



Brussels, 21 November 2006

To: Environment Ministers of EU Member States

Concerning: Input for EU Environment Council Meeting, 18 December 2006

Dear Minister,

On behalf of the European Environmental Bureau I should like to offer you our views on seven of the issues on the agenda of the forthcoming EU Environment Council. Regarding Climate Change, we shall come back to you at a later stage. I invite you to take our concerns into account during final official-level preparations, and during the meeting itself. Below, I present the key messages. Attached you will find EEB's more detailed input to the discussion on the same topics.

1. Marine Strategy Directive

We welcome the European Parliament's first reading improvements to the Marine Strategy Directive, which is a major step forward towards setting a scientifically-based, environmentally meaningful, and enforceable target. We believe that only a Directive which exposes the specific environmental impacts of human activities and requires Member States to change relevant policies and economic activities, is worth the effort.

We therefore call on the Council to:-

- Support Parliament's first reading and specifically the integration of provisions that link the Common Fisheries and Agricultural Policies to the Marine Strategy Directive and the inclusion of a definition of good environmental status (GES)
- Ensure a proper stakeholder consultation during further refining of the GES.

See also Annex 1 for more specific EEB comments

2. EURO 5

We believe that Parliament's Environment Committee report does not adequately improve the Commission's proposal and in some places has even weakened the

already over-cautious Commission proposal. Limit values are much too weak to support the achievement of ambient air quality standards, as many governments have requested it should do, and are not keeping pace with technological development.

We therefore call on the Council to:-

- Lower the 'Euro 5' NO_x limit values from 200 mg to 75 mg/km applicable as from 2008
- Lower the proposed limits for particles from 5 to 2 mg/km
- Introduce technology and fuel-neutral 'Euro 6' stage of emissions standards with NO_x at emissions levels of 40 mg/km to enter into force by 2011 latest
- not allow exemptions for specific vehicle categories, like SUVs

See also Annex 2 for more specific EEB comments

3. Waste Framework Directive

We are disappointed by the Commission's proposal. It fails to set long term goals ensuring that waste production is prevented as far as possible, and that which remains is re-used, recycled or composted. Instead, the proposal would undermine the current and environmentally sound waste hierarchy and promote waste incineration, representing serious deregulation and the loss of the most tangible opportunity to progress with resource efficiency.

We therefore call on the Council to:-

- reject any wording in the waste hierarchy, such as '*guiding principle*', that makes the hierarchy voluntary. Flexibility should be accommodated by the possibility of deviating from the hierarchy, taking into account environmental, social and cost-benefit considerations
- support the deletion of the energy efficiency threshold formula for MSW incinerators, but also ensure that the 'umbrella' definition of recovery should be sufficiently clearly and comprehensively defined (with multiple criteria that go beyond only resource substitution)
- insist on a clarification concerning waste incineration to distinguish between recovery and disposal based on the ECJ criteria – namely whether the principal objective (of the facility) is truly to generate energy – ie it would continue to operate on alternative fuels in the absence of waste or it pays for the waste as a fuel
- Require a phase-out of disposal, through incineration or landfill, of all the waste that can be re-used, recycled or composted by 2020, pre-treatment for removal of recyclables by 2015, and a long-term vision for minimising residual waste

See also Annex 3 for more specific EEB comments

4. Prohibition of Genetically Modified Maize in Austria

We fully support the safeguard clause enacted by Austria on GM maize MON810 and T25, since both were approved under the old legislation (Directive 90/220/EEC) that required no obligation to carry out a thorough environmental risk assessment. The Commission proposals for a decision requesting Austria to repeal its national safeguard clause are based on EFSA opinions that failed to conduct a rigorous risk assessment and take major scientific concerns into account.

We therefore call on the Council to reject the Commission proposals requesting Austria to repeal its national safeguard clause on GM maize MON810 and T25

See also Annex 4 for more specific EEB comments

5. Halting the Loss of Biodiversity

We welcome the publication of the Biodiversity Communication and the 2010 Action Plan which we see as an important move to put biodiversity protection higher on the political agenda. Swift and effective implementation of the Action Plan and buy-in from stakeholders are key factors to deliver on the objective of halting the loss of biodiversity by 2010.

We therefore urge the Council to:-

- Stress the importance of complete and timely implementation of the EU Water Framework, Birds and Habitats Directives, in achieving the 2010 target of halting biodiversity loss
- Commit adequate financing for biodiversity conservation from the relevant EU funds
- Urge the European Commission to review the success of EU financing of actions for biodiversity, (including Natura 2000) within the 2008/2009 budget review
- Ask the European Commission to provide clear guidance and a strategy for how it will set up proposed partnerships with key stakeholders in the relevant sectors

See also Annex 5 for more comments

6. Thematic Strategy on Pesticides

The threat to human health and the environment arising from the use of pesticides is far from being controlled. Farmers' dependency on pesticides is increasing and substances with long-term or potentially irreversible negative impacts are still used in pest control. In this respect we are particularly concerned about the weak Commission proposal for a Directive on Sustainable Use of Pesticides, which fails effectively to tackle agricultural production's unhealthy dependency on pesticides.

We therefore call on the Council to introduce a reduction target of 50% of the treatment frequency index¹ within ten years accompanied by measures, including taxes and charges

See Annex 6 for more information

7. Environmental Quality Standards in the Field of Water

We welcome that the fact that the Commission finally presented its proposal but regret the omission of adequate emission controls, the weakening of standards in some cases during their development, omission of standards for sediment and biota and failing to classify consistently hazardous substances and add more problematic substances to the list. The proposal does not fulfill the mandate of the 2000 Water Framework Directive and risks becoming rather toothless and undermines Europe's commitment to phase out emissions of hazardous substances. Most importantly, the Commission's justification for not presenting emissions control measures, ie that existing or future legislation (REACH) provides sufficient measures, is wrong: i) important pollution sources are not covered, like building and construction materials or SMEs and ii) future legislation like REACH cannot be expected to deliver in time and specifically enough for 'old problem' substances.

We therefore call on the Council to support setting up an inventory for emissions, discharges and losses and complement it with a requirement to draw up plans for pollution control in order to:-

- reduce diffuse pollution which is due to losses of substances from articles within their 'service' life (product design), in particular relating to building and construction materials and components in vehicles
- substitute priority substances in preparations used in small and medium-sized installations as processing aids (integrated pollution prevention)
- develop substitution plans for priority hazardous substances with safer alternatives

See Annex 7 for more information



Yours sincerely,

John Hontelez

Secretary General EEB

¹ Treatment frequency index indicator expresses the average number of times an agricultural plot can be treated with the recommended dose, based on the quantities sold.

Annex 1

EEB comments for the Environment Council 18 December 2006 on

MARINE STRATEGY DIRECTIVE

Political agreement

The European Parliament first reading of the Marine Strategy Directive has resulted in a number of improvements to the Directive in line with our previously stated concerns. We call on the Council to support the general thrust of these amendments, including the integration of provisions that link the Common Fisheries and Agricultural Policies to the Marine Strategy Directive and the inclusion of a scientifically-based definition of 'good environmental status' (GES). In the case of GES, an appropriate definition is essential if the Directive is to be 'fit for purpose', and we call on the Council to ensure a proper stakeholder consultation during the development of this definition. The joint-NGO group following the process has already prepared a proposal in this regard and we commend this to the Council (see link below).

Lastly, and in relation to the GES discussion, we should like to point to marine protected areas (MPAs) as an important tool in reaching GES. However, they are merely one means to an end, and the Directive set as its main and overarching objective the achievement of good environmental status of all European waters, whether or not they are part of marine reserves.

Further Information

NGO position paper: "Defining Good Environmental Status in the context of the European Marine Strategy Directive. What constitutes a healthy marine environment?"
[http://www.seas-at-risk.org/1images/NGO%20paper%20on%20Good%20Environmental%20Status%20\(FINAL\)_1.pdf](http://www.seas-at-risk.org/1images/NGO%20paper%20on%20Good%20Environmental%20Status%20(FINAL)_1.pdf)

Annex 2

EEB's and the European Federation for Transport and Environment's (T&E) comments for the Environment Council 18 December 2006 on

EURO 5 - TYPE APPROVAL OF MOTOR VEHICLES WITH RESPECT TO EMISSIONS

Political Agreement

Euro 5 is a very important Directive to reduce air pollution in the EU. It is also the first Directive in the context of the Thematic Strategy on Air Pollution which is supposed to reduce air pollution emissions at source. Pollution from cars is particularly important because it is emitted in cities and close to where people live and work. Additional action for reducing emissions from motor vehicles is necessary, both for attainment of the health and environmental objectives of the Sixth Environment Action Programme, and to help Member States meet EU air quality standards for PM, NO₂, and ozone.

EEB and T&E were disappointed by the European Parliament's Environment Committee report on Euro 5 which did not adequately improve the Commission proposal and in some places even weakened the already over-cautious Commission proposal by introducing special exemptions for SUVs and by postponing entry-into-force deadlines. A positive element was the Environment Committee's proposed introduction of a second stage of emission limits, Euro 6, albeit with limit values and entry-into-force dates that are much too lenient.

EEB and T&E are most concerned about the proposed Nitrogen Oxides (NO_x) limits for diesel cars. The entry-into-force dates currently being considered are much too late. Air pollution from cars must be reduced now and not in the distant future. The Euro 5 NO_x standard must be swiftly and significantly strengthened and should be set at the level of 75 mg/km as from 2008 for diesel. Euro 6 should enter into force by 2011 at the latest and should limit NO_x emissions at a level of 40 mg/km, which is aligned for petrol and diesel. This is necessary to attain 'near zero' air pollution from new cars and to bring EU air pollution emissions limits in line with what is currently already required in the USA. As EU carmakers already meet these standards for their export models sold in the USA, there should be no question over the attainability of these standards. Diesel car NO_x emissions are an essential factor, not least because recent evidence shows that 'real-life' NO_x emissions from diesel cars are much higher than reported.

In the current debates in COREPER and the ongoing negotiations with Parliament, the Council should therefore insist on earlier entry into force, stronger NO_x limits, and not yield to any further exemptions for different vehicle categories.

The Environment Council should also strengthen proposed particle emissions limits to 2mg not 5 mg, as particle test values clearly indicate that the bulk of diesel particle filters can achieve values as low as 1 or 2 mg/km. Such low values can be very accurately and repeatedly measured under the Particle Measurement Programme's (PMP) new protocol.

EEB and T&E therefore call on the Environment Council to:-

- Lower the 'Euro 5' NO_x limit values from 200 mg to 75 mg/km applicable as from 2008
- Lower the proposed limits for particles from 5 to 2 mg/km

- Introduce technology and fuel neutral 'Euro 6' stage of emissions standards with NO_x at emissions levels of 40 mg/km to enter into force by 2011 at the latest
- not allow specific exemptions for different vehicle categories

Further Information:

T&E position paper on EURO 5 emissions standards for new cars, 5 October 2006

http://www.transportenvironment.org/docs/Publications/2006/2006-09_euro_5_position_updated.pdf

Annex 3

EEB comments for the Environment Council 18 December 2006 on

WASTE FRAMEWORK DIRECTIVE

EEB was disappointed by the Commission's proposal on the Waste Framework Directive. It fails to set long-term goals ensuring that waste production is prevented as far as possible, and that which remains is re-used, recycled or composted (ie phasing out waste as far as possible while also phasing out residual waste that requires burning or landfilling). To achieve these objectives the most important changes that must be made to the Commission's proposal are:-

- The five-step waste hierarchy must be clearly stated and directly binding to Member States and the Commission – with clear differentiation between prevention, re-use, recycling, other recovery and landfill
- An effective waste prevention process must be created – including a clear definition of prevention, a clear common objective of stabilisation in waste generation by 2012, and a Commission-led process which will assist in implementing targets (indicators, eco-design legislation) and support obligatory national prevention programmes
- A continued commitment to further legislative measures on individual material streams, including specific legislation setting a biowaste recycling target, priority for waste oil regeneration and continued use of separate collection and product-based producer responsibility – obliging manufacturers to make products re-usable, recyclable or more durable
- A clear definition of recycling (separating it from combustion or waste to fuel processes), and the separation of priority waste streams by 2015, thus encouraging their recycling, and an overall 2020 objective for the EU Recycling Society of 70% of total waste to be recycled
- A phase-out of disposal, through incineration or landfill, of all waste that can be re-used, recycled or composted by 2020, pre-treatment for removal of recyclables by 2015, and a long-term vision for minimising residual waste
- A requirement for incinerators to be as energy efficient as possible, but not for them to be redefined as recovery facilities – any attempt to redefine incineration as recovery will create competition for investment in recycling infrastructure and increase trade in waste for incineration (creating pressure to burn more waste using the lowest standards possible)

In addition to these key areas, EEB calls on the Council to ensure that the scope of waste legislation is not seriously undermined by exemptions from scope, new definitions on by-products and end-of-waste. Any criteria should be set with full co-decisions scrutiny on a case-by-case basis with the strict requirement that in the absence of EU legislative measures or jurisprudence the process wastes remain waste.

The EEB therefore call on the Environment Council to:-

- reject any wording in the waste hierarchy, such as '*guiding principle*', that makes the hierarchy voluntary. Flexibility should be provided for by the possibility of

deviation from the hierarchy taking into account environmental, social and cost-benefit considerations

- support the deletion of the energy efficiency threshold formula for MSW incinerators, but also ensure that the 'umbrella' definition of recovery should be sufficiently clearly and comprehensively defined (with multiple criteria that go beyond only resource substitution)
- insist on clarification concerning waste incineration to distinguish between recovery and disposal based on the ECJ criteria – namely whether the principal objective (of the facility) is truly to generate energy – ie it would continue to operate using alternative fuels in the absence of waste or it pays for waste as a fuel
- maintain binding national waste prevention programmes, but insist also on overall targets for prevention (stabilisation by 2012) and recycling (70% 2020) and EU action on priority waste streams (separation by 2015) and a biowaste Directive
- Require phase-out of disposal, through incineration or landfill, of all waste that can be re-used, recycled or composted by 2020, pre-treatment for removal of recyclables by 2015, and a long-term vision for minimising residual waste

Further information:

“Achieving the ‘Low waste and Recycling Society’: EEB amendment recommendations on the Commission proposal to amend the Waste Framework Directive COM(2005)607”
<http://www.eeb.org/activities/waste/EEB-amendment-recommendations-on-the-Waste-Directive-072006-final.pdf>

Annex 4

EEB comments for the Environment Council 18 December 2006 on

PROHIBITION OF THE USE AND SALE IN AUSTRIA OF GENETICALLY MODIFIED MAIZE (ZEA MAYS L. LINE MON 810 AND ZA MAYS L. LINE T25)

Council Decision

EEB fully supports the safeguard clause enacted by Austria on GM maize MON810 and T25, since both were approved under the old legislation (Directive 90/220/EEC) that required no obligation to carry out a thorough environmental risk assessment.

The Commission proposals for a Council Decision requesting Austria to repeal its national safeguard clause are based on EFSA opinions that failed to conduct a rigorous risk assessment. It should be also borne in mind that EFSA opinions were issued (in March 2006) without implementing the measures adopted (in April 2006) by the Commission to improve scientific consistency and transparency for decisions on GMOs

In particular, EFSA opinions do not sufficiently take into consideration the following scientific concerns:-

- T25 has been heavily criticised by scientists for being improperly investigated. For example, there are no data concerning the use of silage which would have been a principal use of this corn in most regions of Europe and the feed trials on poultry were of poor design but still found significant differences for GMO-fed animals
- T25 contains a partial copy of antibiotic-resistant marker genes, whose presence has possible implications for future human and animal health. Indeed, Directive 2001/18 foresees the phase-out of GMOs containing antibiotic-resistant genes by 31 December 2004
- T25 is genetically modified to be resistant to glufosinate. This herbicide is currently being evaluated at EU level under Directive 91/414/EEC and the rapporteur MS (Sweden) has recommended that glufosinate should be banned. Studies on GM crops that are resistant to herbicides show that their use actually increases
- MON810 contains irregularities in the host plant's DNA as a result of the genetic modification process. The rearrangement and/or deletion of the plant's genomic DNA can potentially produce unintended effects in the plants. There are also concerns over exudation of the Bt toxin from its roots, the residence time of the Bt toxin in soil from Bt crops and possible effects on soil fauna. A host of new studies on Bt maize have shown potentially damaging results such as fewer beneficial insects in fields where Bt maize is grown and weight loss in earthworms feeding on litter from Bt worms.

Against this background, the EEB calls on the Council to reject the Commission's proposals requesting Austria to repeal its national safeguard clause on GM maize MON810 and T25

Annex 5

EEB comments for the Environment Council 18 December 2006 on

COMMUNICATION ON HALTING THE LOSS OF BIODIVERSITY

Council Conclusions

The European Community's Biodiversity Strategy was adopted in 1998. In 2001, EU heads of state committed themselves to halting the loss of biodiversity by 2010. In 2003, a review of the Strategy was initiated by the European Commission, which concluded with the adoption of the Communication "*Halting the loss of Biodiversity by 2010 – and beyond*" in June 2006. The Communication includes as an Annex an Action Plan with detailed steps that urgently need to be undertaken to achieve the 2010 target. The European Council and Parliament should now endorse the Communication.

EEB welcomes the Communication, but has several concerns, especially regarding the implementation of the 2010 Action Plan and the involvement of stakeholders and industries. Buy-in from civil society and all key stakeholders, such as industry and the agricultural sector, is crucial to its implementation. We are concerned that the Commission might not have achieved tangible commitments yet from other sectors to implement fully the Communication and needs to make progress in building partnerships with other sectors.

EEB welcomes the focus on reporting and evaluation and supports the involvement of Council and Parliament in this. We believe that the reporting should involve all relevant Council formations and Parliamentary Committees (not just Environment).

Another concern is that there are insufficient mechanisms in place in the Commission itself for regular communication between and integration of other relevant other DGs on biodiversity policy (in particular DGs AGRI, FISH, TRADE, RESEARCH, REGIO, TREN, DEV and BUDGET). EEB agrees with the Commission that one tool to halt biodiversity loss by 2010 is to integrate environmental costs (including loss of natural capital and ecosystem services) into decision-making but is concerned there is no proposed mechanism in place to cooperate with other DGs and Member States on this particular issue.

EEB calls upon on the Environment Council to:-

- Stress the importance of complete and timely implementation of the EU Water Framework, Birds and Habitats Directives in achieving the 2010 target of halting biodiversity loss. The review of the Biodiversity Strategy clearly showed that most successes can be directly linked to the Directives, as the only legal tools to enforce biodiversity conservation across the EU. We agree with the focus given to urgently completing the Natura 2000 network, and also to looking beyond site designation to increasing efforts to secure their long-term management and protection, and the need for land use planning to take the Directives into account
- Commit adequate financing for biodiversity conservation from relevant EU funds. This is essential if the EU wants to take its 2010 commitment seriously. We especially agree with the Commission's approach to press to integrate Natura 2000 financing into various EU funds (Structural Funds, Rural Development Funds, European Fisheries Fund), but strongly believe that the continuation of an independent funding stream for biodiversity, ie LIFE+, is also essential

- Urge the Commission to review the success of EU financing of actions for biodiversity, (including Natura 2000) within the 2008/2009 budget review
- Closely follow how the Biodiversity Communication, and particularly the attached action plan, is implemented
- Ensure that the timescale is met, as this is key to its successful implementation
- Ask the Commission to provide clear guidance and a strategy for how it will set up proposed partnerships with key stakeholders in relevant sectors
- Commit itself to participate actively in regular reporting and evaluation envisaged for the Communication
- Urge DG Environment to have regular communication with all other relevant DGs and Member States concerning the full and timely implementation of the Communication by the Commission

Annex 6

EEB comments for the Environment Council 18 December 2006 on

THEMATIC STRATEGY ON THE SUSTAINABLE USE OF PESTICIDES AND FRAMEWORK DIRECTIVE

EEB supports the following position from the Pesticides Action Network (PAN) Europe

PAN EUROPE POSITION ON THE NEW DIRECTIVE FOR THE SUSTAINABLE USE OF PESTICIDES

There is overwhelming evidence suggesting that the scale and trends of problems caused by pesticides in Europe are serious and growing. Particular concerns include the contamination of groundwater and foodstuffs, loss of biodiversity and the continuing accumulation of certain pesticides in plants, animals and the human body. The effects of a large number of substances at lower doses in the human body are largely unknown and children and other vulnerable groups are in a special category of risk that modern risk assessment does not take into consideration. Despite the introduction of new substances active at lower doses, the quantity of pesticides used in Europe is increasing.

The new Directive on the sustainable use of pesticides should be an instrument aimed at changing this paradigm of pesticide use towards prevention and sustainable use. PAN Europe welcomes the long-awaited Commission proposal but we believe it fails in providing the European measures and actions needed to meet the challenge of ever-growing pesticide use and better protection of Europe's citizens and environment from its risks.

In 2002, PAN Europe drafted a detailed pesticide use strategy in the text for a Directive on Pesticides Use Reduction in Europe (the PURE Directive)². We believe that all the measures in the PURE proposal are crucial to effectively curb pesticide dependency in Europe. The PURE Directive and its explanatory memorandum contain the rationale for the measures we are proposing in this document using a short format.

1. Targets and timetables for pesticide reduction

PAN Europe believes that a quantitative reduction target is an important component of any risk/dependency reduction programme. National Action Plans for Member States should have clear targets and timetables for pesticide use reduction and increased percentage of land in organic farming, including, for each Member State, a target reduction of 50% of the treatment frequency index³ within ten years from a baseline year. Member States should report on their national action plans annually and the Commission should report every three years for a rapid assessment of the situation. Finally, the national action plans should be linked with other legislation such as Article 8 of the European Pollutant Release and Transfer Register (EC Regulation No 166/2006) on diffuse pollution particularly suited to monitor pollution from farming activity and use of pesticides.

² Available at http://www.pan-europe.info/PURE/pure_campaign.shtm

³ Treatment frequency index indicator expresses the average number of times an agricultural plot can be treated with the recommended dose, based on the quantities sold.

2. Promotion of integrated agriculture

In a first step, general standards and crop-specific standards for Integrated Pest Management (IPM) should be defined at national and EU levels. In a second step, IPM should be implemented as a minimum for all agricultural land except land under organic farming. Finally, cross-compliance should have IPM as a condition for Common Agricultural Policy subsidies from 2014 onwards. Currently, agro-environmental support is being channelled to IPM but we believe this support should be channelled to systems that go beyond the minimum, eg organic farming. IPM should also be included in the definition of “proper use” under the new Regulation for placing pesticides in the EU market (revision of Directive 91/414/EEC).

3. Ban of aerial spraying

PAN Europe supports a general ban, with the possibility of authorisation for special situations carefully assessed at the level of the national authorities and with the participation of the public. Provisions to inform neighbours have to be set in place.

4. Tax/levy on pesticides to finance measures under the national action plans

A tax/levy on pesticides has been found a successful way to fund measures for pesticide reduction in many countries and should be implemented in all countries as a tool for funding the measures under the national action plans. Member States should be given a choice of different tax/levy systems and they should choose the most suitable for their needs. Resources should be used to implement an effective extension service and training of farmers in IPM techniques and pesticide use reduction.

5. Storage and collection of obsolete pesticides and containers

Agro-chemical industries should have their share in the responsibility for storage and collection of empty containers and obsolete pesticides, in the framework of Directive 94/62/EC on packaging and packaging waste that specifically mentions prevention and re-use and therefore goes beyond Directive 75/442/EEC on waste. Obsolete pesticides are still an important problem in many CEECs and there should be a special set of measures in this Directive for the safe disposal of these stocks, including provisions for funding these measures.

6. Public participation

Finally, transversal to all the measures under the new Directive there should be a strong component of public participation at the level of the national action plans and at European level. At the level of the national action plans, the public should have a strong voice in the drafting, implementation and monitoring. Data monitoring will be much more cost-effective with a strong public participation component.

Annex 7

EEB comments for the Environment Council 18 December 2006 on

DIRECTIVE ON ENVIRONMENTAL QUALITY STANDARDS IN THE FIELD OF WATER

EEB welcomes that the fact that the Commission finally presented its proposal for a Directive which has been overdue since 2004. But we regret the omission of adequate emissions controls, the weakening of standards in some cases during their development, omission of standards for sediment and biota and failing to classify consistently hazardous substances and add more problematic substances to the list. The proposal clearly does not fulfill the mandate given in the 2000 Water Framework Directive and risks becoming rather toothless in meeting the challenge of chemical pollution and undermines Europe's commitment to phase out emissions of hazardous substances.

What was the Commission expected to do under Article 16 of the Water Framework Directive?

Article 16 of the Water Framework Directive mandates the Commission to:-

1. select priority substances (PS) and identify priority hazardous substances (PHS)
2. establish controls for
 - the progressive reduction of emissions, discharges and losses of PS and
 - the cessation or phasing-out of discharges, emissions and losses of PHS within 20 years after the adoption of the proposal
 - identify appropriate combination of product and process control for both point and diffuse sources
3. establish environmental quality standards (EQS) applicable to the PS concentrations in surface water, sediments or biota

Priority Substances PS and Priority Hazardous Substances PHS

Eight further substances have been integrated into the Commission's proposal as "other pollutants". These substances are already regulated by the Daughter Directives of the Dangerous Substances Directive (76/464/EEC). Only three of the substances are still in use and should be considered for pollution control once the Dangerous Substances Directive is repealed in 2013. The total number of substances relevant for additional pollution control, however, remains low compared to the many problematic substances found in our aquatic environment (see demands from water industry). Many substances listed in Annex X are also either no longer used, or are banned by other European laws. The Commission should be urged rapidly to come up with a proposal to extend the list.

The proposal fails to classify atrazine, lead, simazine, trichlorobenzenes and trifluralin as priority hazardous substances: they are either persistent, bio-accumulative and toxic or have the potential to disrupt hormone functions.

Efficient pollution control – no strategy visible

Article 16 of the WFD asks the Commission to propose measures to control and reduce point and diffuse sources of priority substances and take into account Community-wide uniform emissions limit values for process control. The proposal is completely

inadequate to fulfil this mandate and only refers to existing legislation as being sufficient to deliver. We do not believe that this is true as i) important pollution sources are not covered, like building and construction materials or SMEs and ii) future legislation like REACH cannot be expected to deliver in time and specifically enough for those “old problem” substances.

The proposal also introduces a new exemption with its “transitional area of exceedance” concept. It is not clearly defined and risks failing to ensure fair treatment of all polluters across the EU regardless of whether they are on big or small rivers and to avoid abuse through specific discharge techniques.

Overall the proposal puts responsibility for emissions control on Member States, who might be well-placed to control emissions from large point sources, but are not in a good position to intervene in the marketing and use of substances in preparations for downstream users and in articles. However, this is an important prerequisite to achieve the reduction/cessation of diffuse emissions. The proposal for setting up an inventory for emissions, discharges and losses is to be welcomed as an initial small step, but needs to be complemented by a requirement to draw up plans for pollution control for:-

- the reduction of diffuse pollution due to losses of substances from material/articles/objects in their ‘service’ life (product design), particularly relating to building and construction materials and to components in vehicles
- the substitution of priority substances in preparations used in small and medium-sized installations as processing aids (integrated pollution prevention)
- substitution plans for priority hazardous substances with safer alternatives

Emission limit values established by the 76/464 and Daughter Directives⁴ should not be repealed without justification.

EQS (Environmental Quality Standards)

Supporting efforts to establish community-wide quality standards, we are questioning if the proposed EQS are sufficient to ensure an adequate protection level for all organisms in the aquatic system, not least for humans:-

Effect-based EQS for PHS

Regarding AA-EQS, and MAC-EQS for the PHS, there are no indicators for meeting the cessation goal. The effect-based EQS can only be accepted as a milestone to measure progress towards cessation. Tracing market volumes and use patterns, would present a much more direct means to measure cessation progress.

EQS for sediment and biota

We believe that it is not possible to derive EQS_{biota} for PHS based on the PNEC approach. But we think it is questionable whether the proposed water-based EQS for PS are sufficiently protective for sediment-dwelling organisms and predators. Substances may be more toxic to sediment organisms than indicated by the equilibrium partitioning method using aquatic toxicity⁵. Also, substances representing borderline cases with regard to PBT criteria may nevertheless cause additional risks for top predators which are not sufficiently covered by the water EQS.

⁴ E.g. concentration limits for EDC, TRI and PER for metal degreasing.

⁵ See e.g. diphenylether, pentabromoderivative, RAR, final report, August 2000

EQS-values for metals

In the case of metals, the EQS refers to the dissolved concentration which is the method also applied in the EU RAR of Cadmium and Zinc. However, in the EU RAR sediment toxicity and secondary poisoning are assessed separately. What is more, the metal fraction in suspended matter may become partly bio-available if physical conditions in surface water change. Thus, the whole water sample (including suspended matter) should be considered for EQS and monitoring of metals.

EQS values with regard to drinking water abstraction

Even though drinking water abstraction is only relevant for certain surface waters at present, we support the position of drinking water suppliers to ensure sufficient raw water quality for drinking water abstraction in general for all surface waters of the Community. We also agree that drinking water production should be possible by simple treatment of raw water. Thirdly, drinking water standards aiming to prevent long-term effects due to chronic exposure should be kept at any time (similar to MAC-QS). This is justified by the fact that no agreed toxicological concept exists in the EU to draw the line between short-term and long-term exposure of consumers. In the light of these three principles and for the sake of transparency, we propose to present the i) EQS related to ecosystems and ii) the EQS related to human health through drinking water in two separate columns in the Directive.

The overall MAC-EQS proposed by the Commission are not sufficiently protective for current and future drinking water sources, for example in the cases of Benzene, Dichloromethane and some Pesticides.

AA-EQS-values for pesticides

For pesticides, the quality standards for long-term effects should take into account that while high concentration may occur repeatedly or over a prolonged duration during the vegetation period, the annual average over 12 months might not be exceeded. In such cases recovery of organisms may be impossible and adverse effects in the ecosystem may occur. To avoid this problem, the EQS can be defined as a 90th percentile, or alternatively samples are taken only within the defined vegetation period from March to September. In any case, the requirements should be legally binding for all Member States. Recommendations laid down in a not-legally-binding manual are inadequate since it would give too much room for sampling strategies systematically diluting high seasonal values with low winter values.