



Brussels, 6 December 2004

To: the Environment Ministers of the EU Member States

**Concerning: EU Environment Council, Brussels, 20 December 2004**

Dear Minister,

On behalf of the European Environmental Bureau I would like to offer you our views on nine of the issues on the agenda for the upcoming EU Environment Council. I would like to invite you to take our concerns into account during the final officials' level preparations, as well during the meeting itself. Below I present the key messages, attached you will find EEB's more detailed input for the discussion on the same topics.

**1. The Aarhus Convention**

The EEB commends the Dutch Presidency for the progress it is making on the Aarhus package of instruments and urges the Council to press forward in its efforts to complete ratification in time for the upcoming Meeting of the Parties to the Aarhus Convention in May 2005.

However, the EEB protests against the opposition of some governments against proceeding with the draft Directive on Access to Justice as well. It sees this Directive as an inherent part of the European Community obligations towards the Aarhus Convention.

With regards to the draft Regulation, the EEB has a number of specific concerns about the trends in the negotiations. The Council is likely to dissent considerably with the European Parliament, which had made a number of very good improvements in the Commission proposal. *See Annex 1 with EEB's specific comments and suggestions.*

**The EEB calls on the Environment Council to ensure that the Regulation fully meets the requirements *and the spirit* of the Aarhus Convention:**

- allow exceptions for information provision only if they are coherent with Directive 2003/4, which lays down such exceptions for the Member States. There is no reason for being more restrictive on the EU level.
- Remove the exclusion of financial plans and programmes from the scope of public participation, and include policies and legislation in that scope;
- Do not restrict the scope to environmental law, but include all EU activities and policies that can have an impact on the environment;
- Make access to justice possible for the public concerned, along the lines of the amendments of the European Parliament. Do not put unnecessary restrictions to the right of standing.

**2. Batteries and accumulators**

The EEB welcomes the Dutch Presidency's work and support for the continued implementation of the substitution principle in order to control long-term and irreversible threats to human health and environment arising from hazardous substances.

**The EEB calls upon the Environmental Council to adopt a phase-out of use and marketing of batteries and accumulators containing more than 20 ppm of Cadmium, 5 ppm Mercury and 40 ppm Lead where alternative technologies are available with no exemption for power tools and a timetable for the Commission to study and propose an introduction of similar measures on industrial batteries(art. 4).**

### **3. REACH**

The EEB welcomes the progress of the technical work on REACH under the Dutch Presidency and its plans to discuss at the Environment Council ways how to increase REACH benefits and to better manage chemicals in articles. But the EEB opposes proposals to prioritise chemicals for registration, which would go beyond a robust volume and hazard classification based system or would lead to an extension of deadlines.

**The EEB calls on the Council to:**

- Investigate ways how to increase benefits to society and environment and not limit the debate on increasing eco-efficiency within the Commission proposal. Most importantly REACH has to ensure that Europe's obligation to cease emissions of hazardous substances and international commitment to a safe chemicals management by 2020 can be efficiently achieved.
- Keep the registration based on volume and robust hazard classification, like CMR, or already listed chemicals for priority action, like under OSPAR or the Water Framework Directive. Prioritisation based on further, not yet available information, including exposure information or chemical properties, would undermine the "no data – no market" principle and reintroduce the failures of the existing system.
- Improve registration requirements for substances in articles to ensure that consumers and environment are protected the same way from chemicals in imported articles as in EU produce articles. Therefore registration requirements should be based on the cumulative tonnage per producer and importer (and not article type) and the cumbersome obligation to assess the likelihood of release, and the likely toxicity, should be removed.

### **4. GM oil-seed rape GT 73**

In the relevant Regulatory Committee of 16<sup>th</sup> June 2004 it became clear that only a minority of Memberstates proposal agrees with the Commission to authorise Monsanto's GT 73 oil-rape seed, which has been modified to resist Monsanto's Roundup herbicide. This reflects a wide-spread opposition amongst the European public against introducing GMOs in agriculture, for good reasons. Scientific uncertainty about GMO impacts on biodiversity come together with commercial secrecy and absence of need to accept such risks. *See attachment 4 for more details.*

**The EEB therefore calls upon the Council to confirm last June vote of the Regulatory Committee 2001/18 and reject the Commission proposal.**

### **5. Climate Change**

The EEB has participated in the public consultation future commitments post 2012 on climate change. Our contribution can be found on our website.

Our main conclusion are that the EU needs to continue leadership, with a combination of initiatives on the global level and credible action at home and that the 2°C long-term objective is correct and necessary.

**The EEB calls upon the Environmental Council to:**

- Agree on an EU post-Kyoto GHG reduction target of 30% by 2020 as compared with 1990 and 80% by 2050;
- Commit all Member states to binding annual, absolute, reductions of at least 1% energy consumption per year in the EU-25, which can be achieved with existing technologies.
- Ensure that the Lisbon process contributes rather than frustrates effective policies to reduce fossil fuel use in the EU.

- Increase pressure on the USA and find ways to constructive engagement of developing countries. Climate change considerations should be fully mainstreamed into all co-operation activities and agreements with both EU neighbouring countries and developing countries (such as Cotonou, the Euromediterranean Partnership etc).
- Reject the pressure for promotion of nuclear energy.

## **6. Lisbon Strategy**

Regretfully, the previous Commission has refused to prepare a review of the Sustainable Development Strategy. Nevertheless, the new Commission should not develop its proposals for the upcoming Spring Summit on the continuation of the Lisbon process without agreeing at least on the main sustainable development objectives to guide "Lisbon". Without this, conclusions of the Summit might effectively prevent the accomplishment of agreed EU environmental commitments and objectives.

The Kok report contains important elements as well to prevent such a negative scenario, but these elements need to be specifically emphasised to prevent marginalisation.

### **The EEB calls upon the Environmental Council to:**

- Insist that the Commission formulate the key objectives and requirements resulting from the Sustainable Development Strategy to be included into the guidelines for actions in the framework of the Lisbon process.
- Be critical about the Kok report where it endorses the need for Europe to be the most competitive in the world, as this is measured in doubtful terms (beating the USA in GDP/capita);
- Insist the Commission and the Spring Council reconfirm the conclusion of the Kok group that environmental protection is a core objective for the EU and a key value in its own right.
- Insist the Spring Council supports and takes urgent actions to follow up the conclusion of the Kok group that *'Establishing an appropriate regulatory framework to allow eco-innovations to be taken up in markets is essential. Nowadays prices are distorted in some markets, leading to a misallocation of resources and creating disincentives for investors and buyers to participate. Market prices need to reflect the real costs of different goods and services to society. This requires removing gradually environmental harmful subsidies and including progressively externalities in prices, taking account of other policy objectives such as competitiveness in the global economy and social aspects.'*
- Support also its calls for specific investment promotion policies, including tax exemptions for green investment funds, as practised in the Netherlands. And call for a specific initiative for greening public procurement, which is also explicitly mentioned in the Kok report. This initiative should not only focus on the energy but also on the construction sector, car production, electronic products, food products etc.
- Be proactive (like the Competitiveness Council) and set up a working group of permanent representatives in order to prepare a "Key Issues Paper" on the environmental dimension of the Lisbon Strategy which the Environment Council can submit to the Spring European Council 2005. Such a paper should contain specific proposals on how to stimulate the demand for environmental technology through market-based instruments, better implementation of EU's existing environmental regulation and new regulation.

## **7. LIFE+**

The EEB has not been able yet to develop a full analysis of the LIFE+ proposal. With other environmental organisations, we share a strong concern about the insufficient funding that is foreseen for Natura 2000. WWF and Birdlife International estimate that the overall budget of LIFE+ should need to increase with between 250 and 500 million Euro/year in order for the EU to fulfil its role in supporting Natura 2000 and therewith contributing to the EU objective of halting biodiversity decline by the year 2010.

### **The EEB calls on the Environment Council to:**

- Ensure that Natura 2000 will be sufficiently supported by the EU from 2007, and for that purpose, increase this budget appropriately.

## **8. Mercury**

The EEB has been involved in the process leading to the draft EU Mercury Strategy the Commission will present you. In the coming year, it will mobilise the European environmental movement to campaign for a strategy that indeed will phase out the use of mercury in the EU and prevents the dumping of EU originating mercury on the global market.

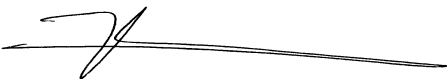
### **The EEB calls upon the Environmental Council to:**

- Agree with the Commission that the aim of the EU Strategy should be to phase out mercury use in the EU while at the same time prevent the export of mercury to developing countries.
- Agree on a positive, pro-active role of the EU and its Member States at the coming UNEP Governing Council where the possibility of a global legal instrument to ban/restrict the use of mercury will be discussed.

## **9. Groundwater**

### **The EEB calls on the Council to ensure:**

- **The protection of remaining pristine groundwater from further quality deterioration**, through establishing a "high chemical status" class or alternatively through a "groundwater protection zone" within in which changes of chemical composition due to anthropogenic activities should be prevented;
- **The implementation of a clear prevention of input of hazardous chemicals:** The approach taken by the existing Groundwater Directive of preventing the input of hazardous substances should be taken forward and improved with harmonised and national action. Therefore the new Directive should ensure the identification of chemicals to be prevented from entering groundwater due to their unacceptable intrinsic properties (including persistence in groundwater or endocrine disruption of aquatic biota) and use the established WFD approach for priority substances to trigger harmonised action.



John Hontelez

Secretary General EEB

## Annex 1

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### The Regulation on Aarhus

03/12/04

[See also the EEB letter of the 22<sup>nd</sup> July to the Council on this matter]

The EEB commends the Dutch Presidency for the progress it is making on the Aarhus package of instruments and urges the Council to press forward in its efforts to complete ratification in time for the upcoming Meeting of the Parties to the Aarhus Convention in May 2005.

However, the EEB is not entirely satisfied with the direction the preparatory work for a Council position has been taken. In particular the EEB is concerned about the refusal of Coreper to take up a number of amendments of the European Parliament which we strongly support.

We would like to highlight in particular the following essential elements that need to be improved or maintained.

#### **1. The scope of the relevance to "Community institution or body"**

The Commission proposes to exempt Community institutions or bodies acting in a (judicial or) legislative capacity. The EEB objects to this exemption of legislative capacity. Again: this is one of the essential features of the EU, leaving that out is narrowing the scope of the Regulation enormously. It is also contradicting to the definition of "environmental information", which includes information on legislation, which we interpret as including information on the making of legislation. The compromise proposal of some Memberstates to not apply this exception for Title II is positive but not enough.

#### **2. The unacceptable exception of financial or budget plans and programmes**

The EEB calls upon the Council to remove the exception of "*financial or budget plans and programmes*" from the definition of plans and programmes relating to the environment (art.2.f.), as not being consistent with Aarhus. We understand that some Member States suggest to limit that exception to those plans and programmes that do not relate to the environment. However, it is unclear that where such programmes and plans have a potential *impact* on the environment, the exception on the exception would cover that. Usually it is not the environmental actions but OTHER actions that are causing the problems to the environment.

#### **3. The definition of environmental information**

The EP wants to include "*the state of progress of proceedings for infringement of Community law*" into article 2.d. The EEB fully supports this. There is too much secrecy about the way the Commission and Member States are fulfilling their legal obligations.

#### **4. The definition of "plans and programmes"**

The EP wants to have, in article 2.e.i, added plans and programmes that are considered for **funding** by the EU. The EEB fully supports this.

#### **5. The scope of "environmental law"**

The EP wanted to broaden the definition of "environmental law" beyond what the Commission proposed and to clarify that legislation with 'primary or subsidiary' environmental protection objectives fall within the definition. The EEB supports this.

#### **6. Limitations to Environmental Information**

It is essential that the exceptions to the right of access to environmental information fully and accurately reflect the Aarhus Convention's provisions. The exceptions as formulated and structured in Directive 2003/4 do closely reflect the Aarhus Conventions provisions and should be followed, in line with the EP's amendments in first reading. There is no reason for the EU to be less transparent than national or local governments, so extra flexibility should NOT be granted. It is unfortunate that, despite EEB's efforts, the EU refused to integrate the Aarhus

requirements entirely into Regulation 1049/2001. That means that that regulation can not be used as the basis for the Aarhus regulation. The EP amendment to article 6 was helpful. Better is to change article 3 so that it reads: "**With the exception of Article 4 (1), (2), (3),** Regulation 1049/2001 shall apply..... Add a new second sentence: "**Article 4 (Exceptions) of Directive 2003/4 on public access to environmental regulation shall apply in place of Article 4(1), (2), (3) of Regulation 1049/2001.**"

### **7. The right to public participation**

The Commission text avoids to lay down the right to public participation. It only speaks about obligations for the Institutions to provide, in certain cases, public participation. In this way the Regulation is not consistent with the Aarhus Convention. So, in Article 1.c., "providing", the words "**the right for**" should be included, and the EP amendment for "**general provisions**" under Article 8, should be included.

### **8. The scope of the public participation provision**

In line with the provisions of the Aarhus Convention, the EP added **policies** related to the environment to article 1.c. This for good reason. It is policies what is the main "product" of the EU, as opposed to "plans and programmes". Refusing this addition is leaving out citizens rights in a very essential part of EU's purpose. Coherent with our first point, we call upon the Council to include: "**policies and legislation**" into the scope described by article 8.1.

### **9. Coherence with Commission policy on public participation**

Communication 2002/704 "*towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission*" sets a preferable minimum period of **eight** weeks for written public consultations and **20 working days** for notices for meetings. The Council risks, in article 8.3, to reduce by half both of these periods. From experience the EEB can say that this is really not a good idea. We call upon the Council to address this so that the Commission's current policy is being reflected.

### **10. Access to Justice**

An essential element of the Regulation. We call upon the Council to keep this and not to limit unnecessarily the scope of organisations that can use this right. The EEB supports the amendment of the EP on article 10a. We understand the Council is aiming for a more limited scope, which we regret. In particular the limitations which would prevent organisations that do not have certified audited accounts for preceding two years is unnecessary and inconsistent with subsidiarity, as that might not at all be a requirement in their country, and it would exclude smaller and more informal organisations. The EP also proposed to make the time limits for internal review under article 9 twelve weeks, instead of four weeks, which is too short.

## Annex 2

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### Batteries and Accumulators

06/12/04

#### Towards a Cadmium Ban where alternatives are available

The EEB welcomes the long awaited Commission proposal for new directive on batteries and accumulators and spent batteries and accumulators, repealing 91/157/EEC. However, whilst we welcome the establishment of collection targets for all batteries, we would like to emphasise that the Commission proposal has two major deficiencies: no phase-out of cadmium and lead in batteries, and an inadequate and insufficient collection target for waste batteries and accumulators.

#### **The EEB therefore calls upon the Council to ensure that:**

- 1) The Directive implements proper hazardous waste PREVENTION and deals with current and future risks posed by the use of hazardous compounds, such as cadmium, in batteries by
  - a) Establishing a clear priority for hazardous substance use prevention and hazardous waste prevention in objectives of directive (article 1 and recitals)
  - b) Adopting a phase-out of use and marketing of batteries and accumulators containing more than 20 ppm of Cadmium, 5 ppm Mercury and 40 ppm Lead where alternative technologies are available with no exemption (including no review clause<sup>1</sup>) including no review clause) for power tools and a timetable for the Commission to study and propose an introduction of similar measures on industrial batteries(art. 4).
  - c) Requiring that the Cadmium and other hazardous heavy metals from banned applications should be removed from the production cycle into permanent storage final storage (in dedicated hazardous waste landfill cells)\_and ensure that parts of, or treated, batteries cannot be landfilled,(article 15)
- 2) Introduction of individual producer responsibility to allow differentiation of end-of-life costs (financial guarantees) for batteries and accumulators (in line with the approach established in art.8 of the WEEE directive (art.20 financing) and ensure no exceptions (such as disregard of guarantee if self financing) are made,
- 3) Producer responsibility covers the most expensive part of battery collection – the end-user information campaigns
- 4) future introduction of obligatory deposit system and facilitated end-user collection to support ensure high levels of take back and collection of the (banned) batteries and to address hoarding (art.9 collection schemes)
- 5) A collection system for ALL batteries and accumulators with collection targets set in terms of consumption (by % age sales) rather than volume (grams) collectable. with targets of 50% within four years of transposition, 60% within 6 years and a mechanism to set future targets.
- 6) Recycling standards be based on best available technology for health and environment as well as efficiency (art.15) – IPPC BREFs are not sufficient and IPPC definition of BREF does not explicitly cover workers health
- 7) Voluntary agreements are not accepted as a basis for achieving the objectives of this proposal , especially for provisions foreseen under the waste shipment regulation (art.33)
- 8) Labelling on battery performance (capacity) to allow consumer choice (article 27)

## Annex 3

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### REACH

06/12/04

The EEB welcomes the progress of the technical work on REACH under the Dutch Presidency and its plans to discuss at the Environment Council ways how to increase REACH benefits and to better manage chemicals in articles. But the EEB opposes proposals to prioritise chemicals for registration, which would go beyond a robust volume and hazard classification based system or would lead to an extension of deadlines.

#### **The EEB calls on the Council to:**

1. **Investigate ways how to increase benefits to society and environment and not limit the debate on eco-efficiency within the Commission proposal.** Most importantly REACH has to ensure that Europe's obligation to cease emissions of hazardous substances and international commitment to a safe chemicals management by 2020 can be efficiently achieved.

There are environmental improvements possible, like streamlining the authorisation procedure and implementing the substitution principle, which would not increase the direct costs to business. But without sufficient and accessible chemicals safety information practical implementation would be hampered and the benefits not delivered. Those gaps must be closed considering the increase of overall benefits, including business benefits, against an increase of direct costs.

As first measure to increase the benefits and efficiency of REACH the authorisation procedure has to be streamlined, including faster and accountable procedures for adding substances to the authorisation list, and deleting the inappropriate "adequate control" loophole to allow an efficient implementation of the substitution principle. Secondly registration has to ensure that sufficient information will be made available and publicly accessible, including for substances in the range of 1-10 tonnes. And thirdly information flow for dangerous chemicals in articles through the supply chain until the consumers has to be guaranteed.

2. **Keep the registration based on volume and robust hazard classification, like CMR, or already listed chemicals for priority action, like under OSPAR or the Water Framework Directive.** Prioritisation based on further, not yet available information, including exposure information or chemical properties, would undermine the "no data – no market" principle and reintroduce the failures of the existing system.

The different proposals presented to the Working Group all risk that authorities loose the possibility to prohibit production and import of a substance when no complete registration dossier is submitted within the deadline. It is essential, that the no data – no market mechanism always applies to the complete Registration dossier and not only to an incomplete pre-registration. Prioritisation will have to take place in the evaluation steps, when decisions about waiving or adding test requirements have to be made. Therefore guidance on how to apply Annex IX is urgently needed and should be developed in the REACH Implementation Projects.

Prioritisation before or in registration, whether based on intrinsic substances properties or exposure would fail, as such information is either not yet available, accessible to the public or standardised – unlike the established CMR classification or tonnage information. Prioritisation based on exposure would undermine the workability and even question the very purpose and principles of REACH by re-introducing the failures of the current system, which puts the burden of proof on authorities.

---

<sup>1</sup> Experience shows that review clauses on bans are a high risk if the Commission is not proactive. For example the ban on Cadmium batteries in electrical cars (ELV directive) has been extended from July 2003 to Dec 2005 and now potentially till 2010 by the Commission through comitology.

3. **Calculate registration threshold for substances in articles per importer and not per article type and improve workability by deleting the concept of “intended” or “likely” releases of chemicals.** The current proposal is not robust to ensure protection of consumers and environment from chemicals in articles.

The proposal makes a difference between importers of articles and importers of substances. Whereas importers of substances will have to comply with the same requirements as producers e.g. registration of substances above 1 ton per annum per importer, importers of articles can import a much higher quantity without any obligation provided only that the substance is spread over several article types.

Public health and the environment would be better protected if the registration threshold for chemicals in imported articles were calculated per importer rather than per article type, and thus be made compatible with the way the proposal deals with substances in preparations. Additionally the obligation for importers to assess the likelihood of release, and the likely toxicity, of the chemical concerned, both of which would be very difficult requirements for an importer, should be removed.

Such a provision would effectively oblige importers to inform their suppliers that they should only use chemicals registered under REACH, or, in exceptional circumstances, that they must register a chemical. Given that the substances in articles procedures will only come into force once phase in registrations are completed for all substances – i.e. around 2017 – then industry will have plenty of time to adapt to this situation. It is clear that the EU registration database, globally available on the internet, will then contain the vast majority of chemicals needed, as any producer manufacturing articles in Europe will be using registered chemicals.

## Annex 4

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### GM oil-seed rape GT 73

06/12/04

The scientific risk assessment undertaken in the Netherlands which forms the basis for this application does not guarantee the safety of the rape-seed for consumers and the environment. Keeping a crucial part of the dossier secret as "confidential business information", the Dutch authorities did not meet their obligations under Directive 2001/18/EC, which severely hindered the entire subsequent risk assessment process.

The European Food Safety Authority (EFSA) also overlooked a number of concerns regarding GM oilseed rape GT73 :

- irregularities in the molecular characterisation were not studied further;
- compositional analysis was performed on samples pooled from different sites;
- significant differences in composition were found, but not investigated further;
- there is no environmental consideration of oilseed rape imports, and in particular no consideration of the fact that importing GT73 could result in feral (non-cultivated) GM oilseed rape populations in the EU.

It is not clear why the EFSA did not consider the environmental implications of oilseed rape imports, as this is part of its remit. Although the application is solely for import of GT73 grain (for food or feed purposes), its seeds could still escape into the environment, during processing and transport, for example. As feral populations of oilseed rape are widespread in Europe, released seeds could germinate, flower and potentially cross-pollinate with feral populations or wild relatives in Europe, or with GM-free oilseed rape crops. It cannot be assumed that populations of oilseed rape resulting from losses during transport, storage and processing (so called "volunteers") are easily displaced by other weeds, as the results of several studies have shown.

**The EEB therefore calls upon the Council to confirm last June vote of the Regulatory Committee 2001/18 and reject the Commission proposal.**

## Annex 5

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### The Lisbon Process and the Environment

03/12/04

[the following is the final part of a document the EEB sent you on ..... November, with the title "*EEB contribution to discussion on future of the Lisbon process, the contribution of the Kok Group*" 19/11/04]

#### **CALL FOR ACTION TO COMMISSION, COUNCIL AND PARLIAMENT**

**The EEB calls upon the new European Commission and the Spring Council 2005 to take the following actions, and the European Parliament to insist on, support and monitor these:**

##### **1. Tackle the SDS implementation deficit**

First of all, the 2005 Spring Summit should recall the obligations of the Council and the Commission in the field of sustainable development, reaffirm its commitment in general and demand a more specific, accountable and monitored action plan with operational targets and timetables.

##### **2. Make markets really work for sustainable development: mobilize the purchasing power of public authorities**

National governments are now adapting rules to conform to the new EU public procurement legislation agreed in 2004. This EU legislation gives scope to governments and public authorities to promote sustainable public procurement, but it does not make this a requirement.

So, governments have a choice – will they make the most of the possibilities to contribute to sustainable development and create rules that encourage authorities to buy sustainable goods and services? Or will they side-step their commitment to sustainable development and create rules that put obstacles in the path of public authorities that want to do so? The European Commission and Council need to make sure that governments apply systematically high environmental and social standards when asking for tenders.

##### **3. Harmful subsidies: from words to deeds**

For too many years now we have seen Council Conclusions and many other important documents repeatedly recommending the abolition of harmful subsidies. There are impressive lists of subsidies eligible for abolition. The lack of concrete progress is becoming more and more embarrassing. The EcoFin Council should finally be put to work on this, given a deadline of March 2006 to finalize a determined strategy, with the full involvement of the Environment Council.

##### **4. Investing for sustainable development**

Government is a large spender. Apart from green public procurement, it can also deliberately set up projects or financially support projects which, in an innovative manner, contribute positively to all three dimensions of sustainable development.

##### **5. Make markets really work for sustainable development: many other options**

Internalisation of costs, tax shifts, fiscal facilities, subsidies, green loans, regulation which drives innovation by setting higher performance standards: we need more coherent actions in this field, at EU level, and at national level.

## **6. Pay special attention to the new Member States**

*In the new Member States of the EU the economic and social situation contributes to a strong temptation to focus on (traditional forms of) economic growth first and care about the environment later. This could lead to irreversible deterioration of biodiversity and increase of other environmental and health problems, which by themselves might limit the future prospects for sustainable development in these countries. As the Kok Group report said: 'Failure to act now means greater, and possibly irreversible, damage or higher remedial costs in the long term.' The Lisbon process should pay special attention to this particular challenge.*

## **7. Promote an ongoing exchange of new ideas**

New ideas and initiatives concerning the different aspects of the concept of sustainable development should constantly be picked up and their potential impact should be examined. Ideas with promising potential need to get the necessary financial and political backing for further exploration and implementation.

## **8. Resist the pressure for deregulation at the cost of the environment**

While it is possible and indeed necessary to reduce administrative burdens where they have become pointless, existing environmental policies should not be undermined for competitiveness reasons, nor should future legislative steps be hindered by scaremongering about perceived impacts on competitiveness.

## **9. Demystify the relation between environment and competitiveness**

Listen to the OECD when it says: 'Environmental policies can affect production costs with consequences on the competitiveness of specific sectors or industries. The perceived negative impacts on international competitiveness of the most affected – and often most polluting – sectors is often a major concern. It is, however, important to distinguish clearly between the competitiveness of individual companies and sectors of the economy, and that of the whole economy in general. Competitiveness will have a different meaning at each level. A company or sector is competitive if it is able to compete in international markets, with a satisfactory rate of return. For a country as a whole, the concept of competitiveness is more complex. At the economy-wide level, correcting for market failures – for example, by introducing taxes to reflect the costs of environmental externalities – provides an improvement in overall economic productivity. While it may represent increased costs for one firm or industry, it may lead to reduced costs for others. When evaluating a particular policy, the effects on the economy as a whole should be considered, not just the effects on individual sectors. With all policy reforms, there are likely to be winners and losers in the short term. These impacts can be addressed through flanking measures – for example, to smooth the transition for affected workers to new employment opportunities – but their existence should not hamper the realisation of the longer-term economy-wide environmental and economic efficiency benefits that can be achieved through implementing the policy changes.' [from 'Issues Paper' to Meeting of Environment Policy Committee at Ministerial Level, 20-21 April 2004, OECD].

## Annex 6

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### The promised Draft Mercury Strategy

06/12/04

#### **Environment and Health NGOs urge for a strong Community Strategy on Mercury**

*Responding to a 2002 request from the Council of Ministers, the European Commission has prepared a Community Mercury Strategy. Mercury collects in human and animal bodies, can be concentrated through the food chain and, as it has been acknowledged, it is highly toxic, causing damage to the nervous system and to the development of unborn children. In addition, it is well known that mercury has no respect for national or regional boundaries, travelling long distances through the atmosphere, and has contaminated both the European and global food supplies at levels posing a significant risk to human health.. It is therefore clear that, since present measures are not adequate to sufficiently reduce the risk, further actions must be undertaken.*

**The global dimension of this Community Strategy needs especially to be underlined, with its clear message to the world community that mercury emissions, supply and demand should be reduced to a minimum, as rapidly as possible.** This is not only a recognition of the EU responsibility for its share of the problems, but also a pragmatic realisation that there is little point in reducing mercury demand simply within the EU, only to export the unwanted mercury to the developing world where it will be used under far less stringent controls, released, and ultimately be transported back into the EU atmosphere and wind up in the fish EU citizens consume.

For the above reasons,, it is important that the actions discussed below make part of the Community strategy:

- 1. Pursue the temporary storage of decommissioned mercury from the chlor-alkali industry** – This action, which is not opposed by industry association Euro Chlor, should be implemented in the near future. Furthermore, the pursuit of temporary storage must incorporate the ultimate intention of permanent retirement, otherwise this measure will only delay the use, releases and impacts of the surplus mercury, not prevent it. Action need not await the revision of the chlor-alkali BREF<sup>2</sup> and certain measures may be taken immediately. Until then, mercury from the chlorine industry will continue to find its way onto the international market.
- 2. Prohibit the export of mercury from the EU.** An amendment to Regulation 304/2003 should be brought as soon as possible, to include a ban on the export of mercury from the Community, as it is already the case with cosmetics containing mercury. Such a prohibition should be implemented at the latest by 2008. As the world's primary mercury exporting region, EU leadership in this area is an economic and moral imperative, and will strongly encourage the global trade deliberations needed to significantly reduce the role of mercury in the global economy. Other countries such as Finland, the Netherlands and Austria have supported such a ban.
- 3. Terminate virgin mercury mining at the Almadén mine in Spain.** Like the mercury from decommissioned chlor-alkali facilities, this source of mercury will no longer be needed after a few years, especially if measures are taken to discourage market demand for mercury. Further, virgin mercury mining represents the most environmentally harmful source of mercury supply because of the magnitude of releases during the mining process and processing activities and because mercury mining adds to the total pool of mercury circulating in the economy, and potentially reaching the environment. By closing Almadén,

---

<sup>2</sup> Best Available Technique Reference Document, under the IPPC directive.

the world's largest mercury mine, EU leadership in this area will focus global attention on the need for similar action at the other main mercury mines in Algeria and Kyrgyzstan.

It should also be noted that from the mid-1990s, substantial EU subsidies have been awarded to this region of Spain with the explicit intent of shifting the economy from mercury mining and trade towards more sustainable activities<sup>3</sup>. Unfortunately, not much has been done so far. It is therefore high time that firm commitments are taken from relevant authorities to avoid further unacceptable economic and environmental cost to Member States.

- 4. Restrict the marketing and use of mercury in measuring and control equipment.** Substituting mercury in these product categories is the only effective way of addressing inevitable emissions from their use and disposal. Mandatory measures are essential to offer the greatest protection and have been widely used to addressing the marketing and use of hazardous chemicals in products (e.g. 76/769). Sweden, Denmark and The Netherlands have all reported on their own experiences implementing such restrictions, while viable and price-competitive alternatives are available for nearly all of these applications. In a similar way, **the restriction of the use of mercury in dental amalgams** should be pursued, given that viable non-mercury alternatives exist. Existing Directives dealing with mercury-containing products should be revised to delete exemptions for mercury uses. Wherever derogations still apply, these should be for a limited period, to provide incentives for research & development, and encourage industries to shift to alternative substances and techniques.
- 5. Support and Promote International Action.** The European Community and the Member States need to send a clear message to the international community that measures should be taken as fast as possible to control mercury emissions, demand and supply globally, in order to reduce risks significantly. Most of the global mercury demand, encouraged by cheap and available mercury supplies, arises from the use of technologies or processes in the developing world that are already illegal or being phased out in the EU and most OECD countries.

Managing mercury releases into the environment is another very important issue. To that end, an integrated approach is specifically important as mercury circulates through the whole environment. As a result, limit values for air emissions should not result in additional mercury emissions to water and soil.

- 6. Introduce, as a minimum action, Emission Limit Values for mercury from all relevant activities** - under the IPPC Directive or in a separate legislative instrument. Developments with regard to mercury emission limit values should be taken on board as soon as they emerge from any EU or international fora, such as the Protocol on Heavy Metals under the Long-Range Transboundary Air Pollution (LRTAP) Convention. Emissions from coal-fired power plants (as well as from small-scale coal combustion facilities) are particularly important, and the largest source of combustion related emissions. To that end, it is important to introduce mercury emission control measures for power plants, considering that various control options already exist, such as abatement techniques, use of low-mercury coal, coal cleaning or switching to a cleaner fuel. Furthermore, emissions of mercury from crematoria should be controlled at EU level. Legislation is already in place in Denmark, the Netherlands and Germany, and should be harmonised before more Member States adopt their own legislation.
- 7. Introduce separate collection and treatment measures for all mercury containing products already circulating in society.** As demand is declining, the mercury recuperated from those products/wastes should be stored permanently in an environmentally safe way, and in any case not be returned to the marketplace. In the same way, waste dental amalgams need to be better controlled in light of their ongoing contribution to mercury emissions, mainly to water.

---

<sup>3</sup> 'Mercury flows in Europe and the World: The impact of decommissioned chlor-alkali plants', Concorde East/West sprl report for the DG ENV(p.7)

Similar measures should be considered for the mercury produced as a by-product during other processes including the production of other metals such as zinc and refining of natural gas.

- 8. Pursue measures against exposure and improve understanding.** It is important that, given the bioaccumulative and biomagnifying properties of mercury, stricter controls are introduced with respect to food quality. At the same time however, informing, educating and alerting the sensitive groups of the population on this issue is necessary.

In conclusion, we wish to reiterate our appreciation for this European Commission initiative. The value of a strong EU commitment to addressing mercury problems on the global stage cannot be underestimated. Both the EU and the UN will miss a golden opportunity if concrete actions are not identified in advance of the upcoming UNEP Governing Council Meeting in February 2005, whose agenda includes a possible global instrument on mercury; and a strong EU strategy is needed to kick-off a UNEP global instrument. This is a straightforward opportunity to reduce health risks to millions of EU citizens, and many more globally, that we cannot afford to miss.

## Annex 7

### EEB'S COMMENTS FOR THE DECEMBER 2004 ENVIRONMENT COUNCIL ON:

#### Towards a new groundwater Directive 06/12/04

The Commission's proposal for a new Groundwater Directive fails to clarify the gaps between the 1980 Groundwater Directive and the 2000 Water Framework Directive. It also fails to provide a clear vision on the protection of Europe's most important water resource. Such a vision is urgently needed considering the ongoing and rapid deterioration of groundwater. Groundwater pollution impacts rivers, lakes and valuable ecosystems, increases the costs of drinking water treatment and threatens the security of supply. The recuperation of polluted groundwater can take tens or hundreds of years and future generations deserve policies that ensure they can benefit from this valuable resource. Therefore, a clear prevention approach is necessary, but missing in the proposal. Harmonised quality standards are difficult to set and to control in an environmentally meaningful way when their size can range from tens of km<sup>2</sup> to several thousand km<sup>2</sup>.

**The EEB therefore calls on the Council to ensure:**

1. **The protection of remaining pristine groundwater from further quality deterioration**, through establishing a "high chemical status" class or alternatively through a "groundwater protection zone" within in which changes of chemical composition due to anthropogenic activities should be prevented;
2. **The implementation of a clear prevention of input of hazardous chemicals:** The approach taken by the existing Groundwater Directive of preventing the input of hazardous substances should be taken forward and improved with harmonised and national action. Therefore the new Directive should ensure the identification of chemicals to be prevented from entering groundwater due to their unacceptable intrinsic properties (including persistence in groundwater or endocrine disruption of aquatic biota) and use the established WFD approach for priority substances to trigger harmonised action.