negotiations started following a vote in EP Plenary on 23 October which ensured no subsidies for building new vessels though a continuation till 2016 of temporary cessation, engine replacement and scrapping schemes. The negotiations did not conclude however, with a final round of talks on 19
December failing to reach an agreement, meaning that it is now for the Greeks to find an agreement.

6. High environmental standards at international level

The test

- 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.

The verdict: Negative

The main threat to maintaining high environmental standards at international level during the Lithuanian Presidency came from the political momentum behind bilateral trade and investment agreements between the EU and Canada (CETA) and the EU and US (TTIP). Although these negotiations have become the exclusive competence of the European Commission following the Lisbon Treaty, they got the full support of the Lithuanian Presidency for these negotiations under their priority of an ‘open Europe’. The Lithuanian Foreign Minister, for example, stated that the European Union has to agree on free trade negotiations with the United States.

7. Protect the public from hazardous chemicals

The test:

- 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 endocrine-disrupting chemicals (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.
The verdict: Negative

Although the Commission has been slow to prepare its REACH review of EDCs, the Lithuanian presidency missed an important opportunity by not including any chemicals topics on the Council agenda to signal, at the very least, a concern from the Member States about the lackluster approach the Commission is taking to protect the public from harmful chemicals such as SVHCs and EDCs.

This was contrasted by for example the launch of Horizon 2020, the largest EU research and innovation programme, in the Vilnius Innovation Forum. Within the area of industry leadership, approximately EUR 18 billion will be allocated to ‘high-impact’ technologies, including nanotechnology for research and development of new products promoting financial instruments as well as innovation building capacity for small and medium-sized companies. However, this budget does not include sustainable innovation or research on the health and environmental effects of nanotechnology. This is highly problematic since today less than 1% of the overall budget of nanotechnologies is invested in risk assessments.

8. Support development of an ambitious air package

The test

- 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.

The verdict: No verdict

The performance of the Lithuanians Presidency could not be assessed due to the delayed adoption of the Commission’s proposals. The air package, initially due for adoption in October 2013 was only adopted by the Commission on Wednesday 18
December 2013. The start of the work in Council and the above mentioned recommendations are therefore not applicable to the Lithuanians but to the Greek Presidency.

9. Conserve nature and biodiversity

The test

- 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

The verdict: Positive

The Lithuanian Presidency was successful in securing a deal between the Council and the Parliament on the regulation on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union, establishing a framework for complying with the Nagoya Protocol to the Convention on Biological Diversity adopted in October 2010. The agreement, which still awaits formal approval by the Parliament and the Council in the first half of 2014, will enable the Union and its Member States to ratify the Nagoya Protocol, securing its entry into force, and contribute to fulfilment of EU international commitments on biodiversity conservation.

Following a delay in the adoption of the Proposal for a Regulation on the prevention and management of the introduction and spread of invasive alien species by the Commission, the Lithuanian Presidency achieved a considerable progress in furthering the discussion on the proposed regulation in the Council. As the proposal was presented by the Commission only in early September, it was not possible for the Lithuanians to define a clearer position of the Council and enter into negotiations with the Parliament by the end of their Presidency. However, the frequency of discussions in the Council preparatory bodies as well as the exchange of views by ministers during the December Environment Council ensured that a solid basis is put in place for the Greek Presidency to conclude negotiations on this file by summer 2014.

Finally, the Presidency played a proactive role in placing high on the agenda the discussion on financing biodiversity conservation. The informal meeting of Environment Ministers, usually dominated by climate change related topics, addressed the issue of mainstreaming biodiversity in different sectors and explored biodiversity financing opportunities at national, EU and international levels, including in the context of new Multiannual Financial Framework. In addition, and also more exceptionally, it dedicated the ministers’ lunchtime debate during the October Council to discussion on the
importance of ensuring sufficient financing for green infrastructure, both at EU level and in operational programmes, following the Commission's communication presented during the Irish Presidency.

10. Promote better environmental governance

The test:

- **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.**

Verdict: Negative

While the Commission is the body responsible for coming forward with new legislative proposals such as on access to justice or environmental inspections, the signals coming from the Council under the Lithuanian Presidency have been far from encouraging. The European Council from October welcomed the Commission’s Communication on Regulatory Fitness (REFIT) which saw the withdrawal of the proposed directive on access to justice without any guarantee of it being replaced and placing of the proposed soil directive on a ‘consideration for withdrawal’ list, as well as a longer-term threat to the nature directives. While the Lithuanian Presidency does not preside over the European Council, it could have influenced these conclusions in various ways, e.g. by putting the issue on the very light agenda for the October Environment Council. More generally, the same European Council meeting was used to promote a strong business-driven message about cutting EU red tape, with business leaders invited to discuss the issue with Heads of State and Government but other stakeholders representing interests that are protected by so-called red tape not being invited to join. Thus the deregulatory agenda seems to have gathered speed under the Lithuanian Presidency.