

EEB'S ASSESSMENT OF THE ENVIRONMENTAL RESULTS OF THE SLOVENIAN PRESIDENCY OF THE EU, January to June 2008

*Slovenia's Presidency: Good on energy and biodiversity,
Bad on soil, agriculture and waste*

SUMMARY OF EEB'S VERDICT ON THE TEN GREEN TESTS

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SUMMARY

From the environmental point of view, for the Slovenian Presidency obviously the Energy/Climate Package was the most important issue and caught the most attention. Slovenia's role was to facilitate progress in the discussions on the four main proposals that comprise this Package so that during the French Presidency, before the end of this year, agreement can be reached not only between the Member States but also with the European Parliament. This ambitious time-schedule, rather unique for such serious proposals, is required in order for the EU to be able to play a global leadership role in the run-up to the climate summit in Copenhagen, December 2009.

The Presidency did manage to get the Member States' commitment to seek an early agreement, but difficulties emerged on the way. On the one hand there was resistance from some of the New Member States against using 2005 as base-line (instead of 1990) and on there was also other pressure from the industrial sectors for free CO2 emission allowances after 2012. On the international level the strategy now seems to be to wait for the US elections results. With regards to the Renewables and Carbon Storage Directives some progress was made.

On the CO₂-and-cars issue, the Presidency was sidelined by the French-German bilateral agreement whereby France gave up its initial strong position in exchange for political support in unrelated areas.

With regards to bio-fuels, the Presidency found an able compromise for the dilemma where the debate on sustainability criteria should be held, under the Energy Council (in relation to the Renewables Directive) or under the Environment Council (as part of the Fuel Quality Directive). A mixed group of officials is now looking into this matter, but unfortunately not yet with impressive results. The debate the Presidency organised at the Informal Environmental Council about second-generation biofuels and sustainable forestry was positive.

In some areas the Presidency could not move because the Commission came out late or not at all with proposals. This includes the CAP Health Check, the Communication on Implementation and Enforcement of EU environmental law. In other cases, such as with the Directives on Soil Protection and on Access to Justice, it decided on a wait-and-see attitude.

EEB's most negative assessment is with the role the Presidency played in the negotiations with a European Parliament delegation on the Waste Framework Directive. It put pressure on the Parliament to give up some important elements of its first reading. The EEB had hoped the Parliament would stick to its guns, but it didn't.

The most positive assessment is on biodiversity. The Presidency ensured support from the EU's political leaders for Natura 2000 at a time when climate change was dominating the environmental debates in Spring Council. This support was particularly important in the run-up to the 9th Conference of Parties of the Biodiversity Convention in Bonn in May.

EEB's VERDICT ON THE TEN GREEN TESTS

INTRODUCTION

This is an assessment of the Slovenian Presidency by the European Environmental Bureau (EEB), the largest federation of environmental citizens' organisations in Europe. EEB has a mandate from its members to work on environment-related issues, a broad agenda comprising 'traditional' environmental issues, as well as sectoral and horizontal policies with a direct or potential environmental impact, sustainable development, participatory democracy, and so on.

EEB views the six-month Presidency as a convenient period over which progress on the EU's environment-related policy and legislation can be measured. We appreciate that a Presidency cannot make decisions on its own. It needs the cooperation of the Commission, European Parliament and other Member States. But the Presidency still has a special impact, whether on how it chairs discussions or how it prioritises practical work and the profile it gives specific issues.

But EEB's Assessment is not an overall political assessment of the Slovenian Presidency's performance. We are not assessing its role on general foreign affairs issues, internal security matters, migration policies, etc. Our assessment is based primarily on the Ten Green Tests we presented at the start of the Presidency.

EEB presented its Ten Green Tests and Memorandum to the Slovenian Presidency at the end of December 2007. We had previously sent an initial letter listing our priorities for the Presidency, which covered most of the issues in the Green Tests. We also established good contacts with the Minister for Environment and his staff, and our Slovenian members had their own specific activities to promote EEB's ambitions over this period.

Regarding the tests on climate and energy, and its assessment, EEB was, as usual, ably assisted by Climate Action Network Europe. The European Federation for Transport and Environment assisted on the test on transport.

On the Ten Green Tests, item-by-item, EEB reached the following conclusions:

1. WORK TOWARDS A CLEAN AND SAFE ENERGY FUTURE

- *Reach an effort-sharing agreement between Member States that guarantees by 2020 energy production with a minimum of 20% environmentally sound renewable resources.*
- *As long as environmentally and socially sound production cannot be guaranteed, abandon the 10% biofuels target for 2020.*
- *Accelerate energy efficiency as an essential element of EU's energy policy as well as product and building policies.*
- *Carbon Capture and Storage operate only under strict environmental, safety and liability requirements, determined by the EU based on independent studies and tests, and laid down in EU law. Funding for such studies to come from special fees imposed on current fossil fuel users for electricity and large-*

scale heat production. All subsidies to coal energy in the EU to be phased out without further delay.

Verdict: on balance positive

Renewables Directive

In the Council progress was made on important elements of the Renewables Directive, such as on the flexibility system between Member States. The Presidency also launched discussions on how to improve the trading system of renewables production obligations as proposed by the Commission.

Bio-fuels target

The bio-fuels target has not been dropped but the European Council has made it conditional on success with second generation bio-fuels, next to effective sustainability criteria. The work on these criteria is ongoing. The Presidency also kicked off a discussion about potential conflicts between second generation bio-fuels and biodiversity protection (see further assessment of test 4).

Energy efficiency

Clearly the priority for the Presidency was to make progress on the Energy/Climate Package. But the Presidency was involved in co-organising the 'Sustainable Energy Week' which went beyond that package and focussed on energy efficiency as well. The Spring Council, though mainly devoted to the Package, did call for, within the framework also of the evaluation of the Lisbon Strategy implementation, energy efficiency activities. It concretely asked the Commission to bring forward "*its legislative proposals on VAT rates, due in the summer of 2008, and working with the Member States, to examine areas where economic instruments, including VAT rates, can have a role to play to increase the use of energy-efficient goods and energy-saving materials.*"

The European Council recognised that addressing energy and climate change is also a matter of shaping values and changing citizens' behaviour. It urged national governments and European institutions to set an example by making substantial progress towards reducing energy use in their buildings and car fleets.

Carbon capture and storage (CCS)

As one of the dossiers within the 'climate-energy' package, CCS received much attention. The Presidency established informal contacts with the European Parliament to work on the package from an early stage. It asked the Member States for its individual opinions and published responses on the internet. Agreement on several points on the dossier is still outstanding, needing further clarification, particularly from a technical viewpoint. Most of the issues that EEB had raised in our letter to the Council on CCS are part of the issues that require more information. Two Council members expressed reservation with the proposal in relation to the global and local environmental impacts, suggesting a limitation of the scope of the proposed Directive to the demonstration phase until more information on safety and viability is available.

2. LEAD ON CLIMATE BY EXAMPLE

- *Reach an effort-sharing agreement amongst Member States that ensures 30% domestic greenhouse gas reduction compared with 1990 for the EU, with all Member States accepting a fair share of the common target.*
- *Agree on an Emission Trading Scheme that gives certainty on emission reductions through a top-down EU-wide cap, sending a clear carbon signal by using full auctioning and clear and stringent limits on the use of external credits.*
- *Work towards a binding post-Kyoto agreement that ensures that temperature increase will remain below 2 degrees.*

Verdict: *mixed*

Effort sharing

The Commission proposal presented in January was based on only a 20% EU target to start with and the Presidency did not specifically stand up to this premise and argue for a 30% target as the starting point. A proposal elaborated by the Hungarian government that significantly complicated negotiations among Member States on this issue and that was supported by most of the other new Member States did not get the Presidency's signature, but at the same time Slovenia was not able to prevent the publication of the alternative proposal either. The main achievement of the Presidency on the package, including the effort sharing proposal, was getting the commitment of all Member States that they would strive to finalise the co-decision process by the end of the year.

Emissions Trading

The main discussion in Council on the Commission proposal for a revision of the Emissions Trading Directive focused on exemptions from auctioning for sectors on the grounds of concerns over international competitiveness and the flexibility to achieve targets in terms of the access to external credits. The Presidency did not add to these attempts at watering down the proposed legislation, but it was also not able to lead the discussions towards more progressive areas.

International negotiations

At the two sessions of the UN negotiations on Climate Change that fell into the first half of 2008, the first steps in the Bali Action Plan, the EU under the Slovenian Presidency did not represent an inspiring force.

In contrast with other progressive Parties to the talks, the EU did not present any seemed well-meaning but without any specific or major new ideas. In that sense, the Presidency had not been able to advance the preparatory work of the EU sufficiently to facilitate agreement on specific positions on important issues such as financing.

3. REDUCE ENVIRONMENTAL IMPACTS OF ROAD TRANSPORT

- *Regarding the CO2 emissions directive for passenger cars:*
 - *Limit average CO2/km emissions to 120 g/km and set 80 g/km target for 2020.*
 - *Reject the integrated approach and inclusion of biofuels, focusing instead on technical means only.*
 - *Refuse differentiation on the basis of the weight of cars, and ensure differentiation means an obligation for high-emitting cars to reduce more, for example by basing it on the car's 'footprint'.*
 - *Include stringent financial sanctions for cars with emissions over 150 g/km.*
- *Include in the Fuel Quality Directive:*
 - *Minimum performance standard of 60% GHG-saving for biofuels in comparison to fossil fuel;*
 - *Clear provisions for 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;*
 - *Review mechanism to assess impacts that the agreed target will have on sustainability of biofuel production;*
 - *Scrap RVP waiver for fuels containing bio-ethanol.*
 - *Call for bringing 10 ppm sulphur content requirement of inland waterway gas-oil forward from 2011 to 2009.*
- *A EURO VI Directive for lorries and buses with stringent limit values that would require fitting particle filters and de-NOx catalysts.*

Verdict: mixed

On CO2 emissions from cars:

The Presidency had no easy role as the two main car producing nations, France and Germany, announced that they would try to come up with a compromise position between the two of them. The agreement the two countries finally came up with, on the 10th of June, substantially weakens the Commission's proposal. It includes a postponement of the entry into force disguised as a so-called "phase-in" and an additional weakening of the target disguised as giving extra CO2 credits for so-called "eco-innovations" that were not foreseen in the Commission's proposal. The EEB is surprised the French government agreed to this deal, as originally its Minister for Environment, Energy, Sustainable Development and Spatial Planning was critical of the Commission proposals and was promoting a system that would not encourage car-producers to increase the weight of the cars in order to be allowed higher emissions.

The Presidency put a long-term target on the table, which is positive in principle. Unfortunately its proposal is not ambitious enough and, most importantly, not binding at this stage, but instead dependent on a later review.

The developments of the last six months are not encouraging and show how powerful companies can frustrate environmental policies.

Fuel Quality Directive

The decision by the presidency to set up an ad hoc working group dedicated to developing a system of safeguards for bio-fuels was positive, as was this group's efforts to work closely with the European Parliament whose Environment Committee had voted on a number of important criteria and principles. However, although this group has not yet yielded results, preliminary documents indicate that the criteria and provisions still fall short of what is needed to avoid severe negative impacts. Most critically, indirect land use change is not addressed and also a greenhouse gas (GHG) saving threshold of 60% that applies immediately is far from certain. Moreover there is a very big risk that the presence of ineffective and incomplete sustainability safeguards will avoid a critical review of the 10% bio-fuel target.

EEB's views about bringing a reduction requirement on sulphur content forward to 2009 was supported by the European Parliament but the Council did not pay attention to this.

Euro VI Directive

EEB acknowledges the contribution of the Council for the fast progress with the EURO VI regulation on engine emissions from heavy duty vehicles. We are pleased to see consistent dedication to reaching a timely agreement during First Reading. EURO VI standards will play a vital role in the successful implementation of the new Air Quality Law and should be enforced as soon as possible in view of the pressing problems with particulate pollution in most Member States. Yet, we did not see the Council clearly demanding an earlier application of the regulation, i.e. 2011, which would streamline it with the targets and dates of the Air Quality Directive.

4. A THOROUGH AND HONEST CAP HEALTH CHECK

- *Full involvement of the Environment Council.*
- *Serious assessment of how much existing instruments such as cross compliance are sufficiently effective in improving environmental quality.*
- *The start of a political debate about the medium- to long-term objectives for a reformed post-2013 CAP designed to meet the global challenges of climate change, biodiversity and water management.*
- *A critical reflection on the impacts of biofuel support measures on the protection of key resources such as soil, water and biodiversity within agricultural production systems.*

Verdict: *Negative*

During the Slovenian presidency, the Council adopted its position on the Commission's Communication on the CAP Health Check. The Slovenian presidency took little initiative on the Health Check and focused mainly on simply facilitating a Council position. Although the Commission's Communication was a disappointment on many fronts, it did at least acknowledge the 'new' environmental challenges the CAP should meet: climate change, water and biodiversity. However even the very modest proposals it put forward to meet these challenges were met with stiff

opposition in the Council. Moreover, the Environment Council was not really involved in the Council discussions, little consideration was given to the effectiveness of cross compliance in improving environmental quality with all focus on simplification of the instrument, and the start of a political debate about a CAP post 2013 was left entirely to the French presidency.

In May, the Council presented concrete legislative proposals, which will be dealt with under the next Presidency.

5. SECURE GM-FREE FARMING AND CONSUMER CHOICE IN EUROPE

Prevent genetic contamination of conventional and organic farming through:

- *strict purity standards for GM contamination of seeds, legally and technically established at the reliable and practically feasible detection limit of 0.1%;*
- *uniform and binding Community rules giving Member States the right to set up GM-free zones at local, regional, or even national levels;*
- *a strictly precautionary approach to any applications for approval and re-approval of GMO varieties for cultivation.*

Verdict: *neutral*

The delay strategy pursued by the Commission on both seed contamination and coexistence gave no chance to the Presidency to play any significant role on these dossiers. As far as the authorisation of GMO varieties for cultivation is concerned, the Presidency supported the French proposal to improve the decision-making process before taking any decision.

6. A COHERENT FRAMEWORK FOR INDUSTRIAL POLLUTION CONTROL

- *Keep the recast of the IPPC Directive water tight: stick with the scope of Commission's proposals for change.*
- *Maintain existing Emission Limit Values in sectoral directives as a critical safety net and ensure their tightening to reflect emission levels achievable through application of Best Available Techniques(BAT).*
- *Ensure transparency in implementation by making permit applications and permits permanently available to public on national websites.*
- *Make using the BAT Reference Documents (BREFs) by local competent authorities obligatory to the permitting process.*
- *Establish BREF review as a trigger for permit review in order to secure continuous improvement in environmental performance;*
- *Reject an emissions trading scheme for the local pollutants sulphur dioxide and nitrogen oxides. Ensure full implementation of the existing Directive and support mechanisms for exchange of best practice between permitting authorities.*

Verdict: *neutral*

At the beginning of the year, the Presidency was absorbed by the Energy/Climate package and car-related issues, so it only slowly started to organise discussions in the

environment working group under the Council. It is too early to say in which direction it will go.

7. IMPROVE WASTE FRAMEWORK DIRECTIVE TO BOOST PREVENTION AND RECYCLING

Refrain from pressure on European Parliament to give up key elements of its first reading position, in particular its demands for:

- *overall EU targets for prevention and minimum recycling rates, including an overall EU objective of stabilisation of waste generation by 2012 and minimum recycling rates (50% by 2020 for municipal solid waste and 70% for industrial, commercial and construction and demolition waste);*
- *a separate Directive to ensure the recycling of biowaste;*
- *regeneration of waste oils;*
- *keeping the binding five-step waste hierarchy;*
- *not reclassifying municipal waste incinerators as energy recovery.*

Verdict: *negative*

The Slovenian Presidency did not refrain from putting pressure on the European Parliament to accept a watered-down compromise on the Waste Framework Directive, proposing merely cosmetic changes to the Common Position. It convinced the Parliament to give up on all key elements of its first reading and the Environment Committee to vote to accept inadequate recycling targets that merely reflect current performance levels in the Member States.

The resulting Waste Framework Directive fails to address the emergency of resources and climate threats because:

- Discussions on waste prevention targets have been delayed until 2014
- EU recycling targets for households waste have been considerably weakened and are now focusing on 4 materials (paper, metal, plastics and glass). The Directive will not include recycling targets for industrial and manufacturing waste (around 20% of waste amounts) and only 70% for construction and demolition waste.

In addition, several distorting elements are now included in the Waste Directive, including:

- The reclassification of some municipal incinerators as a recovery operation
- The possibility for Member States to declassify waste as “by-product” allowing potentially hazardous materials to escape waste controls and even to be exported to the developing world.

8. KEEP WORKING ON THE SOIL FRAMEWORK DIRECTIVE

After the failure at the December Environment Council, find a compromise between Member States that will include:

- *a common approach to identifying contaminated sites and drawing up inventories;*
- *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 over clean-up;*
- *a mandatory chemical analysis as part of the soil status report.*

Verdict: *negative*

The Presidency did not take visible initiatives to put the issue on the agenda again after the veto of five Ministers at the Environment Council in December 2007.

9. BIODIVERSITY COP9 AND COUNTDOWN 2010: SHOW EUROPEAN LEADERSHIP BY SETTING GOOD EXAMPLE

- *Showcase protection regimes as established under Birds and Habitats Directive as effective tools for nature conservation and key drivers for sustainable development.*
- *Introduce an EU proposal on legally binding international regime of strict liability and redress for environmental damage arising from transboundary movement of GMOs/LMOs (living modified organisms).*
- *Push for a robust certification system to ensure sustainability of production, transport and consumption of biofuels in the EU as well as worldwide.*
- *Take bold initiative to intensify and broaden biodiversity protection as part of a climate adaptation strategy.*
- *Initiate investigation on practical measures taken by Member States implementing the objective of halting biodiversity loss by 2010.*
- *Continue the work on the voluntary Initiative Business and Biodiversity, and set clear guidelines for the business sector.*

Verdict: *positive*

Thanks to the Slovenian Presidency, the Spring Council conclusions included a very supportive and robust statement on biodiversity protection, the COP 9 and, most crucially, a commitment from heads of state to the implementation of the Natura 2000 network as Europe's contribution to a global network of protected areas. The discussion papers distributed at the informal Environment Council were of a high quality, critically assessing the role of second generation bio-fuels and their impacts on forest biodiversity, underlining the importance of close to nature forest management for adaptation to climate change.

As already mentioned under test 3, the presidency did push for a certification scheme for bio-fuels although the preliminary outcomes of these negotiations indicate that the scheme will be far from robust.

An investigation on practical measures taken by Member States to implement the objective of halting biodiversity loss by 2010 was taken by the Commission in a mid term review of the biodiversity action plan. Readiness among Member States to contribute to this assessment by delivering data was not particularly great. The Slovenian presidency's continued work involving stakeholders in the meeting of the nature directors was also positive.

10. IMPROVING ENFORCEMENT OF ENVIRONMENTAL LAW

- *Adopt an improved version of the proposed Directive on protecting the environment through criminal law, pending the entry into force of the Reform Treaty, which would allow EU to set standards for penalties.*
- *Hold a broad debate on improving implementation and enforcement of EU environmental law.*
- *Make proposals for a substantial increase in the Commission's capacity to deliver on its enforcement obligations and the capacity of national and local government to enforce EU environmental law, including through the EU cohesion policy.*
- *Increase public involvement, through open and transparent infringement procedures, and access to justice as required by the Aarhus Convention. Relaunch negotiations on the Access to Justice Directive, along the lines of the Commission proposal and EP amendments.*

Verdict: mixed

Environmental Crime

The Presidency and the Parliament Rapporteur agreed on a compromise which made it possible to move forward with the environmental crime directive despite legal constraints. These issues appeared due to a verdict from the European Court of Justice that under the current Treaty the EU is not entitled to prescribe penalty levels. So the Directive could only cover the principles of environmental crime and definitions. Both in Council and in Parliament concerns rose about the scope of the Directive, meaning that the Directive should only cover legislation derived from EU law. The result was a directive that has a list of specific pieces of EU legislation in an annex, which makes it very clumsy in the sense that each time new legislation is adopted it needs to be specifically amended into that annex. However, at least this framework for environmental crime will exist in the near future, which is some progress.

Improvement of Enforcement

The Commission failed to come out with a Communication on the implementation and enforcement of EU environmental law. Therefore a discussion could not start.

Access to Justice

Inside the EU, the Presidency did not react to the studies produced by EEB and Milieu (in the second case for the Commission), that showed that the EU needs to adopt a Directive on Access to Justice in order to ensure that in all Member States the public concerned and environmental organisations have the right to go to court to challenge violations against environmental law by authorities or private actors. The Commission organised a big conference on this issue on the 2nd of June where the French future Presidency also refused to reopen the debate on a draft directive that the Commission had already put on the table in 2003.