



Brussels, 31 May, 2007

To: The Environment Ministers of EU Member States

Concerning: Input for EU Environment Council Meeting, 28 June 2007

Dear Minister,

On behalf of the European Environmental Bureau I should like to offer you our views on nine of the issues on the agenda at the forthcoming EU Environment Council.

I invite you to take our concerns into account during final official-level preparations, and at the meeting itself. Below, I present the key messages. Attached you will find EEB's more detailed input to the discussion on some of the topics.

1. Waste framework directive

The Commission's proposal fails to set long term goals ensuring that waste is prevented as far as possible, and that which remains is reused, recycled or composted. Instead the proposal would undermine the current and environmentally sound waste hierarchy and promote waste incineration, representing a massive deregulation of European environmental protection.

We therefore call on the Council to:

- Make the waste hierarchy legally binding and enforceable
- Introduce the Parliament's targets on recycling (50% for municipal waste and 70% for non-municipal waste), waste stabilisation and reduction, with stabilisation by 2012 and a reduction target to be set for 2020.
- Demand a phase-out of disposal, through incineration or landfill, of all waste that can be re-used, recycled or composted.
- Reject the proposal to reclassify municipal waste incineration as recovery, regardless of whether it is based upon an efficiency formula, and insist on a clarification concerning waste incineration to distinguish between recovery and disposal based on the criteria for the European Court of Justice
- Insist on the further legislative measures on individual material streams, including specific legislation setting out a Biowaste Directive.

- Ensure the scope of waste legislation is not seriously undermined by exemptions from scope, new definitions on by-products and end-of-waste.

See also Annex 1 for more specific EEB comments

2. Priority substances in water

The EEB considers the proposals from the Commission to fail the Water Framework Directive requirements as well as the legally binding commitment the Commission and many Member States have agreed to minimize concentrations of hazardous substances to natural background level or close to zero at the latest by 2020, as laid down in the OSPAR and Helsinki Conventions for the protection of the Northeast Atlantic and Baltic Sea.

The EEB calls upon the Council to:

- Reject exemptions and absence of maximum values that weaken the impact of the proposal, such as related to pollution in harbour-zones and sediments, as well as 'transitional areas of exceedance'.
- Insist on effective measures for controlling the most hazardous substances.
- Support suggestions to improve the list of priority hazardous substances with pollutants such as lead, diuron, pfcs, pharmaceutical residues etc.
- Require complementing the substance-by-substance approach with systematic screening.
- Extend the stricter quality standards for drinking water zones to the whole water-body, because draughts and floods will become more likely with climate change and will require ad-hoc shifts to different drinking-water abstraction areas in the future.

See also Annex 2 for more specific EEB comments

3. CO₂ emissions from passenger cars

The Commission has proposed to set an average limit for CO₂ emissions from cars to 130 g/km by 2012. This in response to the likely failure of the car industry to reach a 140 g/km average by 2008, followed by one of 120 g/km by 2012. The EEB considers the Commission proposal an unacceptable gesture to car-producers that have never put reduction of emissions high on their agenda.

The Commission aims to reach the 120 g/km average by expecting additional reductions from tyres, better driving styles etc. It is not impossible that in the end the use of biofuels might also be calculated in. The EEB considers this approach as contrary to the philosophy of better regulation. Better regulation should consist of laws where it is clear who is the actor, what is the task and how it can be controlled.

The EEB warns against postponing the introduction of the average limit. This would again reward companies that have not given this issue the necessary attention and would penalize those that have been forward looking and active.

We call upon the Council to:

- Insist that a 120 g/km obligation for average cars will be laid down in unambiguous EU legislation, with a transparent and reliable system of burden sharing amongst the different car-producers, which ensures the average will be met.
- Set a further reduction target of 80 g/km by 2016, also to trigger research.

4. Directive on fuel quality

The Commission proposal has interesting elements, such as a 1% per year steady reduction of greenhouse gas emissions from the fuel, based on a life-cycle analysis of the fuels. But it is crucial that the fuel reduction obligation is combined with a list of criteria and elements that should be included in the life cycle analysis in order to avoid unintended negative environmental consequences.

The fuel quality directive should not only be worked upon from the perspective of climate change. Biofuels production in particular can have serious environmental and social impacts, and measures need to be taken to avoid these. The draft directive also includes important proposals with regards to the reduction of health impacts of transport fuels, which the EEB would like to see adopted.

The EEB therefore calls upon the Environment Ministers to:

- Ensure that this Directive will include the greenhouse gas reduction target of 1% per year, that it contains clear provisions for the life cycle analysis methodology and most importantly that direct and indirect land use change and other environmental and social impacts are addressed.
- Support the 10 ppm sulphur fuel limit by 2009, as an important tool to reduce air pollution, particularly dangerous dust particles
- Support the proposal to cut the sulphur content of inland waterway gas-oil to 10 ppm. This will help inland shipping to become cleaner and contribute less to particle pollution. But seek to bring the date for compliance forward to 2009.

5. EURO IV - limit values for heavy-duty vehicles

A new Directive proposal to reduce air pollution from lorries and buses is long overdue. New emissions limit values for these vehicles have already been announced in the Thematic Strategy on air pollution in September 2005. In your Environment Council conclusions on the Thematic Strategy on air pollution which were adopted in March 2006 you have already urged the Commission to come forward with a proposal as soon as possible.

More stringent air pollution limit values for heavy-duty vehicles are urgently needed, because heavy duty vehicles contribute significantly to harmful particulates and nitrogen oxides in urban areas.

The EEB calls upon the Environment Ministers to:

- Remind the Commission that it should propose its EURO VI proposal as soon as possible containing limit values, which are likely to require the use of both particle filters and de-nox catalysts.

6. The review of the 6th environmental action programme

EEB appreciates the frankness of the Commission when it says that "the EU is not yet on the path of sustainable development". Apart from climate change policies, the Commission can't really claim it is on track with implementing the 6EAP. There is a need for a serious debate on the direction of EU environmental policy.

The review fails to admit major weaknesses with 6EAP's key tools, being the Thematic Strategies and related Framework Directives. Particularly in the waste policy area, it does not defend its changed approach, which has led to a failure to achieve 6EAP's objectives. The 6EAP promised quantitative and qualitative reduction targets covering all relevant waste, for achievement by 2010, leading to a major overall reduction in the volume of waste generated, and it foresaw priority waste-stream legislation. Instead, the waste proposals the Commission has produced are undermining existing waste policies.

On the other hand, EEB welcomes several elements of the review: the plea to shift the tax burden away from employment and onto resource and energy consumption and pollution, the commitment to remove environmentally-damaging subsidies and the initiative for a discussion on rethinking GDP as indicator of human development and well-being.

The EEB calls upon the Ministers to call for:

- An increased ambition for the implementation of the 6EAP, in particular in the areas of natural resources and waste, health and environment, and biodiversity;
- A re-orientation of the waste policies, back to the requirements laid down in the 6EAP, including the reduction and stabilisation targets and priority waste stream policies;
- A critical attitude concerning better regulation, ensuring that this do not limit the necessary action to achieve fully the objectives of the 6EAP;
- The publication of the promised strategy paper on implementation and enforcement without delay, and for a major discussion on this paper, between the EU Institutions and with the general public.

The EEB will produce a more detailed response to the review in the next two weeks.

7. The Green Paper on Market Based Instruments

The EEB welcomes the Green Paper on Market Based Instruments. But it regrets that the Commission does not come with a clear roadmap for follow up action.

The EEB welcomes the acknowledgement of the usefulness for environmental tax reforms, but misses a clear proposal for an EU-wide coordinated shift of taxation from labour towards the use of energy and environmental goods.

The EEB calls on the Council to:

- Ensure a follow-up of proposals in the Green paper by urging the Commission to come up with a clear indication of the next steps or a roadmap of actions to follow, including on subsidies reform;
- Encourage the Commission to come with a proposal for a 10% shift in tax income in ten years, from labour to energy and environment use and pollution, using the Open Method of Coordination;
- Support an early review of the EU Energy Tax Directive, increasing the rates, bringing in a specific environmental dimension, and removing exemptions.
- Call for a systematic use of market based instruments in the transport sector
- Call for an open discussion on the use of Border Tax Adjustments.

See also Annex 3 for more specific EEB comments

8. Follow up of informal environmental council

The EEB welcomes the working paper of the Presidency, in particular also the policy proposals. The EEB calls upon the Ministers

- To endorse these proposals and agree on a systematic implementation strategy as outlined in the specific proposals the EEB presented for the Informal Council.

See Annex 4 for EEB's proposals presented in Essen

9. Adaptation to climate change green paper.

The Commission will present its Green Paper on Adaptation to Climate Change. The EEB welcomes the Commission's initiative to start a debate on the policy options necessary to address the impacts of climate change. Environmental, social and economical impacts of climate change will be exacerbated if ecosystems are degraded and no longer able to provide us with the necessary functions. For example excessive rainfall will be more damaging when ground vegetation is no longer there to absorb the excess water and reduce run-offs and erosion. The preservation of our ecosystems through the achievement of EU environmental policy objectives should therefore be the overarching principle of an EU adaptation policy.

The EEB therefore calls on the Council to;

- Include the above considerations into their discussions on this topic

Finally,

We deplore the absence of the **Soil Thematic Strategy** on the Council Agenda.

In September 2006, the Commission finally published its proposal for a Soil Thematic Strategy including a Soil Framework Directive. The EEB is very concerned about the slow progress in this dossier in both the European Parliament and the Council.

EU legislation which gives a specific legal protection to soils has so far been missing from the European environmental acquis, which undermines an effective, integrated and European approach to environmental protection. The EEB thinks that the Commission's proposal is only a very small and minimalist step towards filling this legal gap.

We therefore call on the Ministers to:

- *Not only give the discussion of this important dossier the highest political priority but also to make sure that the Commission's proposal will be significantly strengthened.*

Yours sincerely,

John Hontelez
Secretary General
European Environmental Bureau

Annex 1

EEB comments for the Environment Council 28 June 2007 on the draft WASTE FRAMEWORK DIRECTIVE

EEB was disappointed by the Commission's proposal, not least because it failed to set long term goals ensuring a reduction in waste production, and the preference for what waste remained to be re-used, recycled or composted. Instead, the proposal undermined the current, environmentally sound waste hierarchy and promoted waste incineration, representing serious deregulation and the loss of the most tangible opportunity to progress in resource efficiency.

On the contrary, Parliament's First Reading produced very positive changes, most importantly in clearly reinforcing the waste hierarchy, with repeated preference for prevention, reuse and material recycling. It also set targets for recycling and waste stabilisation, and the requirement to identify a future reduction target. Also introduced were separate recycling collection requirements, the call for a Biowaste Directive and a rejection of the reclassification of incineration as recovery.

Council's discussions have also reinforced some elements introduced by Parliament, particularly the reinforced waste hierarchy, support for separate collection of materials for reuse or recycling, and the introduction of an article on producer responsibility (which will help to drive forward product ecodesign more broadly). However, EEB strongly rejects some elements of Council discussion, most importantly the lack of targets for waste stabilisation and reduction, the lack of an EU target for waste prevention linked to the development of national targets, and the reclassification of municipal waste incineration as recovery.

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, however the underlying principle of the waste hierarchy needs to remain legally robust and therefore a 'general rule' rather than a 'guiding principle'.
- Introduce the Parliament's targets on recycling (50% for municipal waste and 70% for non-municipal waste), waste stabilisation and reduction, with stabilisation by 2012 and a reduction target to be set for 2020.
- 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

- Reject the proposal to reclassify municipal waste incineration as recovery, regardless of whether it is based upon an efficiency formula. The Waste Incineration Directive exists to drive forward improvements in overall environmental performance of incinerators, including their energy efficiency level. Such duplication (and confusion) in the Waste Framework Directive is not better regulation.
- 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), and not the principle result 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.
- On commitment to further legislative measures on individual material streams, including specific legislation setting out a Biowaste Directive with a clear recycling target, continued use of separate collection and product-based producer responsibility – obliging manufacturers to make products re-usable, recyclable or more durable.
- A requirement to separately collect priority waste streams by 2015, thus encouraging their recycling and high quality secondary materials, and an overall 2020 objective for the EU Recycling Society of 70% of total waste to be recycled.
- 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.

Annex 2

EEB comments for the Environment Council 28 June 2007 on

Priority Substances: Environmental Quality Standards in the Field of Water Policy

Compared to what should have been proposed according to the Water Framework Directive the Commission's proposal has a number of serious gaps which need to be addressed.

The WFD objective 'Good Chemical Status in 2015' needs to be respected. And the OSPAR and Helsinki Conventions for the protection of the Northeast Atlantic and Baltic Sea need to be implemented. The Commission and most Member States ratified these Conventions, which require that concentrations of hazardous substances are minimised to natural background level or close to zero at the latest by 2020.

The EEB calls upon the Council to:

- Reject the proposed exemption of man-made pollution in harbour-zones and of man-made-pollution by heavy metals as soon as they fix onto sediment or other matter, as they may be re-released depending upon the acidity of the water. These types of pollution need to be included so that an incentive remains to reduce the pollution of harbours or other dredging-sites and to ensure that activities such as cleaning or repainting of ships are contained better.
- Insist on the introduction of maximum values for sediment and biota such as fish. These are needed because some pollutants tend to accumulate exactly there due to their properties, and these samples can show the long-term pollution better than the "water sample of the day";
- Reject 'transitional areas of exceedance'. Support as a minimum the European parliament's idea to add a time-limit to the acceptance of these contaminated non-compliance waters. Otherwise this concept could undermine for many years the requirement of the water framework directive (WFD) to achieve 'good chemical status' of all surface waters by 2015;
- Insist on effective measures for controlling the most hazardous substances. This directive needs to provide for broader direct controls, because the new reach regulation, pesticides legislation and the IPPC directive do not in practice systematically detect the actual emissions in water or control cases of serious water-pollution;

- Support suggestions to improve the list of priority hazardous substances with pollutants such as lead, diuron, PFCs, pharmaceutical residues etc. These substances are known to be hazardous and are either already listed in international agreements such as HELCOM or OSPAR, or are detected frequently in several member states.
- Require systematic screening to complement the substance-by-substance approach. In future, the Commission should itself detect substances which could threaten surface water (or enter ground or drinking water via surface water). In an initial step, the Commission should use the databases being created at the new reach chemicals agency (ECHA) in Helsinki to screen undesirable properties and uses that could result in emissions entering water. Relying on the reporting of randomly-detected problem substances reported by Member States is not enough.
- Apply the stricter quality standards for drinking water zones to all water-bodies, because draughts and floods will become more likely with climate change and will require ad-hoc shifts to different drinking-water abstraction areas in the future.

Annex 3

EEB comments for the Environment Council 28 June on the GREEN PAPER ON MARKET BASED INSTRUMENTS

EEB welcomes the Commission's Green Paper on Market Based Instruments (MBI) on environment and energy related policies. We welcome the proposal of dividing the Community minimum tax levels into energy and environmental elements, which would then be reflected nationally in the form of energy and environmental (emissions) taxes. This would mean introducing a tax on the energy content of all fuels, together with a differentiated environmental tax, that would distinguish between greenhouse gases and non-greenhouse gas emissions of the fuel used.

EEB welcomes the acknowledgement that environmental tax reforms, shifting taxes away from welfare-negative taxes (e.g. labour) to welfare-positive taxes (e.g. environmentally damaging activities, such as resource use and pollution) could have potential positive effects on growth, jobs and a clean environment. We also welcome the recognition of damage from environmentally-harmful subsidies on competitiveness, environment and health.

We are however, disappointed that the paper makes no solid environmental tax reform proposals, nor a commitment to a political initiative to stimulate an EU-wide coordinated shift of taxation from labour towards the use of energy and environmental goods. There is neither discussion of a clear follow-up to this Green Paper nor a roadmap of possible actions. For EEB, environmental fiscal reform is a pre-condition for sustainable development and an indispensable tool to make polluters pay, which is what the European Community Treaty requires. This requires political commitment, leadership and responsibility.

The EEB also warns against using Market Based Instruments where emission limits, standards etc, are better tools to protect human health and environment locally.

The EEB calls on the Council to:

- Ensure a follow-up of proposals in the Green paper by urging the Commission to come up with a clear indication of the next steps or roadmap of actions to follow;
- Urge the European Council, in the framework of the Lisbon process' Open Method of Coordination', to agree on a 10% shift in tax income in ten years, from labour to energy and environment use and pollution, and agree on a minimum level of coordination on how to achieve it. The revenues could be mainly used for social purposes e.g. By reducing social contributions, and also to promote environmentally sound products and processes through supporting research and development in environmentally sustainable goods, services and eco-innovation;
- Support proposals on the review the EU Energy Tax Directive to divide the Community minimum tax rates into energy and environmental elements, which would be reflected nationally in the form of energy and environmental (emissions) taxes and stress a broadening of the environmental element of the minimum tax

rate to include all environmental impacts of energy production, distribution, (use) and end-products, not just emissions. Insist that energy production should not be considered only for its impact on the climate;

- Ensure that the proposed minimum environmental and energy taxes under the reviewed EU Energy Tax Directive would be applied to all sectors not covered by the EU ETS, such as small installations and households, and for sectors under the EU ETS, the energy tax element should be applicable;
- Call for an increase of the Community minimum tax rates for diesel, ensuring a more harmonized tax rate across the Union – especially to prevent ‘tank tourism’. There should also be a push for minimum taxation for households, both on electricity and heating. The overall revenue should be used for reducing the social imbalances of this tax and for subsidizing insulation of households;
- Urge the Commission to introduce a ‘polluter pays principle’ in road and air transport, ensuring a decoupling of transport from economic policies and the promotion of more environmentally-friendly modes, in line with the EU Sustainable Development Strategy of June 2006. To this effect ensure an internalisation of external costs of all modes of transport. Specifically, a reviewed Eurovignette Directive should introduce a mandatory methodology for the internalisation of external costs, leading to incentives to use best available technologies;
- Recall the EU Sustainable Development Strategy agreed in June 2006, asking the Commission to develop a roadmap in 2008, on the removal of environmentally harmful subsidies sector by sector;
- Refuse any proposals to introduce cross-border emission trading schemes to tackle air pollution from SO₂, NO_x. There is no guarantee that emission reductions will be environmentally more efficient and less costly than with current regulatory approaches. Allowing for cross-border trading would be in conflict with the directive for national emission ceilings (NEC directive). The NEC directive sets absolute caps of four main air pollutants (SO₂, NO_x, VOC, NH₃) for each country of the European Union. This directive has been developed to take account of the fact that air pollution is a cross-border problem;
- Support the consideration of Border Tax Adjustments between the EU and third country trading partners, when needed to ensure that EU environmental policies, which are not followed by these partners, might otherwise have a negative effect on the competitiveness of the EU industry that is to apply such policies;
- Refuse any support for nuclear energy, either for climate change purposes or otherwise, because of risks of serious accidents and its waste legacy. Insist that in Member States where it is used, the polluter pays principle should be strictly applied and liability requirements for environmental and health risks associated with accidents, spills and contamination of natural resources for the short, medium and long term should be made more stringent.

Annex 4

EEB comments for the Environment Council of 28 June 2007

Follow up of the Informal Environmental Council on Environment – Innovation - Employment

The EEB appreciates the initiative of the German Minister for Environment to launch a debate about a European Ecological Industrial Policy. It thanks the Minister as well for the opportunities he gave to give input into the preparation process, including through supporting and being present at the EEB Conference on this theme organised in Berlin, 14 May. And we appreciate the invitation to take part in the Informal Council discussions directly.

The EEB would like to commend Minister Gabriel for the excellent Working Paper for the meeting. We encourage the Ministers to support the policy proposals presented on pages 14 to 18. And we call for the discussion to concentrate on how to start implementation of these proposals without delay, in particular with taking up the following, more immediate political decisions and initiatives.

Fighting Climate Change:

1. Regarding renewables in the EU: in the upcoming negotiations between Member States on how to implement the general 20% renewables target by 2020, all Member States should go for ambitious national targets, so that the 20% becomes the minimum collective outcome rather than the maximum.
2. Move the political target, as laid down in the Energy Efficiency Action Plan, of 20% increased energy efficiency, leading to around 1% absolute reductions in energy use per year till 2020, into a legally binding minimum obligation for all Member States.
3. Member States to fully and timely implement the Directives on Energy Performance of Buildings, on Eco-Design and on Energy end-use Efficiency and Energy Services.
4. Call upon the Commission to come with legislation that sets for the average new passenger car a legally binding target of 120 g CO₂/km emission by 2012, instead of the 130 g proposed, given the uncertainty that the 10 g can be really met with the soft measures the Commission proposed. And to give the car-industry a clear signal of the dimension of the changes required by setting an 80 g/km target for 2016.
5. Agree on the specifics for the next phase in the Emission Trading System as soon as possible, in order to send the right signal to Europe's industry. And build the future system on auctioning.

6. Prevent the increase of other major environmental problems while applying climate policies. Therefore insist on strict environmental conditions for both biofuels and carbon storage.

Energy and Resource Efficiency:

7. Set strategic targets for eco-efficiency: increase of overall resource productivity by a factor 4 by 2030 (as called for by the European Parliament this April) and factor 10 by 2050. These targets are to be used to assess the measures needed and to give the EU Institutions a mandate to act.
8. Introduce dynamic, standard setting schemes in the EU that are addressing environmental as well as performance requirements in an integrated manner, along the lines of the Japanese Top Runner approach. Ask the Commission to initiate an EU Top Runner approach without delay.
9. Apply environmental fiscal reform (taxation and subsidies reform) throughout the EU, with as much coordination/leadership on EU level as possible. As the Working Paper suggests, use the Open Method of Coordination for this purpose. Aim for a 10% shift away from labour taxes to taxes related to environmental performance of goods and services, in a period of 10 years.
10. Develop EU and national programmes aiming to achieve 100% green public procurement by 2010.
11. Strengthen EU Waste policies, in particular prevention, re-use and material recycling. Resist the temptation to see waste as an energy resource. Refuse the reclassification of municipal waste incineration as recovery.
12. Continue the development of priority waste stream policies, where possible built upon the producer responsibility approach and promoting prevention, reuse and material recycling as a priority.
13. Introduce broader product policy legislation, identifying environmental issues, linking these to targets for eco-efficiency and environmental and performance requirements, and incorporating producer responsibility. Include product information for public requirements.
14. Set sufficient precautions with regards to the use of nano-technology, so that negative impacts on people's health can be prevented.

Clean up Industry Production:

15. Strengthen the environmental dimension of impact assessments, in particular also to better explore the environmental advantages of pro-innovation policies.
16. Apply the IPPC Directive in a more systematic and ambitious manner. Make sure the Best Available Techniques formulated for IPPC permitting really present state of the art. Ensure effective implementation of the Directive. Do not engage in a review of the Directive in the near future and appreciate the importance of environmental quality legislation in combination with IPPC.