INCLUDING THE 10 GREEN TESTS

EEB MEMORANDUM TO THE IRISH PRESIDENCY

JANUARY 2013

EUROPE’S LARGEST FEDERATION OF ENVIRONMENTAL CITIZENS’ ORGANISATIONS
The European Environmental Bureau (EEB) is a federation of some 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.

The 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.

The EEB stands for environmental justice and participatory democracy. Our office in Brussels was established in 1974 to provide a focal point for our members to monitor and respond to the EU’s emerging environmental policy.
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INTRODUCTION

Ireland takes over the Presidency of the European Union at a difficult time both for Ireland and for the EU. 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 Irish 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 June 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 Irish 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 IRISH PRESIDENCY

1. Sustainable Development
   - Building on the European Council conclusions of October 2012 on the outcome of the Rio+20 Conference, maintain the pressure for 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 at the key international forums which will carry forward the outcomes of Rio+20 such as the UN General Assembly and in the next meeting of the UNEP Governing Council;
   - Adopt conclusions at the Spring Council supporting environmental tax reform and a rapid phase-out of environmentally harmful subsidies through country-specific recommendations under the Semester.

2. Green the EU budget
   - Save the budget negotiations from the disastrous cuts proposed under the Cyprus Presidency by President van Rompuy and start addressing the question of how the EU budget can be transformed into an instrument for positive change fulfilling the EU’s objectives in the field of climate change, biodiversity loss and resource use;
   - Ensure that 1% of the EU Budget is devoted to LIFE, the EU’s only dedicated environmental fund;
   - Ensure a substantial greening of all the spending lines under the Common Agricultural Policy (CAP), Common Fisheries Policy (CFP), the Structural and Cohesion Funds, transport and energy funding, research and innovation funding, with sufficient funding to be allocated to funding the Natura 2000 network to secure an annual total of 3.5 billion EUR;
   - Ensure that the decisions on the next Financial Perspective are taken in a transparent manner and that sufficient opportunities for public participation are provided;
   - Ensure that environmental sustainability is central to all external dimension policies and spending, along with a significant increase in financial support for sustainable development in the least developed countries.

3. Change the direction of Common Agricultural Policy (CAP) reform
   - A meaningful greening of the direct payments comprising a real and significant green component in the form of a strong mandatory package of good agronomic and environmental practices that will serve as a solid baseline for pillar 2 funding and avoid double funding;
   - Abandon attempts to ‘greenwash’ pillar 1 through a bureaucratic ‘green by definition’ mechanism;
   - Ensure that the Water Framework Directive, the Sustainable Use of Pesticides directive and GAEC 7 on wetlands are not removed from cross compliance in the proposals;
   - Ensure that there is no possibility for reverse modulation (transfer of funds from pillar 2 to pillar 1) for any Member States;
   - Guarantee a well funded second pillar which is focused on EU objectives in the field of biodiversity, soil, water, coastal areas and climate and under which there is mandatory minimum spending for environment for Member States;
• Scientific and independent monitoring and assessment based on a robust sampling approach and methodology for all rural development measures and pillar 1 greening components;
• A new and efficient farm advisory service system which targets the second pillar programmes but also the greening component.

4. **Safeguard Europe’s fish stocks**

• Ensure a reformed CFP that will have the goal of limiting, by 2015, use of living marine biological resources to a level that restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield;
• Fishing opportunities should be fixed at levels not exceeding those recommended by the best available scientific advice, interpreted according to the precautionary principle;
• The allocation of fishing opportunities should not be done through mandatory Transferable Fishing Concessions; rather, access rules should be based on a set of criteria that ensure a transition to, and support for, environmentally (taking into account selectivity, impacts on habitats and non-target species, CO2 emissions) and socially (taking into account numbers of jobs created, working conditions) sustainable fishing;
• The CFP should include legally binding and time-bound objectives for decreasing fishing capacity, as well as requirements to measure and monitor fishing capacity;
• Make the release of EU fisheries funds conditional on compliance with the future CFP, as well as with relevant environmental legislation, namely the Bird, Habitats and Marine Strategy Framework Directives;
• Ensure a shift in funding from structural measures to measures in support of conservation and management efforts including data collection, control and enforcement.

5. **Stop climate change and save energy**

• 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;
• 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;
• Take leadership on the revision of the F-Gas Regulation in order to ensure an effective market shift to climate-friendlier alternatives by means of placing-on-the-market bans for HFC equipment as soon as feasible, i.e. before or by 2020 for most sectors;
• 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;
• 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;
• Ensure the adoption of emission reduction targets for 2020 for new cars and vans which achieve the best possible climate protection.
6. **Adopt an ambitious 7th Environmental Action Programme**
   - Support and strengthen the Commission’s proposal and ensure it includes a deadline by which to propose and adopt new targets;
   - Support in particular the Commission’s proposal for new tools and capacities to improve implementation of existing policies;
   - Spell out within the Programme the regulatory action that the Commission should undertake to address the safety concerns relating to nano materials, endocrine disruption chemicals (EDCs) and cocktail effects;
   - Resume negotiations on the proposed Soil Framework Directive.

7. **Protect the public from hazardous chemicals**
   - Maintain the EU’s leading role during the final weeks of the international negotiations on a Mercury Treaty, including EU financial commitments on support for least developed countries;
   - Insist, e.g. through the 7EAP debate, that the Commission propose legislation on use and end-of-life treatment of nanomaterials and amendments to existing legislation to take account of potential effects of engineered nano materials;
   - Support the Commission’s proposal to end the exemption for using cadmium in batteries for cordless power tools by 2016 at the latest, with a view to urgently phase out cadmium from consumer products entirely;
   - Strengthen the Commission’s proposal for a revised Directive for Environmental Quality Standards for water, in particular retaining the inclusion of pharmaceuticals, and include phase out measures for the most hazardous substances;
   - Strengthen the Rotterdam, Stockholm and Basel Conventions on chemicals and wastes in order to reduce human and environmental exposures to hazardous chemicals.

8. **Support the development of an ambitious air package**
   - Start discussions with Member States and the Council with the clear and sole objective of reducing harmful levels of air pollution across Europe and improving Europeans’ health;
   - Support continuity and further tightening of ambient air quality standards for public health protection, in line with latest scientific evidence;
   - Support ambitious new National Emission Ceilings (NEC) which will reduce overall emissions across Europe and limit the effects of transboundary air pollution;
   - Call for 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 of ammonia from the agriculture sector;
   - Support action to reduce emissions of black carbon, methane and ozone since these air pollutants are also responsible for climate change.

9. **Invest in nature and biodiversity**
   - Ensure adequate funding for biodiversity and Natura 2000 according to the Prioritised Financing Frameworks, totalling at least 3.5 billion EUR per year for N2000 from the EU Budget including a significantly increased LIFE budget;
   - Support adoption of the Commission’s proposal for an Access and Benefit Sharing Regulation.
10. Promote transparency and accountability

- Swiftly resume the discussions on the recast of Regulation 1049/2001 on Access to Documents, cooperate with the European Parliament to secure a progressive outcome and refuse any weakening of the Regulation, with a view to reaching agreement on an improved instrument before the end of 2013;
- In light of recent jurisprudence of the EU General Court, call on the Commission to come forward with a comprehensive proposal to strengthen Regulation 1367/2006 on the application of the provisions of the Aarhus Convention in order to ensure full compliance with the Convention;
- 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;
- Ensure effective follow-up to the Commission’s 2012 Communication on better implementation.
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 and Semesters and the 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 to 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 be in support of these broader political strategies and especially the political instruments that underpin these. 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 exemption 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.

The recent UN Conference on Sustainable Development (Rio+20) should in theory have some implications for both the Europe 2020 Strategy and the EU SDS. The Rio+20 outcome document 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 call for the SDS to be reviewed “as soon as possible, at the latest in 2014” and for the commitments in the Rio+20 outcome document to be implemented through the SDS and the Europe 2020 Strategy. The conclusions also stress “the need to consider and review, as deemed necessary and on a
case by case basis, all other relevant EU and national policies, strategies and programmes, and to implement through them the Rio+20 outcomes”.

The Irish Presidency should therefore maintain the pressure for renewal of the SDS, together with a review and revision of the Europe 2020 Strategy, to take account of the implications 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 the systematic review of other policies, strategies and programmes in the light of the Rio outcomes as referred to in the October Council conclusions.

The EEB therefore calls upon the Irish 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, taking into account the need to reflect environmental imperatives more fully in the implementation of the Strategy;
- Acknowledge that the Europe 2020 Strategy does not amount to a substitute for the EU Sustainable Development Strategy and launch discussions on the renewal of the SDS;
- 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

Despite Poland’s attempt to dynamite the EU climate policy not least by repeatedly vetoing the 2050 roadmaps, twenty-six EU member states have supported the 2050 Energy roadmap and the ‘no-regret’ option, based on the goals of a substantially higher share of renewables and a strong framework to enhance energy efficiency. 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, 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 therefore EEB calls upon the Irish 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 milestones for 2030 and 2040 in line with the recommendations of the 2050 Low Carbon Roadmap and push forward the adoption of ambitious post-2020 targets, in accordance with the no-regret scenario based on decarbonisation, high renewables and energy efficiency choices;
• 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 EU energy strategies build upon the full potential for energy savings, taking into account the 20% energy savings objective for 2020 and request the Commission to propose a binding energy efficiency target for 2030 to 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 the EU energy supply from renewables in 2050;
• Take leadership on the revision of the F-Gas Regulation 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, i.e. before or by 2020 for most sectors;
• 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 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.”
The Commission plans to issue a Communication on the Rio+20 follow-up during the first half of 2013. This will either complement a parallel Communication on the post-2015 development framework or both issues may be addressed in a single Communication. It launched a public consultation in October 2012 with a view to getting public input on specific actions and measures to be taken in the Rio follow-up process.

The Irish 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. 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 Irish Presidency, in addition to taking the actions indicated in section 1.1 above, 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;
  - 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;
- Come forward with Council conclusions in June 2013 that reflect a high-level of ambition on all aspects of the Rio+20 follow-up process.
2. ECONOMIC AND FINANCIAL AFFAIRS COUNCIL

2.1. A MULTI-ANNUAL FINANCIAL FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

The EU budget is perhaps the clearest indicator of the EU's true priorities. It is imperative that it is reformed to ensure that the EU's future challenges do not continue to serve its past political deals.

The EEB has long advocated that the EU budget should be reformed to promote investment in sustainable development aims. The consultation undertaken in 2007-08 as part of the EU budget review process confirmed this aim, highlighting that stakeholders from many different sectors and interests wanted to see a prioritisation of spending on the areas of climate, energy and competitiveness, coupled with a prioritisation of spending on the poorest regions and a shift away from traditional agricultural subsidies.

The Commission published its proposal for the next Multi-annual Financial Framework (MFF) on 29 June 2011. Although the question about how the money is spent under different funding lines is generally more important than how much is allocated to them, there are two exceptions. One is that the LIFE instrument which currently accounts for 0.2% of the EU Budget will need to see a significant increase, rising to 1% of the EU budget to catalyze investments from other EU funding lines into the EU's flagship biodiversity policy, Natura 2000. This is particularly important following the Commission's choice to take a more programmatic approach under the new LIFE instrument. This choice only makes sense when the Fund's size is sufficiently increased. At least €1 billion annually should be available for LIFE biodiversity projects, sufficient to fund approximately 20% of the estimated costs of implementing Natura 2000.

Secondly, the funding under the CAP for the second pillar needs to be increased to 50% of the CAP budget. As a result of earlier reforms of the CAP, the second pillar has now evolved into an instrument that is more effective in supporting those farmers actually delivering the public goods which markets cannot provide for. A further significant increase of its funding would constitute a powerful signal that the CAP is still capable of further adjusting itself to tackle society's main challenges. The EEB was therefore disappointed to see that the Commission's proposal did not constitute a radical shift of funding away from environmentally harmful subsidies into these two funding streams. It means that the questions about under which conditions and for which objectives existing funding streams will be spent will become all the more important.

The Cohesion Policy should become an investor in rebuilding Europe’s green infrastructure and devote a greater amount of investment in the shift toward a low-carbon economy, in particular in energy efficiency and renewable energy projects. In the past, Cohesion Policy has invested mainly in grey infrastructure, often contributing to significant environmental damage. Now ecosystems need refurbishment to be able to continue servicing us with clean water, air, soil, climate and disaster buffering, and other ecosystem services. Business as usual is not an option, as it is estimated that the continued loss of ecosystem services will cost the EU €1 trillion by 2050 (in lost services). On the other hand, evidence is growing that investment in

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1 The current EC proposal of €160 million for biodiversity projects would cover less than 2.5 % of Natura 2000 costs.
ecosystems represents sound investment: for example, it has been estimated that for each 1€ invested in Natura 2000, society gets back €33-50. The tourism alone generated by Natura 2000 creates 4.5 to 8 million fulltime equivalent jobs in the EU. Environmental projects have a clear contribution to multiple EU policy objectives, including local economic development and job creation\(^3\). Thus Cohesion Policy should primarily invest in the management of the Natura 2000 network and in large scale ecosystem restoration projects in the wider countryside.

Regarding how all the money will be spent under the different funding lines, it is critical that a number of horizontal quality control instruments are put in place. These should include a legally binding minimum standard for participation of civil society organizations in the distribution of funds at national and regional level, as well as instruments to track and monitor what impact expenditure has and ‘prove’ its coherence with environmental policy objectives.

The current EU subsidies given to maritime sectors, in particular the fishing sector, have led to a number of serious problems including overfishing, fleet overcapacity and low economic resilience of those in the European fishing industry. The negotiations on the European Maritime and Fisheries Fund (EMFF) provide an opportunity to address these issues that should not be missed.

Support to energy efficiency and renewable energy must be strengthened, with a priority on energy efficiency and flexible local energy solutions.

Trans-European energy infrastructure projects funded under the EU budget should take into account the energy savings potential and energy efficiency objectives for 2020 and beyond. These infrastructure projects should be used to support Europe’s climate and energy goals of reducing CO2 emissions, increasing energy efficiency and developing and integrating renewables and must not incentivise investments in the continued use of fossil fuels.

Discussions so far have largely focused on the question as to how EU funds can be obtained by Member States with as few strings attached as possible. The narrow focus on in particular macro-conditionality (which would reduce the EU budget to simply another lever for economic reform in countries in crisis) and project bonds (which would promote large infrastructure projects in the hope that the private sector will cover the costs) is standing in the way of a more important debate on the question of which policy goals the money is meant to deliver. During the Cyprus Presidency, the debate took a further turn for the worse with major cuts proposed to the CAP’s more progressive second pillar, with the old style first pillar payments by and large being spared plus the little greening proposed to the first pillar effectively hollowed out; the LIFE fund would be reduced as well, despite this being a highly effective instrument in support of the EU’s environmental policies; and the fate of the 20% ringfencing of Cohesion funds for climate purposes hangs in the balance. The only ‘good’ news was that also on this proposal no agreement could be reached and that it triggered a debate on the question why wealthy CAP beneficiaries would be let off the hook so lightly. The biggest risk now, supported by media reports of an informal agreement to avoid further cuts to agricultural spending, is that the disastrous last proposal by van Rompuy will now form a basis for even more disastrous cuts in those parts of the EU budget least defended by vested interest groups.

The EEB therefore calls upon the Irish Presidency to ensure that:

\(^3\) Biodiversity investments – a smart contribution to reach EU 2020 objectives, Briefing by Birdlife, EEB, WWF, 2011 and Investing for the future: More jobs out of a greener EU budget, Coalition of NGOs, January 2012
The budget negotiations will be saved from the disastrous cuts proposed under the Cyprus Presidency by President van Rompuy and start addressing the question as to how the EU budget can be transformed into an instrument for positive change fulfilling the EU’s objectives in the fields of climate change, biodiversity loss and resource use;

- €3.5 billion from EU budgets goes towards Natura 2000 according to Prioritized Action Frameworks;
- The overall budget of LIFE is increased to 1% of the EU budget (MFF 2014-2020) corresponding to approx. €12 billion;
- Increased support, including via innovative financing schemes and European Investment Bank funding, is dedicated to energy efficiency and sustainable renewable energy and its integration to the grid. Support to renewable energy should give priority to local solutions for renewable energy and flexible energy use instead of larger transmission grids. As part of that, no transmission grid should be supported unless the local solutions with comparable or better socio-economic benefits are supported as well;
- The climate allocation under the Cohesion Policy is increased from 20% to 25% in developed and transition regions and from 6% to 15% in less developed regions;
- Policies for energy infrastructure and security of supply are harmonised with the objectives of at least 30% greenhouse gas reductions by 2020. This must require that EU policies and funding only support energy infrastructure for increased use of renewable energy and do not support continued fossil fuel use;
- There is full transparency on how such funds are spent, and effective mechanisms of tracking and control are in place to ensure that funding is used as planned.

2.2. 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 disincentive 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 Irish 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 Irish 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 Irish 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 in 2020, 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 that information on vehicle noise emissions is transparent and made publicly available;
- 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 so far the European Parliament and the Council have tried hard to make it even weaker mainly for the sake of flexibility, effectively giving farmers a blank cheque.

Despite its initial ambition, the Cyprus Presidency did not manage to conclude on any ‘partial general’ approach. The failure in finding agreements was mostly due to the willingness to await to see how much will be allocated to this policy before agreeing on how green it will be which flies in the face of basic principles of good policy making where you first agree what you want to do before deciding how much to put behind it.

This tendency was echoed in the European Parliament with the Agriculture Committee, which is in the lead, postponing its vote until the end of January 2013.

This highly questionable way of negotiating on this Policy (budget before content) took place hand in hand with strong pushes for a hollowing out of the Commission proposal’s most valuable elements.

A defensible CAP should include, as a bare minimum, a meaningful package of basic measures under the First Pillar including ecological focus areas, crop rotation and grassland protection, and should lead to a significant increase in the level of requirements and efficiency of environmental measures within Pillar 2 (with a minimum spending of 30% for the environment included). Sadly, the Council and the Parliament have chosen to push for a CAP without any legitimacy, one from which the wealthiest farmers would benefit the most. Additional to making the greening component an empty shell, the Parliament and the Council have tried hard to maximise the number of farmers that would be exempted from the greening elements. This will notably be done with the help of a mechanism called “green by definition” which would exempt farmers from the three Pillar 1 greening obligations via an unclear but probably very bureaucratic mechanism.

In addition to making the greening meaningless via exemption mechanisms and empty measures, the Council also failed to improve the content and delivery of Pillar 2. At the conclusion of the Cyprus Presidency, the negotiations within the Council ended up with no binding minimum spending for environment and no real recognition of High Nature Value farming systems, nor organic nor thematic sub programmes. It also paved the way for double funding of the same measures (under greening and Agri Environmental Measures) by blurring the baseline, thereby asking taxpayers to pay twice for the same thing. Severe budget threats for Pillar 2 funding post 2013 and a weaker cross compliance can be added to this list of watering down
attempts. As a result of all this, the worst case scenario now looks to become the most likely scenario and would lead to the new CAP being significantly more damaging to the environment than the existing one.

A radical change in the negotiations is therefore of paramount importance. 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 only a real improvement of the Commission’s proposals would achieve this. Both Council and Parliament need to demonstrate why it is worth spending a large part of the EU budget on this policy and should do so before a decision on the EU budget is taken.

The EEB therefore calls upon the Irish Presidency to:

- Steer the co-decision process closer to the Commission’s initial proposals which proposed a package of greening measures that would be compulsory at farm level and not a menu approach;
- Avoid having a whole set of “green by definition mechanisms” which will lead not only to a watering down of the positive elements of the proposal but also to more complexity;
- Improve the Commission’s original proposal by elevating the level of ambition of the measure (10% Ecological Focus Areas, protection of permanent pastures with a cut-off date on the ban on ploughing up such pastures set in the past (2011), crop rotation with a minimum of four crops and having the largest crop not exceeding more than 50% of the land);
- Ensure that the Water Framework Directive and the Sustainable Use of Pesticides directive are not removed from Cross Compliance in the proposals;
- Ensure that the new Good Agricultural and Environmental Conditions (GAEC) on protection of wetlands and carbon rich soils stays in the text;
- Delete the provision for reverse modulation (transfer of funds from pillar 2 to pillar 1);
- Ensure a binding minimum spending level for agri-environment measures in the second pillar, with this being translated into a provision and not only referred to in a recital;
- Introduce sub programmes for High Nature Value Farming programmes in Pillar 2;
- Ensure that organic conversion and maintenance measures in Pillar 2 benefit with a higher co financing rate to more fully reflect its environmental added value and are compulsory for the Member States;
- Ensure that NGOs can be part of the European Innovation Partnerships in Pillar 2;
- Avoid that the next CAP goes back on previous reforms.

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 are unacceptable. The work of European institutions, especially the Presidency, the Council and European 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 dealt with. There is more and more 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) 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 Irish 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 efficiency 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 only those types of biomass are used which reduce emissions in the short term. As far as energy efficiency is concerned, a vast potential to reduce energy consumption remains untapped.

The EEB therefore calls upon the Irish Presidency to:

- Ensure that the EU takes action and commits to meet at least a 30% greenhouse gas reduction by 2020 through domestic action;
- Support ambitious milestones for 2030 and 2040 in line with the recommendations of the 2050 Low Carbon Roadmap and push forward the adoption of ambitious post-2020 targets, in accordance with the no-regret scenario based on decarbonisation, high renewables and energy efficiency choices;
- 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 the 20% energy savings objective for 2020, and request the Commission to propose a binding energy efficiency target for 2030 to 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.

5.2. BIO-ENERGY
The Renewable Energy Directive (RED)\(^4\) 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 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\(^5\).

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 indeed 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\(^6\), the Commission finally published a proposal in September 2012 to tackle this issue. However while it was supposed to propose a correct methodology for ILUC, it failed to do so for the purpose of assessing compliance with the EU’s sustainability criteria and proposed a cap on food-based biofuels set at 5%. This would prevent Member States from using more than 5% food-based biofuels (sugar, cereals, oilseeds) to meet their 10% target; it does not however prevent fuel suppliers from using food-based biofuels under the Fuel Quality Directive

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\(^6\) 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
to meet their 6% emissions reduction and only makes 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 situation regarding biomass for energy is even more problematic because the Commission has decided against developing legally binding sustainability criteria. At this moment, it has indeed 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 carbon neutrality for biomass is a fundamental mistake and that time gaps need to be taken into account as in the short and medium term biomass for energy can increase GHG emissions compared to fossil fuels.

Changes are urgently needed in the EU’s renewable energy directive in order to ensure that the rules regarding biomass actually contribute to decreasing GHG emissions. One priority should be to get the science right on carbon debt and then look at sustainability criteria, efficiency, 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 Irish Presidency to:

- Ensure that the Commission’s proposal on ILUC is amended under the co-decision process in order to include ILUC factors from different biofuel crops in both the RED and FQD;
- Ensure that the cap of 5% remains and that it does not only cover food-based biofuels but all land-based biofuels (all energy crops);
- 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 tackles 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 triilogue 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.

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 Irish 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 adopted in Council under the Irish 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 Irish Presidency to:

• Seek a mandate to resume the trialogue 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 Irish 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 Irish Presidency to:

- Put a discussion on the Commission’s assessment of the 2012 Country Specific Recommendations on the Council agenda;
- Ensure that the Council maintains the pressure for a swift and ambitious roll-out of the Resource Efficiency Roadmap.

7.2. A MULTI-ANNUAL FINANCIAL FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

Section 2.1 above sets out the initial context of the discussion on EU budget reform so far.

The negative impact of the EU budget on environment and climate has been well-documented over recent years thanks to the efforts of CEE Bankwatch and other campaigning organizations. The Environment Council therefore has an important role to play in preparing the way for improved quality of EU spending.

Specifically, Environment Ministers should be actively involved in considering how conditionality and earmarking of funds can help guard against negative impacts and catalyse more positive investments in key priority areas.

The Environment Council should also consider the role that new dedicated funding instruments for climate protection could play in catalysing investment in low-carbon technologies and addressing the costs of the low-carbon transition.

Finally, given that the budget negotiations have potentially disastrous consequences for the LIFE Fund and the CAP’s second pillar, it is essential that Environment Ministers now put their full weight behind these two funding lines.

The EEB therefore calls on the Irish Presidency to:

- Organise formal or informal input from the Environment Council into the ongoing EU Budget negotiations.
- Promote positive engagement with stakeholders and the European Parliament as to how the next MFF (including structural and cohesion funding) can be oriented to deliver on the EU’s sustainable development objectives, including by fighting climate change, promoting resource efficiency, protecting and enhancing biodiversity, and securing a clean and safe environment.
7.3. A STRONGER LIFE INSTRUMENT

The European Commission published a proposal for a new financial instrument for the Environment, LIFE, in December 2011. The proposed budget for this instrument had been set at €3,618 million for the period 2014-2020 (or ca. 0.3% of the planned total Budget), however 25% of it will now be ring fenced for climate action (which is a new task under the LIFE instrument). Therefore for non-climate related environmental action there is only €2,713 million provided, representing a mere 0.25% of the planned 2014-2020 Budget.

The EEB believes that even and indeed especially in a time of pressure on public budgets, there are a number of strong arguments why the LIFE Instrument should be increased to represent a full 1% of the EU budget. Most important, when the purse gets tight, all existing expenditures need to be able to clearly demonstrate how well they support delivery of agreed policy objectives. There are few instruments in the EU budget today which have been so consistently able to do so as the LIFE instrument. There are many other instruments, covering significantly larger sections of the EU budget, which have done much less so, most notably the CAP and the Cohesion Policies. Second, an increase of a very small fund that is very significant in relation to the fund’s size still has only minor implications for the overall EU budget while at the same time it delivers significant benefits in terms of helping to achieve policy objectives.

LIFE has proven to be a vital and very cost-efficient EU funding line. It delivers not only for the environment but also for the wider economy. LIFE will be crucial to implement Natura 20007 and the Water Framework Directive, among others. While other EU funding also contributes to improving the environment, LIFE has a crucial role to play as ‘seed money’ to attract funding from other sources and to implement action that is specific to the site or region and cannot be funded under other instruments.

LIFE contributes significantly to maintaining our ecosystem basis. Evidence is growing that investment in ecosystems is good investment: for example it has been estimated, that for each €1 invested in Natura 2000, society gets back €33.50. The tourism generated by Natura 2000 alone creates 4.5 to 8 million fulltime equivalent jobs in the EU. On the other hand, failing to invest in our natural support systems could cost the EU €1 trillion by 2050 (in lost ecosystem services).8 Environmental projects have a clear contribution not only to environmental but to multiple EU policy objectives, including local economic development and job creation9.

So far, Environment Ministers have failed to stand up for an increased environmental Fund. Under the Cyprus Presidency, negotiations on the budget figures started badly and went in a bad direction, with the prospects of cuts for LIFE. It is therefore essential that when Environment Ministers discuss the LIFE and MFF proposals under the Irish Presidency, they take a much firmer and clearer stance than they have hitherto on the need to increase the amount of funding for LIFE. They should also revise the 50% co-financing requirement, which has been a significant obstacle to the realisation of LIFE projects, especially in some of the newer Member States.

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7 Where there is a will there is a way: an NGO snapshot on Natura 2000 management, EEB, 2011.
9 Biodiversity investments – a smart contribution to reach EU 2020 objectives, Briefing by Birdlife, EEB, WWF, 2011 and Investing for the future: More jobs out of a greener EU budget, Coalition of NGOs, January 2012.
The EEB therefore calls upon the Irish Presidency to:

- Increase the overall budget for LIFE to 1% of the EU budget (MFF 2014-2020) corresponding to approx. €12 billion\(^{10}\) (currently €2.1 billion EUR (0.23%); EC proposal: €3.6 billion (0.3%) incl. new LIFE Climate Action);
- Ensure that at least €1 billion annually is available for LIFE biodiversity projects allowing to fund approx. 20% of Natura 2000 costs (EC proposal: €160 million (less than 2.5 % of Natura 2000 costs);
- Ensure that at least €300 million annually are available for bottom-up LIFE projects in the field of biodiversity (EC proposal: €75 million);
- Increase the EU co-financing rate for LIFE project grants to 75% and allow for even higher rates in less developed regions;
- Ensure that LIFE CLIMA focuses on ecosystem-based mitigation and adaptation projects (the current proposal does not specify the role of LIFE CLIMA in detail. The very small LIFE Climate Action should fund projects which deliver multiple environmental benefits).

7.4. PREPARATION OF THE 7TH ENVIRONMENTAL ACTION PROGRAMME

Since 1971, Environmental Action Programmes (EAPs) have given direction to the work of the European Commission in the environmental field. They have set ambitions and targets, identified priority areas of work and, progressively, also elaborated on the need to integrate environmental objectives and conditions into other policies.

The Council and the Parliament share responsibility with the Commission for the overall direction, ambitions, targets and instruments that are laid down in EAPs.

In recent years, the preparation of a seventh Environmental Action Programme (7EAP) has featured high on the Presidencies’ agendas. Council conclusions adopted under successive Presidencies, notably the Belgian, Polish and Danish Presidencies, all highlighted the importance of the 7EAP, urged the Commission to come forward with a proposal and signalled the Council’s hopes with respect to the content. Similar pressure has come from the Parliament.

The EEB welcomes the Commission’s proposal, published at the end of November 2012, for a new Environmental Action Programme with a time horizon that brings it into line with Europe’s other main policy initiatives including the EU budget and a clear commitment to consider planetary limits in developing new policies. Particularly promising are the proposals for new tools and capacities to close the enforcement gap and to keep soil high on the Environment Council’s agenda. The proposal’s insistence that in order to achieve healthy fish stocks by 2020 as committed to by EU member states under the Marine Strategy Framework Directive, Maximum Sustainable Yield will need to be achieved by 2015 sends a not to be missed signal to negotiators on the Common Fisheries Policy to drop their opposition to the Commission’s proposal for the CFP on this point. Finally, it will be essential for the Environment Council to spell out in a lot more detail what further regulatory action is needed on chemicals and nano.

The EEB therefore calls upon the Irish Presidency to:

\(^{10}\) In current prices.
• Support and strengthen the Commission’s proposal and ensure it includes a deadline by which to propose and adopt new targets;
• Support in particular the Commission’s proposal for new tools and capacities to improve implementation of existing policies;
• Spell out within the programme the regulatory action that the Commission should undertake to address the safety concerns raised by nano materials, endocrine disruption chemicals (EDCs) and cocktail effects;
• Resume negotiations on the proposed Soil Framework Directive;
• Support the Commission’s proposals on phasing out environmentally harmful subsidies and environmental fiscal reform.

7.5. INVESTING IN 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 starting 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”. The Strategy, together with its six targets and recommendations on how to implement the corresponding actions, has been endorsed by the Council.

The negotiations on the EU Multiannual Financial Framework which ran through 2012 will continue in 2013. How much Europe will contribute financially to biodiversity and ecosystem protection will to a large extent determine the achievement of the 2020 Biodiversity target. (See also sections on the MFF and LIFE.)

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 take forward negotiations on the Commission’s proposal for a Regulation on Access and Benefit Sharing, published in October 2012, and urge EU Member States to ratify and implement the Nagoya Protocol on Access and Benefit Sharing of Genetic Resources.

The EEB therefore calls upon the Irish Presidency to:

• Ensure during the negotiations on the MFF that an increased amount of funding is allocated to the new LIFE Regulation;
• Ensure that CAP, Cohesion Policy and CFP provide for specific and effective supporting measures to reach the objectives of the Biodiversity Strategy according to the needs identified in Prioritized Action Frameworks.
7.6. 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 Irish 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 milestones for 2030 and 2040 in line with the recommendations of the 2050 Low Carbon Roadmap and push forward the adoption of ambitious post-2020 targets, in accordance with the no-regret scenario based on decarbonisation, high renewables and energy efficiency choices;
- 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;
- Take leadership on the revision of the F-Gas Regulation in order to ensure an effective market shift to climate-friendly alternatives by means of placing-on-the-market bans on HFC equipment as soon as feasible, i.e. before or by 2020 in most sectors;
- 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;
- Ensure that Council Conclusions on Adaptation to Climate Change support an appropriate use of EU funds for this purpose and create a new impetus to the implementation of the Water Framework Directive.
7.7. 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, respiratory and cardiovascular diseases, which result in extra medication and hospitalisations as well as millions of lost working days. According to the latest information from the European Environment Agency, around a third of city dwellers are exposed to excessive PM concentrations which put their health at risk.

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.

During 2013, the “European Year of Air”, the European Commission is expected to come up with revised and/or new legislation to reduce air pollution in Europe.

The Irish Presidency will open the Year of Air. This is a great opportunity to start discussions in the Council and with the European Commission which will lead to the adoption of a policy package that will allow Europe to achieve "levels of air quality that do not give rise to significant negative impacts on, and risks to human health and environment" as foreseen in the 2005 Thematic Strategy on Air Pollution.

To achieve this goal, the Presidency should firmly reject any call for weakening or “flexibility” with respect to existing ambient air quality limits which are set for the protection of human health. It should on the contrary look for further tightening of existing standards for the years to come. In comparison with the WHO recommendations for ambient air quality, current EU limits are insufficient to protect people’s health, in particular when it comes to the concentrations of the smallest particles (PM2.5). The implementation of 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. With new evidence of diesel exhaust particles being carcinogenic, there is an even bigger urgency to further reduce concentrations of fine particles in the air.

Second, the Presidency should encourage the Commission to propose EU action on specific sectors which contribute to air pollution. This includes the introduction of new or stricter standards to control emissions from shipping, non road mobile machinery (NRMM), road transport, agriculture and small scale combustion installations. All those sectors show great potential for reduction which should be realised during the 2013 Year of Air. Source legislation in all those sectors would be the most cost-effective way of improving air quality and would help Member States and local authorities to comply with ambient air quality standards (Directive 2008/50/EC).
Finally, Member States should push for ambitious new ceilings under the revision of the 2001 National Emission Ceilings (NEC) Directive. Cost-benefit analyses prepared by DG Environment show that strict air policies also make very good economic sense, with financial benefits outweighing the costs by far. An ambitious NEC Directive would also help local authorities to comply with PM10 and PM2.5 limit values, especially in places suffering from significant transboundary air pollution.

The EEB therefore calls upon the Irish Presidency to:

- Start discussions with Member States and the Council 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" as foreseen in the 2005 Thematic Strategy on Air Pollution;
- Firmly reject any attempt to introduce further derogations or flexibility under the Ambient Air Quality Directive as such mechanisms would result in less protection for Europeans’ health, while strong scientific evidence shows that the opposite is urgently needed;
- Insist on the need and importance of developing new and/or revised EU air policies aiming at reducing harmful levels of air pollution across Europe and improving people’s health;
- 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 from the agriculture sector, as ammonia emissions contribute to harmful PM concentration levels;
  - 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 emissions in the EU and is expected to increase;
- Support ambitious new National Emission Ceilings (NEC) which will reduce overall emissions across Europe and limit the effects of transboundary air pollution;
- Support action to target black carbon, methane and ozone since these pollutants are also responsible for climate change.

7.8. NEW ENVIRONMENTAL QUALITY STANDARDS FOR WATER

Article 16 of the Water Framework Directive (2000/60/EC) sets out a “Strategy against the pollution of water” outlining the steps to be taken. To realise this, Directive 2008/105/EC of the European Parliament and the Council on environmental quality standards in the field of water policy was established (PHS or EQS Directive). In January 2012, the European Commission published a proposal to amend the Directive. It is worth noting that the EU is party to international water protection treaties, e.g. the Helsinki Convention, the Barcelona Convention and the Paris Convention which require the cessation of all hazardous substances within one generation (25 years), i.e. to be achieved by 2020\textsuperscript{11}.

\textsuperscript{11} The EU was strongly criticized by other parties to the Paris Convention (Protection of the North-East Atlantic Marine Environment) for not implementing phase-out goals prior to the adoption of the Water Framework Directive in 2000, which reaffirms the phase-out obligations under the treaty obligations.
The Commission proposal includes only 15 new substances for phase out measures or that are required to meet certain standards in water, from a list of 2000 substances considered potentially dangerous. Also, the proposal does not include new measures to achieve the phase out obligation. However, this is clearly needed, as without a clear framework Member States have not moved forward effectively with measures to phase out dangerous substances that were included in the first list in 2008\textsuperscript{12}. A binding timetable and a straightforward framework for phase out measures would be therefore required within the EQS directive.

After a first debate took place under the Danish Presidency, revealing significant opposition to a number of elements of the Commission’s proposal by some Member States, the Cyprus Presidency decided to await the outcome of the vote in the European Parliament’s Environment Committee. As the vote only took place at the end of November, the Cyprus Presidency did little more than informing Council of the outcome which means that Council will need to decide if and with which mandate to start negotiations with the European Parliament.

We welcome the outcome of the vote in the European Parliament’s Environment Committee that proposes to introduce a new article that would strengthen the link between this Directive and key EU source policy instruments such as REACH. This will ensure that once a substance is identified under the EQS Directive, action will be triggered to address pollution at source. This amendment should be supported in particular by those Member States who have voiced the loudest concerns about the costs of achieving new standards as this will ensure that cost-efficient measures to control emissions at source are taken.

The proposed “Watchlist” mechanism is a good step in the right direction to improve the monitoring base for upcoming regulatory decisions on relevant emerging water pollutants. However, the number of chemicals should be increased from 25 to at least 30 and the monitoring frequency needs to be raised from once a year to at least five times a year to obtain reliable information. We consider the Environment Committee’s amendment as a step in the right direction which we hope will be further strengthened in the Council discussions.

Finally, it is essential that the scientific integrity of the Commission’s proposal is respected. The preparatory work was led by the European Commission (DG ENV) and the Joint Research Centre, with participation of the national experts from all Member States and experts from industry, agriculture associations and NGOs under the Common Implementation Strategy of the WFD. The proposed standards were also submitted and reviewed by the independent Scientific Committee on Health and Environmental Risks (SCHER). As part of this prioritisation process, more than 2000 substances, all of which pose a risk to aquatic ecosystems, were screened but, mainly because of lack of monitoring data across EU Member States, only 15 substances were prioritized for action at EU level. Many of these 15 substances are persistent and/or bioaccumulative as well as toxic (e.g. dioxins, perfluorooctane sulfonate) and are therefore likely to remain in the environment for decades and affect birds and mammals including humans via secondary poisoning. In particular, the European Environment Agency report from 2011 provides a summary of numerous studies that document a range of detrimental impacts of pharmaceuticals upon freshwater ecosystems. For example, introducing synthetic oestrogen at concentrations found in polluted environments (5-6 ng/l) in a Canadian Experimental Lake resulted in feminization of male fathead minnows and within seven years the fish species was almost extinct from the lake, clearly demonstrating that endocrine disruptors can threaten the sustainability of wild fish populations. This is supported by a report from the German

\textsuperscript{12} EU governments bury their head in the sand over Europe’s most dangerous chemicals, Greenpeace 2010.
Environment Agency which identifies 24 pharmaceuticals for urgent action as they pose a significant risk to the health of freshwater ecosystems.

The inclusion of pharmaceuticals in the Commission’s proposal has been long overdue and we consider the European Parliament Environment Committee’s proposal to postpone measures to tackle the negative impacts of pharmaceuticals by 7 years as a regrettable step backward. We therefore hope that the Council will move this forward again by 7 years by reinstating the EQS for these substances.

The EEB therefore calls upon the Irish Presidency to:

Ensure that the Council adopts conclusions on the revised EQS Directive which:

- Endorse the inclusion of all newly proposed dangerous substances in the Commission list;
- Support the Environment Committee’s proposal for a new Article 5a that ensures EU level source control measures will be taken and avoids end of pipe solutions;
- Require, through the Watch List mechanism, the effective monitoring of emerging new hazardous substances which enter the market as a result of technological change or the introduction of new products and provide for monitoring the effects of chemical cocktails.

7.9. GLOBAL MERCURY TREATY AND EU STRATEGY

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

At the EU level, a Regulation for an EU mercury export ban and the storage of surplus mercury (mainly from decommissioned chlor-alkali plants) was adopted in October 2008. In April 2009, a sales ban on mercury fever thermometers and on other mercury-containing measuring devices for consumers came into force. 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 banner, 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. Yet a more robust revised EU Mercury Strategy is imperative, not only for the protection of EU citizens but also to ensure that the leadership role of EU is maintained at the global level and in view of the ongoing intergovernmental negotiations towards a robust mercury treaty.

The revised EU mercury strategy adopted by the European Commission in December 2010 was a major disappointment. Instead of showing the way forward, the revised strategy leaves all mercury control to existing EU laws which have been shown to be insufficient, particularly to deal with mercury emissions to air. No additional concrete measures were proposed, and the Commission preferred to wait until the global treaty has taken shape in order to assess which aspects of the mercury life cycle should be subject to additional EU-specific action, including if needed additional legislative proposals. The only action proposed was a life-cycle assessment of
mercury use in dental amalgam and button cell batteries. The study has recently been completed and strong policy proposals are presented by the consultant such as banning the use of mercury from both sectors. It seems that the proposed phase-out recommendations have now found their way into policy. The European Parliament’s Environment Committee is now proposing early phase out of mercury in button cell batteries. The European Commission has already started informal consultations with member states towards a phase out of mercury use in dentistry.

At the global level, four meetings of the Intergovernmental Negotiating Committee (INC) have so far taken place with the hope of arriving at a strong, robust and comprehensive legally binding treaty on mercury on or before February 2013. During the 26th Session of the UNEP Governing Council (February 2011), governments reiterated the need to have the treaty ready for adoption by 2013. Nevertheless, the EU should lead the negotiations by example, and not fall behind by simply following global decisions. 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 negotiations is by setting suitable standards at the EU level and supporting proposals that are within this benchmark during the global negotiations. Furthermore, at this crucial stage, outreach to countries and regions with similar positions to further advance strong policy measures is absolutely necessary.

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 the four negotiations so far. At INC4, among other things, we developed our preliminary views on the draft treaty text as well as on other relevant documents which have been developed to advance discussions on emissions, products and processes. Preliminary views have now been developed on the INC Chair’s draft text which will be the basis for the last round of negotiations, to take place on 13-18 January 2013 in Geneva.

**At the global level, the EEB urges the Irish Presidency to:**

- Promote continuation of the EU leadership role in the UNEP Mercury Treaty negotiations and further outreach to like-minded countries or regions to further pursue strong and effective mercury reduction measures to be agreed at the final INC;
- Take all necessary steps to ensure that the EU can sign the treaty by October 2013;
- Continue working collaboratively with NGOs as the process moves forward to foster the development of a strong, robust and comprehensive legally binding treaty on mercury;
- Concurrently with the work of the INC, and after the treaty text has been agreed, 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 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:
o Phasing down with the goal to phase out mercury in dental care and in button cell batteries since safe mercury-free alternatives are available;

o 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); and

o 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.

- Foster proper implementation of the EU regulation on export ban and safe storage of mercury, by assuring adoption of appropriate acceptance criteria and storage facility requirements eliminating risk of exposure to future generations;

- 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;

- Ensure that energy-saving mercury-containing lamps entering the EU comply with the maximum content limits that are set by the Restriction of Hazardous Substances Directive (RoHS) and that non-functioning lamps are safely and separately collected and treated to avoid exposure, with awareness campaigns being launched to inform citizens on how to handle such lamps;

- Ensure that other key elements of the EU Mercury strategy are implemented correctly and in a timely manner.

7.10. SHIP DISMANTLING

As during the Cyprus Presidency Member States were not able to agree on a common position on a new EU regulation on ship recycling but were rather divided, the Irish Presidency will have the challenging task to conclude the co-decision process. The EU Regulation cannot ignore the recent decision taken during the 10th Meeting of the Conference of the Parties (COP10) to the Basel Convention which clearly stated that a majority of the Parties, including the African Group, do not believe that the IMO Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships provides an equivalent level of control as that provided by the Basel Convention. Therefore, the EU as a party to the Basel Convention cannot unilaterally exempt end-of-life vessels from the scope of the Convention. The Hong Kong Convention can thus not replace the Basel Convention, but should rather be implemented additionally. End-of-life vessels containing hazardous waste must remain under the Waste Shipment Regulation, which incorporates the Basel Ban Amendment into EU community law. New European legislation should therefore provide for a stronger enforcement of the Basel Convention and its principles and at the same time allow for the implementation of the obligations under the Hong Kong Convention.

The EEB therefore calls upon the Irish Presidency to:

- Ensure that a new EU Regulation for end-of-life ships includes rapid and appropriate regulatory action and economic measures to strengthen the 'EC Strategy on better ship dismantling'. This includes:
  o Incentives for a shift from breaking end-of-life vessels on tidal beaches to dismantling operations where containment of hazardous materials and safe working conditions can be ensured;
  o Proper implementation of the polluter pays and producer responsibility principles;
o A policy that does not undermine existing precautionary restrictions on transboundary movements of hazardous waste; and
o Incentives in line with the 'Clean Ship' concept and provisions for eco-design to prevent the use of hazardous materials in new builds, and to ensure pre-cleaning during the operational life of existing ships to minimize the transfer of hazardous substances at end-of-life.

7.11. 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 the civil society have defined major gaps in how the environmental impacts of GMOs have been assessed. A major 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 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 entailing 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. 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 firmly on the position that the European Commission must ensure a full implementation of the EU law, and to reject any proposals to cultivate GM crops in the EU in the current situation.

Therefore, the EEB calls upon the Irish 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.

7.12. FRAMEWORK DIRECTIVE ON SOIL PROTECTION

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 five EU Member States which continue to block progress in Council on the proposed Soil Directive will now adopt a more responsible position. The Commission’s proposal for a 7EAP now provides an opportunity to revisit this issue during the Irish Presidency and act as a preparatory step to resuming negotiations on the Soil Directive itself.

The EEB therefore calls upon the Irish Presidency:

- To put negotiations on the Soil Framework Directive back on track.

7.13. 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 Irish 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.

7.14. 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 all 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 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. The Environment Council thus far has not started 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 show 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 Irish 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 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 Irish 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, with a view to concluding its adoption during the lifetime of the current Parliament and Commission.

7.15. 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” – 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, 7.13 and 7.14). It gave the Commission’s Communication on

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implementing European Community Environmental Law COM(2008) 773/4 a critical welcome\textsuperscript{14} 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.\textsuperscript{15} 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. It also 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 stops short of recommending specific measures that the EEB considers important such as reviving discussions on the proposal for an Access to Justice Directive (see 7.14 above) and introducing a new Directive on Environmental Inspections. The EEB was pleased to see that both were included in the Commission’s proposal for a 7EAP even though in a rather vague way.

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 directive 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 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.

The EEB therefore calls upon the Irish 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;

\textsuperscript{14} EEB Comments on the Commission Communication on implementing European Community Environmental Law COM(2008) 773/4

\textsuperscript{15} Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (COM(2012)95)
• Give its full support to an EU directive establishing minimum standards for environmental inspections, also supporting its inclusion in the 7EAP, and encourage the Commission to make quick progress with the preparation of the legislative proposal;
• 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;
• 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.

7.16 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 is therefore pleased to see that the Commission proposal for a revision of the Directive 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 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 qualifications and registration of experts preparing the environmental impact statement is welcome but in the EEB’s view not sufficient. A national pool of experts would be a better guarantee for good quality reports.

Therefore, the EEB calls upon the Irish Presidency to:

- 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 and participation provisions of the Directive, having regard to and building upon the Aarhus Convention requirements;
- 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;
- Convene Council working group meetings to make good progress on this important horizontal file.

7.17. 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 1.3 above. The fact that, on balance, environmental issues came out worse from Rio than social issues underlines the importance of their role.

The 27th session of the UNEP Governing Council/Global Ministerial Environmental Forum which will take place in Nairobi in February 2013 will be important in determining what shape the partial upgrading of UNEP will take. In November 2012, the UN General Assembly approved the relevant text (para. 88) of the outcome document without amendment and in December agreed that UNEP would have universal membership, but the further elaboration of the mandate will now pass to UNEP itself. Apart from taking decisions on the further development of UNEP, the Governing Council is also expected to provide a forum for discussions on various aspects of the Rio+20 follow-up process. Although there will not be a meeting of the Environment Council before the UNEP Governing Council meeting, the Irish Presidency can play an important role through coordination at other levels to ensure that the EU governments play a constructive and progressive role in Nairobi.

Therefore the EEB calls on the Irish Presidency to:

- Push for a progressive stance by the EU at the UNEP Governing Council;
- Put the Rio follow-up process on the agenda of the Environment Council with a view to ensuring a strong environmental component within an ambitious follow-up process, having regard to the goals referred to in section 1.3 above.