



Brussels, 28 November 2007

To: The Environment Ministers of EU Member States

**Concerning: Input to the EU Environment Council Meeting, 20 December 2007**

Dear Minister,

On behalf of the European Environmental Bureau I offer you our views on two of the issues on the agenda at the forthcoming EU Environment Council, as well as on two other issues needing discussion.

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 two of the topics.

**1. Soil Framework Directive**

The EEB has been pleased with the efforts made by the Presidency to advance negotiations on this important dossier. At the same time, we are getting increasingly worried that important elements of the Commission's proposal are not finding sufficient support in the Council. The EEB believes that the Commission's proposal, by setting neither measurable targets nor a deadline for carrying out the measures, already contains sufficient flexibility for Member States to decide on priorities and the ambition level for their own soil policy. Introducing more flexibility will completely undermine the foundations for a common approach to tackling soil problems.

Although the European Parliament in its vote on 14 November also introduced more flexibility, it did vote in support of the most important elements of the Commission's proposal: the identification of priority areas, a programme of measures for these priority areas and a common approach to identifying contaminated sites and drawing up inventories. It also introduced, under Article 9, clear legal principles by introducing a hierarchy of measures dealing with contamination. Unfortunately the Parliament diluted the requirements for a Soil Status Report and also made Annex I and II indicative. The EEB calls on Council to not follow the Parliament on these last two points.

*The EEB urges Environment Ministers to reach a political agreement which includes:*

- A common approach to identifying contaminated sites and drawing up inventories.
- A clarification that in case of possible overlap between existing legislation and the Soil Directive, the most stringent provisions will apply.
- Clear legal principles which establish a hierarchy of measures giving preference to prevention, then to cleaning up.
- A mandatory chemical analysis as part of the soil status report.
- Peat not being exempted from the provisions dealing with organic matter loss.

**See Annex 1 for more specific EEB comments.**

## **2. Aviation and the EU Emission Trading Scheme**

Given air travel's serious environmental impacts – aviation is the fastest growing emission source, releasing pollutants (not just CO<sub>2</sub>) high in the stratosphere where their impact is increased - it is important that this sector come into the EU Emission Trading Scheme that will focus activities on meeting Europe's 20-30% CO<sub>2</sub> reduction target.

*EEB therefore calls upon the Environment Ministers to:*

- Support a start of the scheme for all flights in 2010. The urgency for curbing CO<sub>2</sub> emissions generally, and particularly in an area of the fastest growing source of emissions, requires the introduction of the scheme as soon as possible. There is no legal, practical or environmental reason to start with EU flights only.
- Strengthen the emissions cap and introduce provisions for future reductions. The Commission's proposal sets the emissions cap at 90% above 1990 levels (while Heads of State committed to reduce emissions by at least 20% compared with 1990 levels). To align aviation effort with other sectors and Kyoto agreements, the cap should be 50% of average emissions in 2004-2006.
- Ensure that auctioning is the preferred allowance distribution mechanism.
- Address all climate impacts of aviation. Support the establishment of a temporary multiplier on CO<sub>2</sub> emissions until other legislative measures are introduced addressing NOx emissions and aviation-induced cloud formation.
- Limit aviation access to project credits and allowances from other sectors. This will help to ensure that the aviation sector focuses attention on reducing their own emissions rather than accessing reductions from other sectors.

**See Annex 2 for more specific comments.**

## **3. A postponed issue: Revision of the Fuel Quality Directive**

The EEB welcomes the support in Council for the inclusion of a quantitative greenhouse gas reduction target for transport fuels in the revised Fuel Quality Directive (FQD). We share the opinion raised within the Council that such a target must be linked to the most stringent sustainability safeguards. The EEB calls for a target that would not lead to unsustainable reliance on biofuels and which is linked to the most stringent sustainability criteria. We believe that both the criteria for the life cycle analysis and for sustainability standards should be defined under this Directive. These criteria would constitute a minimum set which can be further developed under the coming Renewables Directive. Lastly, we believe that the proposal to increase the vapour pressure limit should be scrapped. Today, the European Parliament's Environment Committee voted in favour of all of the above points, thereby advancing the discussion on sustainability criteria within the FQD. We urge the Council to do likewise.

*The EEB calls on the Ministers of Environment to:*

- Take the discussion about sustainability safeguards forward in the context of the Fuel Quality Directive to ensure avoidance of negative impacts from biofuels, especially considering the following elements:
  - A minimum performance standard of 60% GHG-saving for biofuels in comparison to fossil fuel.
  - Clear provisions for the life cycle analysis, including direct and indirect land use change and other environmental and social impacts.

- Sustainability criteria dealing with impacts on water, soil, and biodiversity resources as well as social criteria.
- A review mechanism to assess the impacts that the finally agreed target will have on the sustainability of biofuel production.
- Scrap the RVP waiver for fuels containing bio ethanol.
- Call for bringing the 10 ppm sulphur content requirement of inland waterway gas-oil forward from 2011 to 2009.

#### **4. EU Sustainable Development Strategy and the EU Budget Review**

The late publication of the Commission's Progress Report on the EU SDS did not allow for a full debate in the October Environment Council. The European Council, which is to lead on the progress of this SDS, will meet before your December meeting. I attach the letter and position paper the EEB sent to the members of the European Council earlier this week.

One specific proposal I would like to highlight and ask for your active support, as it was not mentioned in EEB's comments sent to you in our letter for the previous Environmental Council (October 2):

*The EEB proposes to introduce in the **EU Budget review** the Commission kicked off on the 12th September, the need for the EU Sustainable Development Strategy to become the lead framework for the determination of future EU Budgets, both concerning objectives and sizes of individual budget lines as well as criteria and conditions for their use. A fundamental review of the EU SDS is therefore required before or in 2011 in order to lead the conclusions on the Financial Perspective 2014-2020.*

Yours sincerely,

John Hontelez  
Secretary General  
European Environmental Bureau

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P.S. Attachments for point 4 will be joined to the letter sent by post.

## ANNEX 1

### EEB comments to the Environment Council of 20 December 2007 on SOIL FRAMEWORK DIRECTIVE

After a rather slow start under the German Presidency, the discussions on the Soil Framework Directive have picked up speed under the Portuguese Presidency, in both Parliament and Council. Although there was initially strong resistance against a Directive in both institutions, following a strong lobby especially from farmers, the discussion has now moved on to one about how much flexibility should be included in the new law. The EEB believes that the Commission's proposal, by not setting any measurable targets or a deadline for carrying out the measures, already contains sufficient flexibility for Member States to decide what priorities and with what ambition they want to develop their own soil policy. Introducing more flexibility will completely undermine the foundations for a common approach to tackling soil problems.

The EEB is getting increasingly worried that especially the support for a common approach to identifying contaminated sites and setting up inventories is not getting sufficient support in the Council. There are obvious benefits in taking such a common approach where industries are treated equally across the internal market. It also means that the Annex II which lists specific sectors will need to be kept mandatory.

The EEB agrees that it is useful to clarify the relationship between the Soil Directive and other existing legislation which may have indirect impacts on the protection of soil. In line with Article 174 of the Treaty which requires Community policy to aim for a high level of protection, and in line with for example the Water Framework Directive, we believe that a clear statement is needed which clarifies that in case of overlap the most stringent provisions should apply.

The EEB underlines that in line with existing hierarchies in waste policies, a hierarchy of priorities for soil protection should be formulated. Framework Directives for environmental protection define general principles to guide political action of the EU Member States. They also are fundamental markers to steer the elaboration and the implementation of such a Directive and make their interpretation easier. The Parliament has adopted such legal principles in Article 9 and we ask you to support this.

The EEB strongly supports the requirements for a soil status report as a smart mechanism to facilitate the identification of contaminated sites. A chemical analysis however should be mandatory, as it is the only way to identify a great number of dangerous substances such as heavy metals.

Lastly, we are getting worrying signals that peat and peat abstraction may be excluded from the provisions dealing with organic matter loss. We would like to stress that the best contribution peat can make to mitigating and adapting to climate change is by leaving it where it is. Peatlands are important carbon stores and also act as sponges for maintaining water but only so long as it is not being abstracted.

Following the above, the EEB calls on the Council to reach a political agreement in December which includes:

- A common approach to identifying contaminated sites and drawing up inventories.
- A clarification that in case of possible overlap between existing legislation and the Soil Directive, the most stringent provisions will apply.
- Clear legal principles which establish a hierarchy of measures giving preference to prevention, then to cleaning up.
- A mandatory chemical analysis as part of the soil status report.
- Peat not being exempted from the provisions dealing with organic matter loss.

## ANNEX 2

### **EEB comments to the Environment Council of 20 December 2007 on AVIATION AND THE EMISSION TRADING SCHEME**

EEB works in coalition with organisations such as Transport & Environment and Climate Action Network on aviation. The comments below are based on this cooperation.

Environmental NGOs believe that the inclusion of aviation into the EU ETS is necessary due to this sector's potential to contribute to the fulfilment of the EU's independent commitment to achieve at least a 20 % reduction of greenhouse gas emissions by 2020 compared to 1990, increased to 30% if a post-Kyoto global agreement can be reached. These targets were endorsed and agreed by Heads of States and Governments at the 2007 Spring Council Summit. The EU should strive to maintain its leadership role in tackling climate change and not bow to pressure from third countries at the upcoming Bali meeting.

We therefore urge Ministers to support the 30% reduction target and to endorse the inclusion of aviation in the EU ETS, but with a clear strengthening of the Commission Proposal and the European Parliament's agreement in several key aspects. Environmental NGOs are disappointed with the Proposal as it is ineffective in reversing the upward trend of emissions from aviation, as clearly pointed out by the Commission's impact assessment. Furthermore, it will repeat well-known mistakes from the first phase of the EU ETS such as over-allocation of allowances, free distribution of allowances creating windfall profits, and excessive access to project credits (CDM and JI) without clear quality criteria. The Proposal also ignores the fact that CO<sub>2</sub> emissions are only a part of the contribution of aviation to climate change and that to foster innovation in the aviation sector itself, restrictions to access to non-aviation credits have to be created.

EEB therefore calls upon the Environment Ministers to:

- Support a start of the scheme for all flights in 2010. The urgency for curbing CO<sub>2</sub> emissions generally, and particularly in an area of the fastest growing source of emissions, requires the introduction of the scheme as soon as possible. There is no legal, practical or environmental reason to start with EU flights only, so all flights to and from Europe should be included from the start.
- Strengthen the emissions cap and introduce provisions for future reductions. The Commission's proposal set the emissions cap at approximately 90% above 1990 levels. Instead, Heads of State committed to a more ambitious cap of at least 20% reduction of 1990 levels. To align aviation effort with other sectors and Kyoto agreements, the cap should be 50% of average emissions in 2004-2006. Future revisions of the cap downwards should be introduced, based on the outcome of negotiations for the post-Kyoto regime.
- Ensure that auctioning is the preferred allowance distribution mechanism. Since the Commission Proposal clearly states that airlines will pass-through the value of allowances, anything but 100% auctioning will lead to windfall profits and would be a lost opportunity to apply the polluter pays principle, while also being a complication of the scheme.
- Address all climate impacts of aviation. CO<sub>2</sub> is not the only climate-related emission of aviation, so the scheme would be made more effective by establishing a temporary multiplier on CO<sub>2</sub> emissions. This would serve to guarantee the environmental integrity of the scheme until other legislative measures are implemented which specifically address NO<sub>x</sub> emissions and aviation-induced cloud formation.
- Limit aviation access to project credits and allowances from other sectors. Such limitations would help to focus attention within the aviation sector on actual reductions in emissions. This is the only way to avoid that the proposed Directive leads to the disappointing outcome of a continued growth of emissions from aviation, with the industry limiting its climate responsibilities to buying emission allowances from other sectors, without any innovation being introduced.