

# EEB MEMORANDUM

TO THE IRISH PRESIDENCY, THE EUROPEAN UNION MEMBER  
STATES AND THE ACCESSION COUNTRIES JOINING IN 2004

JANUARY 2004

ADDRESSING:

THE EUROPEAN COUNCIL

THE COUNCIL FOR GENERAL AFFAIRS AND EXTERNAL RELATIONS

THE COUNCIL FOR ECONOMIC AND FINANCIAL AFFAIRS

THE COUNCIL FOR AGRICULTURE AND FISHERIES

THE COUNCIL FOR COMPETITIVENESS

THE COUNCIL FOR THE ENVIRONMENT

'Europe is acutely aware of the need to combat local and world-wide environmental degradation. We shall act together to achieve sustainable development and guarantee a better quality of life for future generations.'

Millennium Declaration, European Council, Helsinki, 11 December 1999

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## INTRODUCTION

On 1 January 2004, Ireland took over the challenging task of leading the European Council and the Council of Ministers. The European Environmental Bureau (EEB), a federation of 147 European environmental citizens' organisations in Europe, present here its main ideas for this Presidency to the Irish government.

This Memorandum has been produced by the Board of the EEB with contributions from Climate Action Network (parts 5.4. and 5.5.). In the Memorandum we state our long-term goals with pragmatism about what is feasible to achieve during a six-month Presidency.

After the failure of the Italian Presidency to finalize the negotiations on an EU Constitution, the Irish Presidency will have the responsibility to relaunch the discussion. It has not been given a time-table for this purpose, but asked to inform the March Summit on this point. The EEB calls upon the Presidency to convert this crisis to an opportunity for a renewed discussion on key points not yet considered by the IGC, including participatory democracy (in particular, public participation and access to justice), the need to update the policy chapters in Part III (in particular, on environmental requirements and sustainable development), and to phase out the Euratom Treaty. The EEB also recommends the inclusion of a Protocol on Sustainable Development.

The EEB has appreciated the co-operation of the Irish Taoiseach (Prime Minister) and the Irish Minister for the Environment in organising the conference *Investing in Sustainable Development* for 2 February 2004, Dublin. At this conference, the EEB, with its partners the European Trade Unions Confederation (ETUC) and the Platform of European Social NGOs, will campaign for an active role from the governments of the EU Member States and Accession Countries in promoting sustainable development, in particular in public transport and social housing. The message of the Dublin Conference is to be reflected in the conclusions of the 2004 Spring Summit on the implementation of the Lisbon and Gothenburg Strategies.

One of the most important European environmental policy reforms for the coming years will be the new chemicals policy. The European Commission presented a watered-down proposal for a REACH system in October 2003, and the EEB calls upon the Irish Presidency to make serious efforts to achieve a positive common position before summer 2004. Although the Italian Presidency made an unfortunate decision to give the lead on chemicals policies to the Competitiveness Council, the Irish Presidency should ensure that the Environment Council remains fully involved.

We appreciate the importance that the Irish Environment Minister intends to give to waste management issues. While the EU has impressive specific legislation on waste management in general as well as for specific waste streams, the reality is that the Member States continue to be faced with streams of waste that are very hard to reduce, with substantial environmental and health problems and a waste of natural resources. We hope that the work of the Irish Presidency in improving waste management will also provide positive input into the Thematic Strategies on Resource Efficiency and on Waste Recycling, in preparation by the European Commission.

During the Irish Presidency, new members for the European Parliament will be elected. The proportion of European citizens voting in these elections five years ago was very low. It cannot be taken for granted that it will be better this time around. The Irish Presidency can affect the voting turnout, and the support from the citizens to the EU institutions, by showing the European public solid commitments towards sustainable development, emphasising the environmental and social dimensions, and a dedication to policies that protect health and biodiversity.

Also during the Irish Presidency, negotiations will begin on the composition of the next European Commission. The EEB calls upon all Member States and new Member States to ensure that all Commissioners, and in particular the President of the Commission, have a clear and declared commitment to sustainable development, in particular to its environmental dimension.

This Memorandum starts by highlighting the EEB's ten main priorities: the Ten Green Tests for the Irish Presidency of the EU. It continues with a broader spectrum of demands directed at the various Councils. At the end of the six months, the EEB will evaluate the performance of the EU during the Irish Presidency with regard to the Ten Green Tests.

We understand that a Presidency cannot make things happen on its own. In most cases, it needs proposals from the Commission, advice from the Parliament, and the cooperation of the other EU governments. However, a Presidency has considerable influence by what it puts on the agenda, how it prepares for discussions, and what special events it organises. We encourage the Irish government to make its Presidency one that will lead the EU forward to secure real progress in environmental and sustainable development.

# TEN GREEN TESTS FOR THE IRISH PRESIDENCY

## **1 THE EUROPEAN CONSTITUTION**

- Re-start the Intergovernmental Conference (IGC) without delay to come to agreement incorporating the positive elements of the Convention text with regard to sustainable development, environmental policy integration, participatory democracy, the Environment Chapter and the role of the European Parliament in environment-related decision-making.
- At the same time, seek to open up the IGC agenda specifically to permit the long overdue update of the Chapters on key specific policies to ensure that they will contribute to environmentally sustainable development.
- Phase out the Euratom Treaty by 2007.

## **2 SUSTAINABLE DEVELOPMENT**

- Ensure that the 2004 Spring Summit:
  - launches major programmes of public investment, particularly in public transport and social housing, with explicit objectives to reduce overall energy consumption and to improve the quality of life of disadvantaged people
  - puts emphasis on decoupling economic growth from environmental pressures
  - prevents further prioritisation of 'competitiveness' above other important objectives of the EU
  - takes steps to effectively phase out environmentally problematic subsidies of the EU and its Member States within five years.
- Involve the Environment Council in the evaluation of the EU Sustainable Development Strategy.

## **3 AN EFFECTIVE NEW CHEMICALS POLICY**

- Ensure that human health and environmental protection is at the heart of the policy debate about the new chemicals policy (REACH), led by the Environment Council.

- Full implementation of the substitution principle: closing the irresponsible gap in the authorisation procedure in REACH by deleting the 'adequate control' test and ensuring that uses of hazardous chemicals will rapidly decrease.
- Bring back a 'duty of care' for industry, so that industry produces and makes available basic safety information for all chemicals in use, and chemical safety reports for quantities smaller than 10 ton/year. Ensure that within 11 years all existing chemicals above 1 ton/year are properly registered.
- Establish a high enough minimum number of substance evaluations/year for Member States to ensure increased quality of industry's safety assessments.
- Insist on the same requirements for chemicals in imported consumer products as for domestically produced chemicals.
- Expand the transparency arrangements so that civil society has the right to know about dangerous chemicals in consumer products and about the functioning of REACH.

#### **4 CLIMATE CHANGE**

- Make every effort to encourage Russia to ratify the Kyoto Protocol as soon as possible.
- Reinforce the European Climate Change Programme and the work on policies and measures. Ensure that the National Action Plans produce strong emission cuts in the EU, consistent with the overall Kyoto target.
- Strictly limit the number of Emission Trading credits that can come from Joint Implementation and the Clean Development Mechanism. Apply this cap at an entity level. Disallow credits from sinks, large hydro plants or nuclear projects under any circumstances.
- Work with the developing countries on adaptation and a framework for a post-Kyoto regime.

#### **5 ENVIRONMENTAL POLICY INTEGRATION**

- Ensure that the multi-annual strategic programme of the Council is developed in full compliance with the obligation, laid down in the EC treaty, of integration of environmental concerns into all EU policies.
- Ensure that all the Council formations produce their integration strategy, and establish clear, transparent criteria for monitoring and reporting on the implementation of the strategy.

- Ensure that the Commission's new integrated procedure for impact assessment be carried out in full transparency, with effective and efficient public participation, and higher environmental standards.

## **6 REQUIREMENTS FOR THE NEW EUROPEAN COMMISSION**

- Ensure that all Candidate Commissioners make a clear commitment to integrate environmental requirements and the objectives of a high level of protection and improvement of the environment consistently in their work areas, and establish policies which contribute to sustainable development inside the EU as well as globally in all their work.
- Ensure that the President of the Commission accepts full responsibility for the implementation of an ambitious Sustainable Development agenda with a strong environmental dimension.

## **7 THE AARHUS CONVENTION**

- Finalise the first reading of the 'Aarhus Package' presented by the Commission October 2003.
- Improve the Commission's proposals by providing a broader right of access to justice for citizens.
- Insist on legally binding rights for citizens to be consulted by the Commission in preparation of decisions with a potential environmental impact.
- Stop the EU resistance to amending the Aarhus Convention so as to fully integrate GMO-related decision-making in the requirements for public participation.

## **8 RESOURCE EFFICIENCY AND WASTE REDUCTION**

- Ensure that the European Commission, ahead of the Thematic Strategies on 'Waste Prevention and Recycling', and on the Sustainable 'Use of Natural Resources', produces concrete proposals for ambitious quantitative targets and timetables for both strategies.
- Ensure that the Commission completes its work on specific waste streams, setting recycling targets and making full use of individual producer responsibility. Priority to be given to a draft biodegradable waste directive in 2004 with mandatory separate collection targets.

- Promote Council support for the European Parliament position on the Regulation on Waste Shipment as adopted 19 November 2003, in particular on key elements dealing with enforcement of the proximity and self-sufficiency principles, sham-recovery, transparency and clarification of some wastes such as ships.

## **9 COMBAT AIR POLLUTION FROM SHIPS**

- Bring about a Council position on the revision of Directive 1999/32/EC on the sulphur content of marine fuels along the lines of the European Parliament's position of June 2002, including an 80% reduction of SO<sub>2</sub> emissions by 2012.
- Establish an EU-wide charging system for infrastructure used by the maritime sector to internalise external costs.

## **10 MAKE NATURA 2000 WORK**

- Ensure that the European Commission comes forward with a plan for financing Natura 2000 which secures adequate financial resources for the long-term protection and management of the Natura 2000 Network through revision of the CAP and Structural Funds, coupled with the continuation of LIFE Nature with an increased budget.
- Ensure special attention for the needs of the Accession Countries.

# 1 THE EUROPEAN COUNCIL AND THE COUNCIL FOR GENERAL AFFAIRS AND EXTERNAL RELATIONS

## 1.1 THE FUTURE OF EUROPE

After the failure of the Italian Presidency to finalize the negotiations on an EU Constitution, the Irish Presidency will have the responsibility to relaunch the discussion. It has not been given a time-table for this purpose, but asked to inform the March Summit on this point. The EEB calls upon the Irish Presidency to convert this crisis into an opportunity for a renewed discussion, not only on the sticky institutional issues that were left unresolved, but also for a quality improvement addressing issues that might convince EU citizens that the EU is worth supporting. This would mean a broadening of the agenda for discussion.

The Convention on the Future of Europe, preparing for an EU Constitution, was a unique exercise. However, it was unable to take any steps forward on sustainable development and environmental policy integration in Part III on the policies of the Union. In addition, its proposals on strengthening democracy were partial and compromised. The Convention did not propose, or proposed only partially, co-decision rights for the European Parliament in major policy areas such as agriculture, fiscal policies, internal market, transport and research. It failed to grant the EU citizen and citizens' organisations the right to access to justice, and the requirements for public participation remained vague.

*The EEB therefore calls upon the Irish Presidency to include the following issues in its coordination work in the coming months:*

- *Maintain the formulations on sustainable development (Part 1, art.3) and Environmental Policy Integration (Part III, art 4), as they are now.*
- *Include the Protocol on Sustainable Development, launched by the Environment Commissioner, while improving the text by adding (after par. 2) 'The European Union shall have a Sustainable Development Strategy, which will be reviewed and updated periodically. This shall include concrete objectives, targets and timetables for the Union with regard to sustainable development', as well as include the specific concept of environmental policy integration and the coherence between sustainable development and the EU's external policies. (A broad coalition of NGOs has made specific proposals.)*
- *Introduce in all the policy chapters the requirement that the policies of the EU contribute to the improvement of the environment. The EEB, in conjunction with other organisations, has produced major text proposals for: Internal Market, Economic and Social Cohesion, Agriculture and Fisheries, Transport, Trans European Networks, Common Commercial Policy (Trade) and some specific to: Competition, Economic Policy, Environment (removing the unanimity requirement for some issues), Research, and Industry.*
- *Give concrete guidance on how participatory democracy is to be implemented.*

- *Maintain the environmental chapter of the current Treaty as it is, with the exception of article 175 par. 2, which exempts certain environmentally related policies (including environmental taxation) from the Qualified Majority and co-decision-making rule. That paragraph needs to be deleted.*
- *Ensure that qualified majority decision-making and co-decision with the European Parliament becomes the rule also in areas such as agriculture, fisheries and cohesion policy.*
- *Encourage the ending of the Euratom Treaty by 2007.*

## **1.2 SUSTAINABLE DEVELOPMENT STRATEGY**

The adoption of the Sustainable Development Strategy at the Gothenburg Summit in 2001 and the decision to broaden the Lisbon Process on economic and social prosperity to promote the sustainable development agenda, was a major event. However, the real integration of the two processes proved difficult. In Barcelona nothing was achieved, and in the 2003 Spring Summit some modest cross-references were made with regard to the positive economic impacts of environmental targets and policies. There have been some positive conclusions from the 2003 Spring Summit, but we are still far from the point when sustainable development really takes over the Lisbon Process.

Among the conclusions of the 2003 Spring Summit, one specifically addresses the GA/ER Council, which we find very important. *'The Council should use [the updated and reviewed 'Road-map on the follow up of the Goteborg conclusions', provided by the Commission] as a practical and dynamic implementation instrument giving a clear overview on goals, targets and respective responsibilities' (par. 58).*

*From the Irish General Affairs/External Relations Council the EEB expects in particular the following:*

- *To act on the call from the joint declaration of the EEB, the European Trade Unions Confederation and the Platform of European Social NGOs [to the 2003 Spring Summit] to shift from a narrow definition of economic growth to broader, quality-oriented economic development. 'It is absolutely fundamental that we break the link between economic growth and the pressure on the environment. The promotion of economic activities needs always to be tested against the requirements of the Treaty: ensuring a high level of protection and the improvement of the environment. In particular, reduction of natural resources use must become a main objective of the Lisbon/Göteborg strategy. Improving resource productivity will also benefit economic growth and competitiveness.' However, the further prioritisation of 'competitiveness' above other important objectives of the EU must be prevented.*
- *To also follow the EEB / ETUC / Platform call for a clear commitment from the EU to take the lead in pursuing global and equitable solutions to key unsustainable trends. 'We urge the Spring European Council in particular to integrate the*

*necessary shift to sustainable production and consumption patterns into the Lisbon agenda.' The EEB calls for initiatives to promote a Ten Years Framework Programme on Sustainable Production and Consumption for the European Union, in line with the conclusions from the World Summit on Sustainable Development, with a clear positive impact on developing countries.*

- *To promote a political decision on major programmes of public investment for sustainable development in public transport and social housing in particular, with explicit objectives to reduce our society's energy consumption and to improve the quality of life of disadvantaged people.*
- *To take steps to effectively phase out environmentally problematic subsidies of the EU and its Member States within five years.*
- *To include in the 2004 Spring Summit programme the analysis of CAP reform from the point of view of sustainable development.*

### **1.3 ENVIRONMENTAL POLICY INTEGRATION**

In Cardiff, June 1998, the European Council instructed specific Councils to develop strategies to implement article 6<sup>1</sup> of the EC Treaty in order to integrate environmental considerations into sectoral policy decisions. In the first two years, Councils were to report regularly on progress to the European Council. The profile of this exercise remained, unfortunately, rather low.

The 2003 Spring Summit decided that the Cardiff Process should be strengthened. It proposed to:

- develop overall and sector-specific decoupling objectives
- improve environment-related structural indicators
- monitor progress
- identify best practices.

During the Italian Presidency, we saw little, if any progress on the above-mentioned issues. We failed to see Council reviews for 2003 taking place, and the internalisation

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The Amsterdam Summit in June 1997 introduced article 6 into the Community Treaty: 'Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.' In the Convention's draft Constitution this Article is placed prominently in Part III on Policies.

of environmental policy integration requirements in the day-to-day work of all the Councils is still lacking. However, under that Presidency we did see a proposal from the Council, in line with the Seville European Council, recommending that the European Council endorse a multi-annual strategic programme for 2004-2006 during its December sitting. The European Commission is preparing this programme, and the European Parliament will be informed about its purpose and content. We believe that the endorsement of this programme will, among other effects, facilitate progress in environmental policy integration and a follow-up on Council activities, thus strengthening the Cardiff Process.

*We expect from the Irish General Affairs/External Relations Council the following:*

- *To invite all Council formations to intensify their environmental policy integration efforts, making it a structural feature. Develop a set of quality benchmarks including:*
  - *sound problem analysis based on the precautionary principle*
  - *policy objectives with measurable targets and timeframes*
  - *action plans with effective instruments and adequate institutional arrangements*
  - *indicators, monitoring and control*
  - *public involvement and transparency*
  - *regular evaluation of results.*
- *For that purpose implement the quality improvements set out above as called for by the 2003 Spring Summit.*

## **1.4 ENLARGEMENT**

After May 2004 ten new countries will join the EU. The EEB welcomes this enlargement, but is concerned about the application and implementation of environmental legislation by the new Member States.

The negotiations on the environmental *acquis* have gone fairly well, but what counts now is the actual application of these rules in practice. Will the commitments of the Accession Countries be translated into effective regulations and policies? Will the necessary administrative strength for implementation and enforcement be built up and maintained? Will the authorities work to promote consumption and production patterns that will help to decrease and prevent environmental degradation?

Furthermore, environmental organisations in the Accession Countries will be paying more attention to regional policy. The EU, thanks to its funding, will have a major impact on how infrastructure will be developed. It is essential that the lessons learned in the EU lead to a mutually agreed, environmentally and socially sustainable regional policy.

*The EEB calls upon the Irish Presidency to:*

- *Maintain the pressure on the new Member States to apply and implement in practice the environmental acquis communautaire by the date of their accession.*
- *Continue regular monitoring of and reporting about the implementation of the environmental acquis communautaire.*
- *Insist on finalising draft lists of the Natura 2000 sites as soon as possible. Encourage the new Member States and the European Commission to include Natura 2000 in the EU funding priorities.*
- *Accelerate negotiations on the environment chapter with Romania as well as making sure that Bulgaria and Romania start early implementation of the acquis.*
- *For Bulgaria and Romania, which will continue to receive pre-Accession funds, insist that these will only be provided if assessments prove that there will be no direct or indirect adverse impacts on the environment. These assessments should also take into account public/NGO opinions.*
- *Promote sufficient assistance, including financial, for strengthening administrative capacities to implement and enforce the agreed environmental legislation and measures.*
- *Issue clear, binding, enforceable regulations on public participation based on the Aarhus Convention for the programming and implementation of regional policy.*
- *Insist on an early start of preparations for the new budgetary period for Structural and Cohesion Funds and conduct the preparations in an open and transparent manner.*
- *Take specific steps to facilitate agricultural reform in the Accession Countries in order to prevent further adverse impacts on the environment and biodiversity.*

## 2 THE ECONOMIC AND FINANCE COUNCIL

### **2.1 Removal of environmentally hazardous subsidies**

The Spring European Council Summit 2003 urged the Ecofin Council to ‘encourage the reform of subsidies that have considerable negative effects on the environment and that are incompatible with sustainable development’. Neither the Greek or the Italian Presidencies took initiatives to launch this extremely important reform. We call upon the Irish Presidency to finally make a start and launch an open debate.

An essential element of sustainable development, particularly for sustainable consumption and production patterns, is to influence prices for resources, products and services. Environmentally perverse subsidies do the opposite: they promote unsustainable production and consumption patterns, increasing depletion of scarce resources, emission of greenhouse gases, and so on.

*Therefore, efforts to reduce and eliminate such subsidies and their undesirable environmental impacts should be initiated without further delay.*

## 3 THE AGRICULTURE AND FISHERIES COUNCIL

### 3.1 ORGANIC FARMING

The Irish Presidency should treat organic farming as a high priority in the first months of 2004. The EEB urges the Irish Presidency to ensure that the European Commission will finalise the European Action Plan for Organic Food and Farming early in 2004. This would enable the current European Parliament to still examine the Communication before the elections and before the new Commission is formed. It is essential to ensure the adoption of the Action Plan during the current legislation period so that its implementation can start in 2004.

### 3.2 SECTORAL REFORMS OF OLIVE OIL, COTTON AND TOBACCO

On 23 September 2003 the European Commission published proposals for the reform of the common market regime of the olive oil, cotton and tobacco sectors. These proposals will be discussed in the Council of Ministers in the first half of 2004.

*The EEB urges the Irish Presidency to ensure that the market regimes will be fundamentally reformed in line with principles of environmental integration and sustainable agriculture.*

*In particular, the EEB calls on the Irish Presidency to ensure significant changes in the current subsidy regime for olive oil, which is a major cause of serious environmental problems linked to soil erosion, over-use of water resources, desertification and habitat loss, as it encourages intensification.*

The Commission has proposed to introduce an 'Olive Grove Payment', ie to re-orientate 40% of the current production subsidies in favour of plantations of high environmental / nature, social and cultural value.

*The EEB calls on the Irish Presidency to:*

- *ensure that this additional payment is area-based instead of a payment per tree, which would encourage intensification and therefore lead to environmental degradation.*
- *urge the Commission to establish clear criteria / guidelines upon which Member States base their definition of which olive groves should be eligible for the Olive Grove Payment, including the maintenance of Natura 2000 sites, landscape and biodiversity preservation and other environmental, social and cultural criteria.*
- *promote the introduction of a regionalised version of the Single Farm Payment resulting in an average payment per hectare for all producers in a given region; rather than calculating the SFP on the basis of historical payments received by individual farms in the reference period, which would be to the disadvantage of organic producers and traditional, low-intensity systems and would favour the most intensive plantations.*

### **3.3 REFORM OF THE MARKET REGIME FOR SUGAR**

The European Commission presented a paper outlining three options for the reform of the sugar regime. A Communication is expected in early 2004, followed by the legislative proposals which should be presented later on in 2004.

There is an urgent need for a reform of the current sugar regime, which has encouraged a particularly intensive production system causing significant environmental problems like soil erosion, soil compaction, water contamination (due to pesticide run-off), reduced biodiversity and overuse of water.

*The EEB calls on the Presidency to ensure that:*

- *the forthcoming reform of the market organisation for sugar follows the logic of the recent CAP reform and makes the sector more environmentally sustainable by decoupling the premiums for sugar beet from production.*
- *the legislative proposals take account of the results of the environmental impact assessment of the current sugar regime.*
- *concerns of external trading partners, particularly of developing countries, are adequately taken into account.*

## 4 COMPETITIVENESS AND ENVIRONMENT COUNCILS

### 4.1 CHEMICALS POLICY

The EEB welcomes the Commission's adoption of a proposal for a new regulation of chemicals in the European Union, called REACH (Registration, Evaluation and Authorisation of Chemicals). It is a most important reform of EU health and environment protection.

But unprecedented interference by the chemical producers in Europe and the USA has led the Commission to considerably weaken the proposal and to tip the proposal's balance away from environmental and public health protection towards business interests. However, despite all these problems, REACH is still the right framework, which environmental organisations support.

*The EEB expects the Irish Presidency to make sure that public health and environmental protection will have a central place in the agenda and debate of the ad hoc working groups and Councils.*

*In particular, the EEB asks the Presidency to address the following key concerns:*

- **Authorisation: dealing with the worst chemicals, or 'chemicals of very high concern'**. *One of the goals of the reform is to ensure that chemicals of very high concern are phased out and replaced with suitable, safer alternatives. But, as the proposal stands, the use of such chemicals can still continue, even if a safer alternative is available at a comparable price. 'Adequate control' is an inappropriate way to manage the risks from these chemicals, which would not, for example, avoid exposure to carcinogens or stop the accumulation of brominated flame retardants in children's bodies. The 'adequate control' route for authorisation has to be deleted. This would put REACH in line with European law<sup>2</sup> and jurisprudence<sup>3</sup>, which has an established hierarchy for dealing with dangerous chemicals, using elimination and substitution as the first regulatory options.*
- **Duty of care and registration: closing the safety gap.** *The REACH proposal does not provide a general duty of care for industry and excludes chemicals produced in quantities below 10 tonnes per year from the requirement of a chemical safety report (CSR). This is a serious gap in health and environment protection, as, for most chemicals in use, REACH would not provide any safety obligation at all, and prioritisation for risk management measures is made impossible. Therefore a revised and workable duty of care, which will guarantee*

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<sup>2</sup> 'European Union law places elimination and substitution at the top of the hierarchy of control measures to protect workers from the risks related to chemical agents (89/391/EEC), carcinogens (90/394/EEC) and biological agents (2000/54/EC).' FACTS 34. European Agency for Safety and Health at Work, 2003.

<sup>3</sup> ECJ decision on Case C-473/98, 11 July 2000

*that the industry has to produce and make available basic safety information for all chemicals in use, regardless whether they are registered or not, has to be reintroduced. Further, the CSR for chemicals between 1 and 10 tonnes and the three tests which have been removed should be reintroduced.*

- **Evaluation.** *The proposal does not require a mandatory evaluation of the quality and content of registration dossiers. Considering the large amount of inaccurate safety data produced by the industry under existing laws, Member States should be obliged under REACH to carry out a minimum number of substance evaluations per year. This would improve the quality of safety information and help Member State authorities to maintain and increase their capacities, which is essential to ensure a level European playing field for industry.*
- **Registration and protection from chemicals in imported articles.** *The proposal would allow companies to import consumer products containing unregistered, dangerous, unauthorised or banned chemicals as long as their quantities are below one tonne per year per article type or not intended to be released. This presents a serious threat to health and environmental protection and to the competitiveness of specific industry sectors. Therefore importers of consumer products must have the same duty to register their chemicals as importers of substances and preparations.*
- **Transparency and the public right to know.** *The proposal only ensures a safety information flow on chemicals until they are introduced into an article, like an additive in a plastic piece or a brominated flame retardant into carpet fabric. This means that manufacturers, retailers and consumers will not be able to find out easily which chemicals are present in their products. Therefore a new communication requirement about chemicals in articles throughout the whole supply chain has to be introduced, which at a minimum will ensure that a complete list of dangerous chemicals in products will be available to the public.*
- *Also, the proposal only ensures that a very short list of non-confidential (white list) information will be made actively available to the public. Most relevant information, including the name of the registrant, the list of ingredients in preparations, total production tonnage and use categories, will only be made available to the public on request and after time-consuming red tape. Therefore, where there is no genuine reason for claiming confidentiality, the white list will have to be extended, and the decision on which information in a registration dossier is to be kept confidential must be taken immediately. Further, an appeal mechanism in line with that of the Aarhus Convention should be introduced.*

## 5 ENVIRONMENT COUNCIL

### 5.1 Sustainable development and environmental policy integration

In March the Environment Council will have an important role in the preparation for the 2004 Spring Summit. We understand that the Irish Presidency is aiming to underline the need for decoupling of economic growth and environmental pressure at that Summit. The EEB supports this.

*The EEB asks the Irish Presidency to support the Environment Council focusing on, at least, the following issues:*

- *The need to refocus on sustainable development instead of concentrating overwhelmingly on economic growth and competitiveness. At the moment, we see a return to an old-fashioned approach towards growth as an aim, with the related pressure to remove or prevent any burdens and barriers for economic actors. This would be a historic mistake. Instead the EU should base its economic policies on a vision and strategy that improves the quality of life for all, including the less privileged groups in society, creates meaningful employment and improves the quality of the environment, both in the EU and globally.*
- *Bring the attention of the Spring Summit to the conclusions on the Environmental Policy Review, in particular the 'Trends and Challenges', as we see that much needs to be done on the main objectives of the 6<sup>th</sup> Environmental Action programme, including measures to steer the economy away from unsustainable production and consumption patterns.*
- *Make a critical assessment of other conclusions from the Environmental Policy Review, as outlined below.*

The EEB has the following initial comments on the 2003 Environment Policy Review, published by the European Commission in November 2003.

- We disagree with the way the Commission describes sustainable development in the Review. It describes economic growth and social cohesion as the objectives of such development, while relegating environmental quality to something that can be traded off with these objectives. We expect the Commission and the Council to insist that 'improvement of the quality of the environment' remains one of the priority objectives of the European Union, as reconfirmed in the draft Constitution presented by the European Convention. Environmental quality must figure prominently as an objective for sustainable development by itself.
- The Commission is much too optimistic about the performance of the Cardiff Process, even though it has not done its 'stocktaking of integration to date' yet. Linking the recent reform of the CAP to this process appears overly optimistic. The Cardiff Process needs a really critical audit, otherwise it will not send the right messages to the other Councils.

- Before a possible ‘Open Method of Co-ordination’ for the environmental field can be introduced, a thorough debate about the pros and cons needs to take place.
- A similar debate is necessary for the proposal on ‘a new approach to implementation’, which seems to have its main focus on ‘modernising the environmental regulatory framework’. In the Review the Commission risks undermining the credibility of existing EU legislation by saying that weighting environmental objectives from now on against their economic and social impacts ‘marks a major shift in the way environmental policy has been conceived and designed thus far’. There is little evidence of environmental legislation being unnecessarily ambitious or prescriptive. The EEB believes the Commission and the Council should not assent to the unfounded criticism often heard from industry circles. Instead, the Commission and Council should defend the existing legislative network as necessary but insufficient. In the view of the EEB the Commission should give priority to tackling the main current environmental challenges (greenhouse gases, biodiversity decline, waste management, loss of soil fertility, transport growth, hazardous chemicals, etc). The EEB does support important parts of the solution proposed by the Commission, ie ‘a more flexible, market-friendly approach’, but we stress that this still needs to be looked at critically.
- The Review gives reasons for a new debate on implementation and enforcement complications. We insist that the solution must NOT be to remove legislation that is not being implemented sufficiently, unless there is hard proof that it will not have a negative impact on the environment. Nor can the solution be to rely even more on citizens to police enforcement gaps. The real answer is a combination of commitment from the Member States to implement what they have agreed to, and sufficient resources mobilized by the Commission to play its role as effective overseer of implementation and enforcement by Member States.

For further proposals for the Spring Summit, see section 1.2.

## **5.2 ENVIRONMENTAL GOVERNANCE AND THE AARHUS CONVENTION**

### *5.2.a Directive on Access to Justice*

The EEB welcomes the draft Directive on Access to Justice in Environmental Matters as the third important contribution from the EU to the implementation of the Aarhus Convention in the Member States. It welcomes the fact that the Directive includes the right to take cases against economic operators to court, so it will not be just public authorities who have to uphold environmental legislation.

However, the EEB would like to emphasise that the Directive should be seen explicitly as setting minimum requirements, and that no Member States should present the Directive as a reason to reduce existing access to justice for members of the public in environmental matters. Even more, the EEB calls upon the Member

States and the European Parliament to improve the Commission's proposal, so that the unnecessarily narrow approach chosen by the Commission may be corrected.

The EEB produced a position paper on the draft Directive on 19 December 2003. This includes the following specific concerns:

- The draft Directive leaves too much to the national authorities on how to define the criteria for cases against private entities, which might come into conflict with the EU objective to create level playing fields across the EU for economic operators.
- The definition of 'public authority' is incomplete in comparison with the Aarhus Convention. This is important given the increasing privatisation and contracting out of functions previously carried out by public authorities.
- The draft is too limiting with regards to the persons that can have legal standing. The Commission leaves scope for restrictions that are not in agreement with the spirit of the Aarhus Convention.

*The EEB calls upon the Presidency to promote a Directive which fully respects the Aarhus Convention in content and spirit, taking into account the comments from the EEB from 19 December 2003*

### ***5.2.b Regulation on the Application of the Aarhus Convention to the EU Institutions***

The EEB is completing a detailed response to the draft Regulation 'On the Application of the Aarhus Convention to EC Institutions and Bodies'. It welcomes the proposal, as it shows that the Commission is serious about environmental governance along the lines set out in this Convention.

On access to information: the Commission refers to the '2001 Regulation on Access to Documents of the Commission, Council and Parliament' and proposes to expand the scope of this Regulation to all other institutions of the EU. The EEB welcomes this.

With regards to public participation, the EEB deplores that the Commission ignores the Aarhus Convention recommendation to include 'policies', as well as its exclusion of 'financial or budget plans and programmes' from the definition of plans and programmes relating to the environment, which is not consistent with Aarhus.

As in the draft Directive on Access to Justice (above) the Commission has chosen a narrow definition for the right of standing. In this case it limits this right to European environmental NGOs that fulfil certain obligations. The EEB considers this an unnecessary restriction.

The exceptions to the 'administrative acts' that fall under this Regulation are too wide and need to be reviewed.

*The EEB calls upon the Irish Presidency to promote a constructive discussion aiming to widen the scope of the Regulation in order to bring this better into coherence with the spirit of the Aarhus Convention.*

The EEB will present more detailed proposals in January 2004.

### ***5.2.c Integrating GMO-related decisions into the Aarhus Convention***

On 31 October 2002, the Signatories and Parties of the Aarhus Convention decided that, despite the existence of other regional and international arrangements, such as in the EU, the Convention 'provides the most appropriate international framework for further developing access to information, public participation and access to justice in the field of GMOs'. Negotiations were therefore begun on legally binding options to integrate decision-making on the deliberate release and placing on the market of GMOs into that Convention. In this Convention currently related information on GMOs was included, but public participation in decision-making was excluded (it is left to the decision of the individual Parties to apply the Convention's public participation rules or not).

The European Commission and many Member States are taking an active part in these negotiations. However, there is clear reluctance among them to respect and implement the decision taken by the Signatories and Parties only a little more than a year ago. Suddenly the EU Directive 'on the deliberate release into the environment of genetically modified organisms' (2001/18) is a reason to object to a change in the Aarhus Convention. The EEB rejects this response for three reasons:

- It is in clear conflict with a conscious decision taken by the Signatories and Parties in 2002, indicating that GMO-related decisions should not be treated differently from decisions about other projects and activities with a potential impact on the environment.
- The EU Directive does not provide the same requirements for public participation procedures as the Aarhus Convention.
- The EU obstruction blocks the non-EU countries in the Aarhus Convention from a legally binding international requirement to organise meaningful public participation procedures on GMO release and sales.

The EEB calls upon the Irish Presidency to promote a common position, at the next meeting of the Working Group on GMOs, 24-26 March 2004, of the EU Member States, Accession Countries and European Commission, promoting the amendment of the Aarhus Convention in such a way that it fully includes GMO-related activities, by removing article 6.11 of the Convention and adapting the Annex defining the activities covered by article 6 of the Convention.

## **5.3 ENVIRONMENTAL LIABILITY**

After years of wrangling at EU level over a new law aiming to make polluting companies responsible for cleaning up environmental damage, on 17 December

2003 the European Parliament failed to strengthen a weak Council common position on the Commission proposal for a Directive on Environmental Liability. As a result, a great opportunity to provide an EU-harmonised, strong interpretation of the 'polluters pay' principle was lost.

The European Parliament second reading did not improve the Council text on a number of key provisions, notably on ensuring that polluters, rather than public authorities and broader society, should pay for environmental repair after catastrophes such as chemical leaks, mine spills and wildlife damage caused by GMOs. We now look to Member States to use the flexibility offered to them by the Directive and bring forward robust national laws to make the polluter pay.

#### **5.4. CLIMATE CHANGE**

The EU's leadership on climate issues is as vital as ever. The EEB is looking for leadership from the Irish Presidency in four areas.

The first is to ensure that the EU and its Member States implement clear and effective policies and measures to reduce their greenhouse gas emissions. Notably, the Emissions Trading Directive has given rise to two major policy challenges during the first six months of 2004. The first of these is the setting of the National Allocation Plans (NAP) to establish the targets for the trading system. The second is the amending Directive linking the EU system to the Kyoto project mechanisms, the Clean Development Mechanism (CDM) and Joint Implementation (JI) – see the section below. The EEB calls on the Irish Presidency to ensure that the incentive for domestic emission cuts is not diminished. Furthermore, the proposed Directive on security of energy supply and energy services present a major challenge. The European Commission has taken an atrociously unbalanced approach that makes weak gestures in the direction of energy demand management, while promoting more generation and transmission at huge cost. These priorities have to be reversed.

Second, the EEB deplores the fact that there has still been no progress towards agreeing deeper cuts of greenhouse gas emissions by Annex 1 countries after 2012. While the Irish Presidency will not include a COP, the EU must continue to engage developing countries and our Annex 1 partners to engage in constructive discussions on future commitment periods.

Third, this engagement with developing countries will only be possible with a more serious engagement on adaptation to the impacts of climate change. This will need strong diplomatic activity with the countries of the G77 and China, as well as good faith from the EU and other rich countries. Some progress has been made to clarifying the financial commitments of the Bonn Declaration, but more concrete action is needed to address the urgent needs of the least developed countries that are already feeling the impacts of climate change.

Finally, the Kyoto Protocol was held hostage to Russian internal politics in December 2003 while we waited for ratification. The EU must continue to stress to Russia at every opportunity the importance it attaches to the Kyoto Protocol, and encourage the Russian government to an early ratification. However, at the same time the need to engage Russia should not be used as a excuse for weakening EU legislation.

*The EEB therefore calls upon the Irish Presidency to:*

- *make every effort to encourage Russia to ratify the Kyoto Protocol as soon as possible*
- *reinforce the European Climate Change Programme (ECCP) and the work on policies and measures*
- *work with the developing countries on adaptation and a framework for a post-Kyoto regime.*

## **5.5 EMISSIONS TRADING**

The NGO community has given tentative support to the newly-created emission trading system (ETS) for carbon dioxide. However, this support critically depends on the outcome of two central issues: the National Allocation Plans (NAP) and the proposed linking Directive to allow the use of credits from CDM and JI.

The NAPs are the key to success of the ETS. For the EU to meet its 8% reduction target overall, the sectors covered by the ETS will have to cut their emissions more drastically, since other sectors such as transport have still not been brought under control. The Irish Presidency should take the lead in ensuring that Member States set strong and consistent targets.

The European Commission has presented its proposal for an amendment to the Directive on emissions trading, with the aim of linking credits from the Kyoto project mechanisms, the Clean Development Mechanism and Joint Implementation. This is a potential loophole to the ETS that needs to be treated with the greatest care.

The EEB has some reservations about the proposed amendment and insists on the following essential points:

- We view the emission trading system as a policy to achieve domestic emission reductions in the EU. We see no justification for decreasing the incentive for this domestic action by giving companies access to cheaper credits through the project mechanisms. Given that such a link has been decided on, we call on Member State allocation plans to be correspondingly tightened, and for a cap to be imposed on the total volume of credits allowed into the system. This cap should be applied at entity level and should be considerably below the 6% of allowances discussed by the European Commission.
- The use of so-called carbon 'sinks' in place of emission cuts is counter-productive from the environmental perspective, as well as diverting resources away from improvements in energy efficiency and technologies that are essential for long-term climate reductions. Credits arising from these activities must not be allowed into the EU system.

- A number of highly damaging large hydroelectric projects have already been proposed as CDM projects. These will have large environmental and social impacts, and are not acceptable in the EU system.
- Although nuclear projects are excluded from the first commitment period under the Kyoto Protocol, it is important that this inclusion be restated for the EU system. This system is expected to survive into future commitment periods, and must clearly exclude the promotion of nuclear energy.

*The EEB calls on the Irish Presidency to pay particular attention to the following points.*

- *Ensure that the NAPs produce strong emission cuts in the EU. The overall level must be consistent with the Kyoto target, which means that for the ETS sectors the target must be considerably below 8%.*
- *Strictly limit the number of credits that can come from JI and CDM into the ETS. Apply this cap at an entity level.*
- *Disallow credits from sinks, large hydro plants or nuclear projects under any circumstances.*
  - *Emissions trading should not be used as an excuse to stop further progress in energy taxation/environmental tax reform. Taxation must be further used to tackle growing emissions from other sectors like transport, SMEs and households as well as other activities of those firms concerned by trading only for their emitting installations (offices, transport etc)*

## **5.6 WATER POLICY ISSUES**

### *5.6.a Water Framework Directive: ecological standards and links with other policies*

The implementation of the Water Framework Directive (WFD) at national level is still far from being satisfactory. The EU implementation strategy provides useful and important guidance, which should be duly considered during national implementation. The informal EU water directors' conference in its Rome meeting highlighted the importance of intensifying the work on ecological classification and intercalibration of ecological standards. The EEB fully supports this focus and urges the Irish Presidency to do everything in its powers to facilitate and improve this work process, especially by involving the public. It would be advisable that the Presidency organises special events.

But one of the biggest hurdles for national implementation is the lack of integration and consideration of WFD obligations and objectives in other policies, especially EU agriculture and regional policies, as well as the marine strategy and flood protection.

*The Irish Presidency should ensure that the communication about the WFD between agriculture, regional and water authorities and relevant ministries is improved.*

*Further, the Presidency should try everything to overcome national resistance against an EU legislative flood protection tool closely linked with the WFD.*

### **5.6.b Bathing water protection**

The EEB is keen to see improved integration between the new bathing water protection Directive and the WFD and public participation. While the European Parliament has adopted some appropriate amendments, a dangerous new derogation has been introduced, which is likely to be abused and potentially lead to different protection levels in Europe.

*The EEB urges the Irish Presidency to work towards a Common Position, which accepts the European Parliament's improvements on the link with the WFD objectives and public participation and does not introduce any new derogations from the Commission's proposal.*

### **5.6.c Groundwater protection**

The EEB believes that the Commission's proposal for a new Groundwater Directive undermines established groundwater protection under the 1980 Directive and WFD. It fails to clarify which chemicals to prevent and which to limit from entering groundwater and lacks effective mechanisms for classifying groundwater chemical status and in implementing the no-deterioration obligation. The proposal as it stands is confusing and ambiguous and needs major rewriting.

*Therefore the EEB urges the Irish Presidency to focus the discussion on following issues:*

- **Protection of pristine and near to pristine groundwater from quality deterioration.** *The proposal as it stands would allow the filling up of our remaining unpolluted groundwater with pollutants until a standard is reached or when surface waters fail to meet 'good status' criteria. Therefore we propose to introduce a new 'high chemical status' class on the basis of the river basin analysis carried out under the WFD. Such areas of groundwater would mostly coincide with already protected areas under EU legislation, where human impacts are minor. The deterioration of such groundwater to 'good chemical status' would need to be prevented.*
- **The prevention of input of hazardous substances, including a European prevention list and subsequent measures similar to the WFD article 16 process.** *The proposal as it stands does not establish clear criteria on which substances to prevent from getting into groundwater and which could be allowed up to a certain limit, as established by the 1980 Groundwater Directive (to be repealed in 2013). Additionally, no EU or national measures have been provided to effectively achieve the prevention of input of substances. Therefore we suggest the establishment of clear criteria on the basis of the EU-wide agreed hazard assessment standards and a similar process for the priority substances of the Water Framework Directive. This will require the subsequent establishment of a EU list and prevention measures, which would be merged with the WFD priority*

*substances work. For substances on the prevention lists no standards need be established. Instead, in order to achieve 'good chemical status' a downward trend of the concentration of such chemicals must be proven, further input from new or ongoing human activities be prevented and measures be put in place to ensure that all legitimate and protected water uses are safeguarded.*

The limitation of input of all other pollutants is necessary to achieve article 4 WFD objectives and to progressively reduce the level of purification treatments needed to produce drinking water: As the proposal stands the WFD would be undermined by allowing costs to be taken into account when establishing quality standards. Social and economic costs should be taken into account when deciding whether an environmental standard can be achieved, but not when defining the standard itself. This is the philosophy of all existing EU water legislation and must be reinstated. The relevant standard setting procedure is specified in the WFD and is further clarified by Annex II of the Commission's proposal. But no standards should be set for 'prevented substances'. Furthermore, the list in Annex III is arbitrary and should be deleted.

## **5.7 GENETIC CONTAMINATION OF SEEDS**

In September 2003 the European Commission proposed the last piece of legislation on GMOs concerning a Directive establishing labelling thresholds for genetic contamination of conventional and organic seeds. The proposed thresholds are too high (0.3% for oilseed rape; 0.5% for maize, sugar beet, potato, tomato, chicory; and 0.7% for soya) and will lead to the contamination of the whole food chain. They will make it increasingly difficult and costly for farmers and for the food industry to supply consumers with GM-free products. Even the labelling thresholds of 0.9% for food and feed is likely to be exceeded regularly by producers. This unlabelled seed contamination would be especially critical for organic farmers. If the proposed thresholds are approved, the genetic contamination of conventional and organic crops could become irreversible.

*Therefore the EEB calls upon the Irish Presidency to make every effort to prevent seed contamination and strive to set the labelling threshold of non-genetically modified seeds at the reliable and practical detection level of 0.1%.*

## **5.8. TOWARDS AN EFFECTIVE SUSTAINABLE RESOURCE USE AND MANAGEMENT STRATEGY**

The European Commission has published its communication *Towards a Thematic Strategy on Sustainable Use of Natural Resources*. In the mandate for the Strategy, the Sixth Environmental Action Programme identified various priority actions. Key among these was the request for 'establishment of goals and targets for resource efficiency and the diminished use of resources'. Without such goals and targets in place in the final Strategy in 2005, the crucial backbone of directional guidance ('the mission') that must set the framework will be missing; not only for other Natural Resource priority action areas, but also for action in other Thematic Strategies and policies, such as the Waste Strategy and product policy.

With this in mind the EEB has proposed that this target setting proceeds on three fronts simultaneously in the coming Thematic Strategy:

- A general target: driving in the right direction

As all material use is closely connected to energy use and the production of greenhouse gases, as a general rule the long-term reduction of greenhouse gases can be used as a rough guidance. Material use is responsible for approximately 50% of total fossil fuel use. To limit climate change to a presumably safe level, at least a halving of fossil fuel use is necessary. This combined with a doubling of global welfare, makes factor 4 a desirable EU global short- to medium-term target for abiotic material use in 2020. This is in line with earlier pledges and obligations of the EU at the Rio +5 summit<sup>4</sup>.

This general target would be a political obligation for producers, civil society and governments alike, and would create a reference target for all product, waste, transport and other resource-related policies, and a core criteria for EU and national government spending on procurement, investment and research

- Steering resource policy on priority (biotic and abiotic) resources by developing specific targets for:
  - All crucial biotic resources, with the aim to meet sustainable management criteria. The strategy should propose that such management criteria be modelled along the lines of existing labels such as the Forest Stewardship Council, the Marine Stewardship Council etc<sup>5</sup>.
  - Twenty priority EU material streams. The choice should be based on current knowledge of volume and impacts of such material streams.

The strategy should list the appropriate targets for 2010, 2020 and 2030.

- A sustainable production and consumption approach aiming at creating products and services adapted to the targets defined. Its purpose will be to adopt the functions or need-based approach, covering all major consumption areas such as housing, food, clothing, transport/access, communication, information/education, health and recreation.

*We therefore urge the Irish Presidency to:*

- *ensure that the Commission immediately comes forward with a concrete proposal for targets for the Thematic Strategy on the Sustainable Use of Natural Resources, including a global short- to medium-term indicative target for factor 4*

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<sup>4</sup> At the Earth Summit +5 (New York, June 1997), an EU initiative on eco-efficiency 'to consider setting a target of achieving a tenfold improvement in productivity in the long term, with a possible four-fold increase in the next two or three decades' was agreed.

<sup>5</sup> Detailed worked example given in EEB position paper: EEB position TSSUNR 14 November 2003 at [www.eeb.org](http://www.eeb.org) under Environmental Action Programmes

*reduction by 2020 for abiotic materials as well as specific management and material flow targets on priority biotic and abiotic resources*

- *emphasise that in order to translate the targets into reality the Strategy must include a strong consumption area innovation focus, where innovation of production and consumption approaches is based on functions and needs and is aimed at all major consumption domains.*

## **5.9 WASTE POLICY ISSUES**

### *5.9.a Waste prevention and recycling strategy*

Waste prevention encompasses activities that reduce both the quantity and the hazardous character of wastes. These activities are applicable on a life-cycle basis and can be loosely classified as the elimination of hazardous substances, reduction at source and product re-use.

Community policy<sup>6</sup> upholds that waste prevention is the primary objective for a good EU waste management strategy. The 1996 Waste Strategy review already indicated that the Community's achievements in the prevention of waste generation are not satisfactory, given that waste quantities have, on average, continued to grow.

Despite this, waste prevention strategies and targets are not discussed in depth by the Commission Communication *Towards a Thematic Strategy on the Prevention and Recycling of Waste*. Propositions on waste recycling measures are also very modest. Waste prevention experiences have been developed in many EU countries, as is shown by a comprehensive report on waste prevention initiatives successfully undertaken in several EU countries.<sup>7</sup> However, the Communication does not propose any avenue for serious discussion of waste prevention.

The EEB strongly believes that the only approach that can make a difference is the setting of EU-level waste prevention and reduction targets, such as prevention of generation at source, prevention of hazardousness and reduction of waste for disposal. In order to be able to propose such targets there is an urgent need for a structured discussion during the Spring Summit of 2004.

*The EEB therefore calls on the Irish Presidency to:*

- *Ensure that the Commission immediately comes forward with a concrete proposal in preparation for the Thematic Strategy on Waste Prevention and Recycling, for*

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<sup>6</sup> Commission Communication COM(96) 399 final of 30.07.1996: 'Communication from the Commission on the review of the Community Strategy for Waste Management' and the Waste Framework Directive – 91/156/EEC COUNCIL DIRECTIVE of 18 March 1991 amending Directive 75/442

<sup>7</sup> Oekoinstitut 'Waste Prevention and Minimisation', Final Report, 29 July 1999. This report was commissioned by DG Environment.

*quantitative targets on waste generation prevention, reduction in waste disposal and reduction waste hazardousness.*

- *Propose a call from the Environment Council on the Commission to complete its work on specific waste streams, setting recycling targets and making full use of individual producer responsibility. Priority to be given to a draft biodegradable waste directive in 2004 with mandatory separate collection targets.*

### **5.9.b Waste shipment regulation**

The EEB welcomes the Commission's proposal on the revision of the Regulation on Shipments of Waste. However some important issues need to be strengthened. The regulation must have the appropriate legal basis (article 175 - protection of the environment) as it is not primarily a market instrument and authorities must be given the options to object to waste movements on the basis of technical and waste management policy criteria. This clearly reflects Article 4(1) of the Basel Convention whereby authorities may object to the import of hazardous waste, either for recovery or disposal.

*The EEB therefore calls on the Irish Presidency to ensure that the following elements are supported in the Council position:*

- *legal basis of article 175 (1) of the treaty*
- *criteria for objections to movements of waste for recovery (article 13) should include technical criteria to dissuade sham recovery, - on the basis of calorific value, the presence of harmful substances in the waste (or in the final product) or its mixed nature. Furthermore, to allow objections to be based on national and regional waste management policy, in particular in respect of the proximity and self-sufficiency principles*
- *transposition of Basel Convention requirements (Basel Article 4[9]a), whereby authorities can object to the movement of hazardous waste if the exporting state already has the technical capacity and necessary facilities for treatment at home*
- *the OECD and EU hazardous waste lists should be given equal hierarchical footing to the Basel list*
- *a requirement for prior notification for the movement of non-hazardous wastes, in order to have complete waste movement records and discourage sham non-hazardous waste movements*
- *reinforce the regulation which regards ships as waste, by clarifying their definitions in the annexes, addressing their particular peculiarities as waste (ie their location, when they become waste and when they are in transit)*
- *spread good practice by requiring all waste shipment notifications to be made publicly available, through appropriate means such as the Internet.*

### 5.9.c Mining waste

The EEB welcomes the European Commission's proposal for a Directive on the management of waste from the extractive industries, which aims to regulate the production, treatment and storage of waste from mining and quarrying. The EEB believes that such a Directive is a vital step towards minimising the risk of accidental spills and preventing day-to-day pollution from extractive wastes of freshwater ecosystems across Europe. One of the most efficient ways to minimise the impact of mining wastes is avoiding its production altogether through operational planning, prospective and extraction practices as well as use of cleaner technologies.

In the current Commission proposal the EEB considers that the proposal requires strengthening.

*The EEB therefore calls on the Irish Presidency to ensure that the Directive:*

- *ensures that waste prevention, in quantity and harmfulness, is implemented by verifying the choices made on the design, evolution and choice of prospecting, extractive and ore treatment practices from which the wastes are generated as well as the design and choices of the waste management practices.*
- *covers all the waste from the extractive industries by all the provisions of the Directive, including the so-called non-hazardous inert waste (eg silts and coal ashes, fines from quarries).*
- *ensures safety provisions for tailings ponds and the stability of extractive waste facilities through a procedure which makes the approval, registration, enforcement and amendment of their design subject to external scrutiny.*
- *adopts pollution control measures for closed/abandoned waste facilities.*
- *implements measures to prevent pollution from existing waste facilities during the transitional period.*
- *ensures water and soil protection according to the Treaty and Community environmental legislation, in particular the Framework Directive on Waste and the Water Framework Directive, especially for abandoned excavation voids as well as freshwater and coastal water ecosystems.*
- *Develops criteria in the waste management plan for the closure and after-closure period of a waste facility for preventing or at least minimising long-term negative effects and to assure the long-term geo-technical stability of any dams or heaps rising above the ground surface.*
- *controls the location of waste facilities in Community or national sites for the protection of endangered habitats and species and their areas of influence as well as in other protected areas, such as those for drinking water.*

- *establishes an inventory of new waste facilities to improve their management, to prevent future and reduce current environmental impacts and to avoid the existing problem of uncertain 'historical' wastes.*
- *develops a management policy regardless of the period of deposition of extractive waste.*
- *leads Community's waste policy priorities to prevention and minimisation of waste and its impacts at source through proper design and planning of extractive activities as well as extractive waste management and disposal activities.*

#### **5.9.d Batteries: towards a cadmium ban**

The recent Commission proposal on the revision of the Directive on Batteries and Accumulators COM(2003)723 does not intend to follow the original aim of the proposal, which was to introduce a ban on cadmium in new products, as batteries are the major source of cadmium released into the environment, and substitutes are already available.

This resistance to proposing a cadmium ban is in sharp contrast to several principles in the Commission's own White Paper on a *Strategy for a Future Chemicals Policy*. It is also in direct contrast to the opinion of the Council, the European Parliament and the Commission itself in the negotiations of the Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS). In June 2001, the Council unanimously agreed that, from 2007, new electrical and electronic equipment must not contain cadmium. We see no valid argument to exempt cadmium batteries from this ban.

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

- *includes a phase-out of cadmium.*
- *includes a minimum collection rate of 90% for all batteries.*
- *sets recycling rates of 95% for automotive batteries and 70% for remaining batteries.*
- *sets up provisions for the development of workers' environmental and health standards in dismantling and recycling operations.*
- *includes individual producer responsibility.*

#### **5.9.e. Biowaste Directive**

Since February 2001, the Commission seems to have stopped working on a draft proposal on organic waste (biowaste composting). The rationale for this lies in the conviction that composting is linked to the development of the soil Thematic Strategy. Composting does indeed contribute to sustainable farming, along with other

important measures. However, the EEB sees it primarily as an element of waste prevention. Composting contributes to the achievement of waste recycling targets, entailing the need to implement a strategic approach.

A strategic approach to management of biowaste is one that will include provisions for source separation, either through mandatory source separation and through separate collection and composting targets as the key element to achieving and respecting waste management, compost quality, soil improvement and climate change goals and policies. More concretely, a strategic approach will contribute to:

- fulfilling the targets of the Landfill Directive and the waste hierarchy (with priority to be given to prevention and recycling).
- compliance with recommendations of the EU Soil Strategy (promoting the use of quality composted products while preventing contamination of soils).
- achieving the goals of the ECCP, as far as the role of soil organic matter as a 'sink' for carbon is concerned, and the possibility of replacing mineral fertilisers, thereby avoiding emissions related to their productions and application.

*The EEB calls on the Irish Presidency to take leadership on this issue and encourage the Commission to come forward with the proposed Directive on Biowaste by the end of 2004 which:*

- *sets quantitative targets for organic waste to be separated and composted.*
- *outlines programmes in the short-, medium- and long-term to implement schemes for source separation of organic waste according to different situations.*
- *sets common limit values for 'high quality' composted products stemming from source-separated organic waste so as to allow their marketing across Europe.*
- *promotes, through supportive programmes, home composting and, through simplification of permit requirements, community composting as activities most consistent with the 'proximity principle', the reduction of waste at source and the importance of the direct involvement of populations.*
- *outlines roles and technical features of biological treatment for mixed municipal solid waste or 'rest waste' as a means that could further contribute to the reduction of biodegradable waste to be landfilled. This will require also the determination of conditions and permit requirements for the use of these materials.*

## **5.10 AIR PROTECTION POLICIES**

### *5.10.a Air pollution from shipping*

Over the last years, air polluting emissions from land-based sources have gone down, and are foreseen to continue to do so, while those from shipping are showing a steady rise. As polluting emissions from ships are virtually unregulated, shipping is one of the sectors with the greatest remaining SO<sub>2</sub> reduction potential. In order to protect human health and the environment, significant additional cuts in European SO<sub>2</sub> emissions are necessary. Such reductions are also needed for the Community to achieve the interim environmental objectives for 2010 as stated in the directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants. Measures leading to a marked decrease in the emissions from shipping are a clear necessity in order to reduce acidifying emissions in Europe. In addition, ship emissions also contribute to other air pollution problems, notably health-damaging particulates and ground-level ozone.

Global action under the International Maritime Organisation has so far yielded little in the way of results. To get emissions down as required by European air quality legislation, as well as to put pressure on the global negotiations, moves will have to be made both at national and EU levels. The first step must be to get legally binding EU rules to set minimum fuel and/or emission standards as soon as possible, and to bring about sufficiently large reductions more quickly, economic instruments, such as environmentally differentiated charges, will be needed to supplement those rules.

The EEB is concerned that although the European Parliament had its first reading of the Commission proposal on the revision of the Directive 1999/32/EC as regards the sulphur content of marine fuels in June 2003, under the last two Presidencies there has been almost no progress in Council. In order to achieve the EU interim environmental targets, it is necessary to start reducing ship emissions as soon as possible. We urge the Irish Presidency to speed up delayed Council treatment of this issue and to stop procrastinating discussions in the Council Working Group.

*The EEB calls upon the Irish Presidency to:*

- *ensure priority treatment of the sulphur content of marine fuels and come to a common position on this issue at the March 2004 Council. This common position needs to support the European Parliament's unanimous recognition of the necessity for far-reaching measures in reducing shipping emissions in the proposal to revise Directive 1999/32/EC, namely by:*
  - *calling for a 80% reduction in SO<sub>2</sub> emissions from seagoing ships by 2012 at the latest (in two phases, including the southern European seas);*
  - *requiring strict monitoring and fuel sampling procedures;*
  - *requesting the Commission to come forward with comprehensive marine fuel standards*
- *In addition to which, in order to protect local port and coastal areas air quality, a stricter limit value of 0.2% S should be introduced for territorial waters*
- *work towards the introduction of EU-wide transport charging that applies marginal social costs pricing, including damage caused by exhaust emissions.*

### ***5.10.b Fourth air quality Daughter Directive on heavy metals and PAH***

On 16 July 2003 the Commission adopted a proposal for a Directive relating to arsenic, cadmium, nickel, mercury and polycyclic hydrocarbons (PAH) in ambient air. The EEB strongly criticises the Commission's proposal as it would result only in the monitoring of these substances, and is not ambitious enough to protect people's health and the environment.

Arsenic, cadmium, nickel and PAHs are known as possible genotoxic human carcinogens for which no threshold for adverse effects on human health can be identified. These substances can cause lung and skin cancer, kidney dysfunction, and cause damage to the central nervous system, the respiratory tract and the immune system, among other effects. Therefore exposure to these pollutants should be as low as reasonably achievable.

The EEB insists that binding limit values for arsenic, cadmium, nickel and PAH are introduced. These limit values must be set in order to guarantee the protection of people's health and the environment, taking into account the precautionary principle. It is essential that this Directive provides legally enforceable standards throughout the Community, in order to achieve a substantial improvement in air quality, protect the health of EU citizens and to spur technological innovation.

*The EEB calls upon the Irish Presidency to:*

- *achieve a common position on the Parliament's first reading of the Directive on arsenic, cadmium, mercury nickel and PAHs in ambient air that contains binding limit values at the levels that have been proposed by the working groups on heavy metals and PAHs.*
- *ensure that, additionally to this, the Directive contains ambitious long-term targets derived from strict health criteria.*
- *ensure policy coherence between the EU air quality directives and other important policy areas such as the Water Framework Directive and the EU Strategy on Soil Protection.*

## **5.11 PROTECTION OF BIODIVERSITY / NATURE PROTECTION**

The EU has committed itself to halting the loss of biodiversity by 2010 in its Sustainable Development Strategy. The effective implementation of the Birds and Habitats Directives which establish the Natura 2000 network will be crucial for achieving this goal. Securing adequate EU funding is essential for the long-term management of the network which has to follow the designation of Natura 2000 sites.

The European Commission has committed itself to publish a communication on 'Financing Natura 2000' following the work of the working group of Article 8 of the Habitats Directive in 2002.

*The EEB calls on the Irish Presidency to ensure effective EU co-financing for the protection and management of the Natura 2000 network.*

The EEB believes that this can be achieved by directing a substantial amount of the Rural Development Budget to meeting the objectives of Natura 2000. In addition, a clear environmental objective should be introduced in the new Structural Funds Regulations, part of which should be earmarked for Natura 2000. The LIFE Nature instrument should be continued, not only in the period of 2005-2006, but also in the new programming period (2007-2013) and its budget substantially increased in order to take account of the accession of ten new countries with outstanding biodiversity and extensive natural habitats. LIFE is also crucial in guiding the integration of Natura 2000 objectives into other funds and in demonstrating best practice.

## **5.12 SOIL PROTECTION**

The EEB welcomes the European Commission's open and transparent process in order to develop a Thematic Strategy for the Protection of Soil with the input from expert working groups and a stakeholder Advisory Forum. The Sixth Environmental Action Programme recognised that soil is a finite resource which is under environmental pressure and advocates a sustainable use of soil.

So far there has been no European policy which was directly concerned with soil protection. Soil problems have been ignored for too long and urgent action is needed to counter disconcerting trends of soil deterioration caused by erosion, desertification, soil sealing, contamination, biodiversity loss and other imminent threats and specifically to support the achievement of the EU's environmental objectives to achieve 'good water status' by 2015 and halt the decline of biodiversity by 2010.

The EEB fully supports the European Parliament's resolution of November 2003 calling on the Commission to define qualitative and quantitative objectives geared towards reversing 'alarming trends' of erosion, compaction, sealing, the removal and contamination of soil. The EP also wants the Commission to produce guidelines to prevent soil pollution, targets for reducing it and timetables for curbing the accumulation of dangerous substances in the soil which pose an environmental and health hazard.

The European Commission should present its Communication on Erosion, Organic Matter and Contamination as well as a Directive on Monitoring of Soil by July 2004. Whether soil protection will receive the same level of protection at the EU level as other natural resources like water and air will also depend on political support from the Council.

*The EEB urges the Irish Presidency to encourage the European Commission to consider the following in its proposal for an EU strategy:*

- *Without strategic targets and quantified soil objectives embedded in legislative action the integration of soil protection in sector policies is likely to fail.*
- *The overall aim of the strategy should be to halt any further deterioration of soils and enable soil to provide its multiple functions for ecological needs and human activities. The strategy should recognise the importance of bio-diversity indicators for soil monitoring, in line with the conclusions from the World Summit on*

sustainable development, as physical and chemical parameters alone are insufficient.