

**EEB MEMORANDUM  
TO THE SLOVENIAN EU PRESIDENCY**

**JANUARY 2008**

**Addressing:**

**The European Council  
The Agriculture and Fisheries Council  
The Energy and Transport Council  
The Justice and Home Affairs Council  
The Environment Council**

“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**

Slovenia is the first of the new Member States to take over the EU Presidency, a duty that comes at an extremely important moment for the EU. It will have to show leadership in putting the EU's promises to its citizens and the world concerning climate change and biodiversity protection into reality and it could play a crucial role in shaping the EU's path towards sustainable development by bringing the debates about the future of the Common Agricultural Policy and soil policy to a higher level and a good end.

The European Environmental Bureau (EEB), as always, has produced a Memorandum for this Presidency. Including the so-called Ten Green Tests, the Memorandum presents the EEB's principal goals and most urgent demands to the Slovenian EU Presidency. EEB is a federation representing nearly 150 environmental citizens' groups all over Europe. The memorandum has been produced by staff and volunteers of EEB under the auspices the EEB Board.

The Memorandum is ambitious, as it clearly states what is needed in the environmental sector in the EU, while remaining realistic by only demanding progress in fields on the agenda for the six months of the Presidency. In addition, the Memorandum addresses the entire Government, not just the Environment Ministry, because meeting these challenges will involve several ministries and their officials.

Climate and energy issues are again high on the EU's agenda. EEB is urging EU Member States to agree on effort-sharing agreements on greenhouse gas reduction and renewable energy promotion that will deliver a 30% greenhouse gas reduction for the EU by 2020 and a 20% renewables contribution by that date. EEB calls for a set of technical measures to reduce emissions from road transport. EEB is also keen to see an active role for the Presidency in the debate on the future of EU agricultural policy and a good start to the debate on the revision of the industrial pollution prevention and control (IPPC) directive. In addition, after the collapse of discussions on the proposed Soil Framework Directive at December's Environment Council meeting, Slovenia will be charged with the task of finding a compromise between Member States to keep the work that has already been done on this Directive afloat. On the other hand, EEB wants the Presidency to refrain from pressuring the European Parliament to tone down its demands on waste policy.

Slovenians are proud of their well-preserved natural environment and the great diversity of animal and plant species present within a small area, reflected in the 286 Natura 2000 sites that encompass almost 36% of the country. These resources give a strong backing for Slovenia's responsibility for seeking ways to improve and accelerate the EU's internal and external nature protection policies

relative to the countdown to Europe's goal of halting biodiversity loss by 2010, which is quickly approaching. The Slovenian Presidency will also have the responsibility of making some real progress in securing GMO-free farming in Europe. Finally, EEB calls on the Presidency to take measures to systematically improve the enforcement of EU legislation, including by giving a greater role to citizens.

At the end of June 2008, EEB will evaluate the Slovenian Government's work during its Presidency. We shall bear in mind that a Presidency cannot perform miracles, that the term is only six months in duration and that it relies on its peers in 26 other countries. However, a Presidency *can* influence discussions and processes by setting the agenda and organising special events.

We appeal to the Slovenian Government to make the best of its Presidency, to meet both the expectations it has raised and the criteria of our Ten Green Tests.

John Hontelez, Secretary General, EEB  
Anamarija Slabe, EEB Vice President and Director of Slovenia's Institute for Sustainable Development

## **TEN TESTS FOR THE SLOVENIAN EU PRESIDENCY**

### **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.

### **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.

### **3. REDUCE ENVIRONMENTAL IMPACTS OF ROAD TRANSPORT**

- Regarding the CO<sub>2</sub> emissions directive for passenger cars:
  - Limit average CO<sub>2</sub>/km emissions to 120 g/km and set 80 g/km target for 2020.
  - Include stringent financial sanctions for cars above the limits. Sanctions should be 150 EUR for each gram of CO<sub>2</sub> above the limit per car.
  - 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 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 Regulation for lorries and buses with stringent limit values that would require fitting particle filters and de-NOx catalysts.

#### **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.

#### **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.

#### **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;
- Ensure full implementation of the existing Directive and support mechanisms for exchange of best practice between permitting authorities.

## **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.

## **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.

## **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.

## **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.

## 1. EUROPEAN COUNCIL

### 1.1. Energy/Climate and the Lisbon Agenda

The Commission is expected to release its Energy/Climate Package on the 23<sup>rd</sup> of January. It will contain four main elements intended to achieve the agreements set by the Spring 2007 European Council:

- An effort-sharing proposal between Member States to reach the 20% EU greenhouse gas reduction target by 2020 (compared with 1990);
- An effort-sharing proposal between Member States to reach the 20% EU overall renewable energy EU overall by 2020;
- A proposal on the future of the EU Emission Trading System; and
- A proposal to promote and regulate Carbon Capture and Storage [see under 1.2.].

EEB insists that EU energy policy for the next 40 years must contribute to the global objective of reducing the rise in global temperature to less than 2°C, with measures proportionate to the EU's current and historic per capita contribution to global warming. This means the EU must achieve a 60-80% reduction in annual greenhouse gas emissions by 2050 compared with 1990. Its energy policy should fully integrate other environmental requirements, such as conserving EU and global ecosystems and protecting public health. It should also contribute to universal sustainable development.

EU's Energy Policy must be characterised by measures that enable:

- Reduction of energy needs: systematically promoting energy efficiency and life-style changes. Energy efficiency alone should lead to at least a 10% absolute reduction of energy use in the next decade and at least a 1% further absolute reduction in each succeeding year.
- Expansion of the use of renewables with a minimal impact on the environment: wind and solar are unlimited sources. On biomass, EEB insists on policies that protect biodiversity and water resources, do not compete unfairly with other priority raw material needs and do not reduce global access to food.
- Phase out nuclear energy use: a limited resource with unsolved waste problems and security, environmental and health risks.
- Reduction of the environmental impact of fossil fuel use: this not only relates to CO<sub>2</sub> emissions, but also to the impacts on ecosystems and public health.

The Presidency will have to lead the Member States into a principle agreement on the Climate and Energy Package at the March Council. A failure to achieve this principle agreement in March will most likely take the negotiations on this

package beyond the 2009 European Parliament elections. A failure to implement the March 2007 Council conclusions on the EU 27 2020 greenhouse gas reduction target before the end of 2008 will also reflect badly on the EU's international leadership on climate change. It will harm the European Union's credibility in general and the timely and successful conclusion of the Bali mandate in particular.

The United Nations Framework Convention on Climate Change (UNFCCC) summit in Bali demonstrated a clear will by India and China to move towards measurable and verifiable greenhouse gas mitigation efforts in a post-2012 regime. The EU has to reciprocate this movement on its part by implementing a 2020 30% domestic reduction target. Anything below this ambition level will, on the international level, be perceived as the EU backtracking on its leadership and promises.

***The EEB calls upon the Presidency to lead the European Council towards the following outcomes:***

*With regards to climate policies:*

- 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.
- 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.
- Concrete efforts towards a binding post-Kyoto agreement that ensures that temperature rise will remain below 2 degrees.

*And with regards to energy policies:*

- 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.
- Acceleration of energy efficiency as an essential element of EU's energy policy as well as product and building policies.

## **1.2. Carbon Capture and Storage**

EEB promotes phasing out coal use as much as possible, not only because of its CO<sub>2</sub> emissions, but also because of its other environmental impacts. EEB is aware of scenarios that assume a phase-out of the use of coal for electricity production by 2050 in Europe. However, it is unlikely that coal can be phased out worldwide by that time, although its use can be reduced. EEB is concerned about

studies showing that with Carbon Capture and Storage (CCS) we may need up to 25% more coal to produce the same amount of electricity, but realises that this figure could be reduced over time. However, this still means that other environmental impacts related to coal use may increase along with CCS. EEB is also concerned about the risks for the environment and people resulting from leaks of stored CO<sub>2</sub>. CCS also does not ultimately make coal a carbon-free energy source, but only a low-carbon option.

However, EEB accepts the possibility that even in Europe in 2050 coal will not have vanished from the energy production mix for several reasons, including international energy supply complications and delays in energy efficiency results. It also recognises that CCS can be used as a residual option to reduce gas-fired power stations' CO<sub>2</sub> emissions. EEB therefore does not want to exclude the CCS option.

***The EEB calls upon the Presidency to ensure that any obligation of CCS for coal-fired electricity and heating plants is accompanied by all of the following measures and conditions:***

- CCS development should in no way lead to reduction of funding and other types of support and leadership regarding energy efficiency and environmentally-sound renewables.
- CCS must follow strict environmental and safety requirements, determined by the EU, based on independent studies and tests and laid down in EU law.
- The EU should carry out research and testing to determine what will be considered safe storage. Funding for this R&D should come from special fees imposed on current fossil fuel users for electricity and large-scale heat production.
- Deploying CCS may only be permitted if an environmental liability regime, holding companies strictly liable for leaks from CO<sub>2</sub> storage, is put into operation in the EU.
- The EU should commit itself to regulations that ensure coal-fired power stations continuously improve their environmental performance. It should start this procedure with strict emissions and waste treatment requirements for the entire coal production and use process, based on regularly updated Best Available Technology definitions.
- The EU should apply the Polluter Pays Principle and as soon as possible move to complete auctioning of CO<sub>2</sub>-emission rights for fossil fuel users in the Emission Trading Scheme. It should determine the total allocations for electricity-producing and energy-intensive industries over the coming years, in line with long-term CO<sub>2</sub>-reduction targets, and thereby give a clear incentive to electricity producers and energy-intensive industries to invest in efficiency, renewables and low-carbon technologies, including CCS.

- The EU should phase out all subsidies to coal energy as soon as possible, to avoid CCS legitimising prolonged use of coal in the EU.
- The EU should offer to share its safety requirements on CCS and the studies that produced them with other countries including China and India.

See also EEB position paper on Carbon Capture and Storage:  
[http://www.eeb.org/activities/energy\\_policy/EEB-Carbon-Capture-Storage-Position-050407.pdf](http://www.eeb.org/activities/energy_policy/EEB-Carbon-Capture-Storage-Position-050407.pdf)

### **1.3. Strong Support for Biodiversity Protection**

Between the 19<sup>th</sup> and 30<sup>th</sup> of May, Germany will host the ninth Conference of the Parties of the Convention on Biodiversity. The development of a global network of protected areas and the establishment of a global financing facility to protect these areas are high on the Conference agenda. At the same time, we are coming very close now to 2010, the year by which EU heads of state have committed to halting the loss of biodiversity.

***The EEB calls upon the Presidency to put biodiversity on the agenda of the European Council in March to reinforce the role of the EU for the protection of biodiversity in Europe and globally, in particular to:***

- Reconfirm strong support for EU's biodiversity policy instruments.
- Express commitment to accelerating the implementation of Natura 2000 as a fundamental contribution to the implementation of the 2010 target.
- Commit to strong leadership at the upcoming Convention meeting.

## 2. AGRICULTURE AND FISHERIES COUNCIL

### 2.1. A Thorough and Honest CAP Health Check

Every major environmental assessment of the last 3 years, including the Millennium Ecosystem Assessment, the latest report of the Intergovernmental Panel on Climate Change (IPCC) and the European Environmental Agency's State of the Environment report, shows that to address and reverse processes of environmental degradation, fundamental changes to our agricultural policy are needed. Despite the efforts made so far, agricultural practices in the EU are often still highly unsustainable and a major driver of the degradation of key resources such as soil and water. In this context the new Commission Communication '*Preparing for the "Health Check" of the CAP reform*' (20/11/07, COM (2007) 722 final) is a disappointment. It reads rather as a defence of the status quo than as the kick-off for a wider public discussion on how fit the current Common Agricultural Policy is to meet these environmental challenges and what reforms are necessary. Although the Communication does acknowledge that these challenges must be met, it does not go any further than suggesting more money for rural development. Although, if spent on environmental measures, the rural development focus would be positive, it is more important that the CAP be looked at in its entirety, assessing how suitable its instruments are for getting farmers ready to meet environmental challenges.

The EEB asserts that the Environment Council needs to be strongly involved in the CAP Health Check. Apart from the framework for a post-2013 CAP, we need to focus on the more immediate consequences of the Commission's Communication. Most importantly, the abolishment of the cereal set-aside regime is likely to have devastating consequences for farmland biodiversity and environmental quality. Although it was designed as a supply control measure, this regime ended up providing significant environmental benefits such as small biodiversity havens. In a scenario of continuously high cereal prices and the resulting drive for further intensification taking away the instrument that ensured some level of ecological connectivity within the intensively farmed landscape would be disastrous and turn large parts of arable land into biodiversity deserts, increasing pressure on soil and water resources. The set-aside regime must therefore be replaced by a compulsory instrument that would not only ensure the current environmental benefits of the set aside system but ultimately also lead to improvement.

Bio-energy is also mentioned in the Commission's paper as one of the challenges that the CAP needs to meet in the future. The EEB finds this rather misleading as the production of bio-energy, when done sustainably, can be a tool to help meet the challenge of climate change, but is not a purpose in itself. It is

important to make this distinction because bio-energy and specifically biofuel support measures may well lead to increased intensification and pressure on key resources such as soil and water, thereby undermining the EU's ability to deal with wider problems of environmental degradation and the loss of biodiversity. Given the growing body of evidence and reports on the impacts of bio-energy we think that this should also have a place in the CAP Health Check debate.

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

- Ensure that the Environment Council will be fully involved in the discussions of the CAP Health Check.
- Start a political debate about the medium- to long-term objectives for a reformed CAP designed to meet the global challenges of climate change, biodiversity and water management.
- Serious assessment under the auspices of the Health Check to determine to what extent existing instruments are effective in meeting global environmental challenges. A special focus should be placed on cross compliance and the environmental impacts of the abolishment of the set-aside regime.
- 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.

## **2.2. Coexistence of GM Crops with Conventional and Organic Farming**

The Commission is working on its report – to be finalised by spring 2008 – on the progress made in relation to the implementation of national measures on the coexistence of GM crops with conventional and organic farming.

The EEB is very concerned that the Commission is going to follow the same approach of the 2006 report (Com 2006/104) that did not recommend an EU regulation on coexistence, using the excuse of needing “to conclude the process of implementing national coexistence measures”. The 2006 report clearly showed that the Commission is failing: on one hand it is pushing Member States to define laws and on the other hand it is itself rejecting Member States' proposals aimed at preventing any GM contamination of organic and conventional farming. By favouring weak measures, such as a non-mandatory approach, and delaying any concrete decision until 2008 or later, the Commission is opting for a “wait-and-contaminate” approach which could be very damaging for organic and conventional farming.

So far the implementation of the Commission guidelines (Recommendation 2003/556/EC) has been a failure across the European Union, due to:

- The clear difficulties of growing GM crops without contaminating traditional and organic cultivations;

- The demands from citizens for GM-free food and GM-free local environment.

In addition, thousands of local and regional authorities around the Union are calling for the exclusion of GM crops in their area to protect their local economy, culture, environment and health of their citizens.

Against this background, the only viable solution is an EU regulation recognising the democratic right of local and regional authorities to decide whether GM crops can be cultivated in their own area. Such an approach is supported by the European Parliament, which in the plenary of 18 December 2003 adopted a resolution that:

- “calls for uniform and binding rules to be established without delay at Community level on the co-existence of genetically modified crops on the one hand and non-genetically modified conventional crops on the other hand; and
- Takes the view that Community co-existence must allow Member States the right to prohibit completely the cultivation of GMOs in geographically restricted areas so as to safeguard coexistence”.

***The EEB therefore calls upon the Presidency to work for uniform and binding community rules allowing Member States the right to set up GM-free zones at the local and regional level.***

### **2.3. Genetic Contamination of Seeds**

The Council – in the conclusions on co-existence of GM and non GM-crops adopted on 22 May 2006 – invited the Commission to “come forward, with Community labelling thresholds for seeds, which should be set in such a way that is in any case possible to respect the labelling threshold for the final product at the end of the food chain. The level of the thresholds should allow freedom of choice throughout the whole food production chain and it should not create a disproportionate burden for any group of operators”.

The purity of seeds is the single most important factor that will determine whether co-existence – between conventional/organic and GM products - and freedom of choice for both farmers and consumers will be possible or not. Seeds are the basis of the food production chain. The labelling thresholds represent the most crucial measure in determining the feasibility, complexity and costs of coexistence measures.

The Commission is working on a Decision to establish minimum thresholds for “adventitious or technically unavoidable traces of genetically modified seeds in other products”, which foresees thresholds up to 0.5%. This approach offers no

guarantee that farmers and the food industry would still be able to offer non-GM products. In addition, it would, in any case, create massive additional costs for all economic operators further down the production chain. In fact, it reduces the remaining "safety margin" between 0.1% and 0.9% for farmers, processors and retailers and thus shifts the burden of costs and risks to other businesses and markets than those introducing and demanding the GM products. Additionally, the quantity of seeds used typically amounts to less than 1% of the quantity of produce yielded from them. It appears to be common sense that controlling the contamination at the source will incur - by magnitudes - much lower costs than controlling the vast and diverse amounts of products instead; especially as commercial seeds are already a highly controlled product and seed producers would already have to test for the presence of GM traces anyway. Thus, even if seed costs were doubled, their share of costs would be minimal compared to the overall costs of the final product.

Moreover, by undermining the market for non-GM products, the genetic contamination of conventional and organic products would destroy businesses and threaten jobs in the agri-food sector, which already suffers from a lack of consumer trust resulting from past food scandals. So from a strictly economic perspective it appears that the costs and risks of GM production are arbitrarily shifted onto farmers, food processors and retailers to the benefit of the Seed Industry.

***Therefore the EEB calls upon the Presidency to:***

- Work for strict purity standards against GM contamination of seeds, legally and technically established at the reliable and practically feasible detection limit of 0.1% as the European Parliament, in its own-initiative report on co-existence (December 2003), has also proposed.
- Call for a strictly precautionary approach to any applications for approval and re-approval of GMO varieties for cultivation.

## **2.4. Authorisation and Sustainable Use of Pesticides**

Under the Portuguese Presidency, Parliament completed its first reading of two important pesticide files, the proposed Framework Directive on the Sustainable Use of Pesticides and the proposed Regulation concerning the placing of plant protection products on the market. The Regulation revises an existing Directive governing authorisation of pesticides, while the Directive fills a serious gap in existing legislation by regulating pesticide use.

In December 2007, the Agriculture and Fisheries Council discussed the Regulation on authorisation of pesticides and agreed on a Common Position on the Directive on use. Under the Slovenian Presidency, the Agriculture Council is charged with agreeing a Common Position on the Regulation on authorisation.

The Presidency should ensure that the legal basis of the proposed Regulation includes Article 175 (1), in order to highlight the objective of protecting the environment. Furthermore, the Presidency should support Parliament's proposal for stringent cut-off criteria for the approval of active substances, ensuring that the most harmful active substances cannot be sold on the European market. For the remaining pesticides, it is critical that an effective substitution scheme based on the comparative assessment of active substances drives the replacement of harmful substances by less hazardous substances or non-chemical alternatives. EEB urges the Presidency to join with Parliament in rejecting the zonal system proposed by the Commission, allowing Member States to consider domestic environmental conditions when deciding which pesticides to authorise for use.

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

- Establish cut-off criteria that ban substances on the basis of their properties such as causing cancer, mimicking hormones, or being toxic to the reproductive, neural or immune systems
- Require comparative assessment and substitution of substances of concern with less hazardous substances and non-chemical alternatives
- Reject the zonal system for product approval and improve the mutual recognition system by allowing Member States greater discretion to change proposed conditions of use, or refuse to authorise products on the basis of health and environmental protection
- Require regular evaluation of authorisations and monitoring programmes for pesticides, especially for newly-identified effects
- Provide greater transparency in the pesticide authorisation process
- Protect vulnerable groups, including infants, children and pregnant women

### **3. ENERGY AND TRANSPORT COUNCIL**

#### **3.1. Renewable Energy Policy**

A legislative proposal on renewable energy is expected on 23 January, 2008 under the Slovenian Presidency. In order to achieve the EU's climate and energy objectives, the legislative proposal should be strengthened.

***We urge the Presidency to prepare for a successful 1<sup>st</sup> reading of this proposal, including:***

- 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, the abandonment of the 10% biofuels target for 2020.

#### **3.2. Energy Technology Action Plan**

The Commission's Strategic Energy Technology Plan (SET) (22/11/07, COM (2007) 723 final) contains some positive measures, particularly on renewable energies, but is rather poor on energy efficiency. A significant reduction in primary energy demand is necessary to achieve the emission reductions needed to meet Europe's energy efficiency and climate objectives. EEB is against the proposals to promote nuclear energy due to the risk of serious accidents and the nuclear waste legacy. In countries where it is used, the 'polluter pays' principle should be strictly applied and liability requirements for environmental and health risks associated with accidents, spills and natural resource contamination made more stringent. The operator should be made fully responsible for long-term waste management. EEB believes the focus should instead be on tapping energy from the sun, wind, water, waves and tides and the heat of the earth's crust, which are all abundant, clean and safe energy sources. Biomass can to a certain extent, and under strict sustainability criteria, also be supported.

***The EEB calls on the Presidency to ensure that the SET does indeed contribute to EU's climate and energy objectives. Priority should be given to:***

- Promotion of environmentally sustainable renewable energies and energy efficiency measures. Implementation of EU's Action Plan for Energy Efficiency (19/10/06 COM(2006) 545 final).

- No promotion of nuclear energy, not even for climate purposes. Public funds should be spent on developing and ensuring market penetration of environmentally sustainable renewable energies.
- Instead of focusing on biofuels for transport, the focus should be on biomass for heat and electricity production and only those types meeting strict sustainability standards.
- Work on the basis of relevant conclusions of the June 2007 Environment Council on ecological industrial innovation. Advance work to ensure development, promotion, market-uptake and the spread of eco-innovative technologies, products and services using relevant market-based, research and regulatory tools. Promoting green public procurement in Member States would also add to the spread and market penetration of energy efficient and eco-innovative technologies, products and services.

### **3.3. Greening Public Procurement of Transport Vehicles**

On 19<sup>th</sup> December, the Commission published a new proposal to promote greener procurement policies with regards to road transport vehicles purchased by public authorities. It proposes a system to calculate the life-time costs of such vehicles, taking into account not only fuel consumption but also the usually non-internalised costs of CO<sub>2</sub> and pollutants emissions.

***Without completing a detailed examination, the EEB welcomes this proposal and calls upon the Presidency to take this proposal seriously as a step towards greening public procurement by authorities at all levels and including private entities to fulfill public tasks, which could give a major boost to more environmentally friendly technologies, goods and services.***

## 4. JUSTICE AND HOME AFFAIRS COUNCIL

### 4.1. A Directive on Environmental Crime

In February 2007 the Commission published a draft Directive on Environmental Crime, which is another attempt to ensure that all EU Member States have legal arrangements in place to punish environmental crime with prison, financial penalties and, where appropriate, other sanctions.

The Commission is correct in speaking out about the increasing problem of environmental crime and the lack of adequate sanctions from Member States. EEB also agrees with the preventive aspects of having EU criminal legislation, including social disapproval and the deterrent effect of prison sentences or large fines, involving neutral institutions such as the police and courts. Introducing measures at the EU level would help prevent environmental crime, such as illegal shipment and dumping of waste, from becoming concentrated in countries where punishment of offenders is currently unlikely.

It is very important to consider environmental crime not only an administrative problem, but also emphasise its criminal character, highlighting the perpetrator's personal responsibility.

EEB published a position on the draft Directive on Environmental Crime on 5<sup>th</sup> of July 2007, before the European Court of Justice in its judgment C-440/05 decided that the EU has, under current Treaties, only very limited competences with regard to prescribing the type and scale of sanctions. The EEB very much regrets this decision. Environmental crime must have effective prosecution with agreed minimum penalties that are sufficient to make a preventive impact throughout the EU. The EEB is happy to learn that the new Lisbon Treaty will resolve this problem and urges the EU not to waste this opportunity.

***The EEB therefore calls on the Presidency to embrace and promote the improvements EEB has proposed, as far as legally possible, within the draft directive. EEB particularly emphasises:***

- Certainty of the Directive on Environmental Crime's complementarity with the Directive on Environmental Liability;
- Keep the option of "sovereign immunity" for states and public bodies to an internationally agreed minimum.
- Assurance that prosecution of legal persons does not systematically exclude combined prosecution with natural persons who have played a crucial role in the crime

- Inclusion of a requirement for states to ensure sufficient staffing and training with relevant services and sufficient capacity for authorities and courts.

In addition the EEB calls on the Member States to use EEB's position for setting minimum penalties in national law, for both natural and legal persons. Only a largely uniform approach would bring about the desired results.

See also EEB's position on the environmental crime directive on the EEB website: <http://www.eeb.org/publication/EnvCrime-EEB-position-final-050707.pdf>

## **5. ENVIRONMENT COUNCIL**

### **5.1. Post-2012 EU Climate Agenda**

See chapter 1.1 of this Memorandum, addressed to the European Council.

### **5.2. Carbon Capture and Storage**

See chapter 1.2 of this Memorandum, addressed to the European Council.

### **5.3. Enforcement of Environmental Law**

Over the years, the EU has acquired an impressive body of environmental laws. They play an important role in protecting our environment and human health, creating harmonised conditions for business and providing incentives to invest in sustainable products and production processes. However, as EEB has often stressed, the EU falls short of thoroughly implementing existing laws. Improving enforcement must be a priority and would not only contribute to achieving the above objectives but also increase the EU's credibility, bringing it closer to its citizens and improving conditions for good co-operation among Member States.

The EU lacks tools and probably also the political will to improve the situation. EEB therefore particularly welcomes two Commission initiatives in this area:

- Draft Directive on environmental crime [see chapter 4.1.]
- Communication on enforcement and implementation of environmental law, to be tabled in February or March.

***EEB calls on the Presidency to organise a broad debate on improving implementation and enforcement of EU environmental law, in particular making proposals to:***

- Substantially increase the Commission's capacity to deliver its enforcement obligations, including by considering the placement of Commission lawyers in each Member State, based at the Commission representations to improve and speed complaints procedures and increase accessibility to people not familiar with EU procedures;
- Increase the capacity of national and local government to enforce EU environmental law, including through EU cohesion policy;

- Increase public involvement, through open and transparent infringement procedures and access to justice as required by the Aarhus Convention [see also 5.16]

#### **5.4. Sustainable Production and Consumption**

A delayed Commission Sustainable Consumption and Production (SCP) Action Plan is now expected for March 2008, in combination with a separate Sustainable Industrial Policy (SIP) Action Plan. This package could strengthen the objectives of the EU Sustainable Development Strategy as a unique policy mechanism that directly addresses consumption and production behaviour. It could carry societal messages while reinforcing existing environmental and human health sustainability objectives. It could also help deliver sustainable development objectives by integrating industry and energy policies as well as policies regarding products, waste, natural resources and public procurement.

The package is expected to include proposals for revisions to the European Ecolabel scheme and the Environmental Management Scheme (EMAS), a Greening Public Procurement Directive and a new product policy mechanism that extends beyond the existing Ecodesign for Energy-Using-Products Directive. As such, this SCP package is intended to merely strengthen what already exists, thereby continuing to 'tinker at the edge' of the issues.

EEB is afraid the SCP Action Plan will lack ambition and vision, missing an important opportunity to place many environmental issues within a societal context. It is likely to stay on the level of specific messages on climate change or energy efficiency, failing to provide a wider context, linking necessary actions on transport, climate change, aviation and energy efficiency with other issues of consumer concern such as organic food and chemicals in products. It is not yet clear what will be included on sustainable consumption, which is a difficult issue for Governments to address beyond communication campaigns.

***The EEB calls upon the Presidency to ensure that the Council will insist on actions with clear, detailed objectives (particularly linked to the 6th Environmental Action Programme), including activities that influence consumption (particularly advertising). The Presidency should be proactive and insist that the Commission to come up with ambitious and visionary proposals.***

***In particular the EEB calls upon the Presidency ensure that the resulting Action Plans:***

- Are ambitious and visionary, setting out a road map for sustainable products and proposing roles for different actors in helping to shift to sustainable patterns of consumption;

- Integrate eco-efficiency and sustainable production and consumption into the Lisbon strategy with an overarching objective of achieving a Factor 4 increase in energy and resource efficiency by 2030 in the EU.
- Include framework legislation on products, clearly identifying the priority environmental objectives found in the Sixth Environmental Action Programme to be met in product design and production.
- Include Extended Producer Responsibility legislation on environmentally sound products, or a general obligation to comprehensively integrate environmental aspects into all eco-design and standardisation work.
- Feature a supporting mechanism that requires companies to provide quality and product lifecycle data through a general obligation to manufacturers. Such information should be independently assessed and verified.
- Include a robust stakeholder process to further develop the action programme, leading to results by mid-2009.
- Feature a mechanism that systematically drives forward continuous improvement, such as the Japanese 'Top Runner' scheme.
- Include actions addressing sustainable consumption, especially those focusing on marketing and advertising.
- Include fiscal mechanisms that drive pricing policies that better reflect the environmental impact of a product, especially with regard to resources used.
- Ensure that by 2010 12 % of products on the EU market are produced according to sustainability criteria, reaching 100 % by 2030.
- Set a 100% green public procurement target for 2010.

## **5.5. Cap-Health Check**

***The EEB calls upon the Presidency to ensure full involvement of the Environment Council in the discussions (preparing for) the CAP Health Check.***

See chapter 2.1. of this Memorandum.

## **5.6. Review of the IPPC Directive**

The Commission proposal for a recast of Directive 96/61/EC on Integrated Pollution Prevention and Control (IPPC) was published on 21 December 2007. The critical role of the recast in filling existing gaps in the current IPPC Directive and the fierce controversy surrounding the proposal demand firm leadership from the Presidency on a number of key issues.

Firstly, in order to protect key safety nets in the IPPC Directive, it is vital for all actors to respect the restraints of the recasting technique. This implies that when developing a Common Position on IPPC, the Presidency must ensure that Council's amendments are restricted to those provisions opened in the Commission's proposal.

The Commission proposal will integrate six sectoral directives under the proposed IPPC recast, including the Directives on Waste Incineration, Large Combustion Plants, Solvent Emissions, and three Directives on Titanium Dioxide. These sectoral directives include mandatory Emission Limit Values (ELVs) that act as a safety net to ensure that relevant installations do not emit above a certain threshold. EEB considers it critical that these ELVs are not eroded but rather that they are tightened to reflect emission levels achievable through the application of Best Available Techniques (BAT).

EEB believes that in order to ensure a level playing field, competent authorities must be legally obliged to refer to the BAT listed in the BAT Reference Documents (BREF) and impose permit conditions that reflect emission limit values associated with the BAT. BAT reflects a dynamic concept and as such the BREFs are reviewed approximately every six years. Permit conditions must also be reviewed as BAT evolves and better environmental performance becomes fully feasible.

IPPC affects 50,000 industrial installations in the EU and was due to be fully implemented by 30 October 2007. However, several Member States have failed to achieve full implementation, with up to 50% of IPPC installations in some Member States operating under permits from preceding legislation. It is critical that the Commission is supported in its efforts to increase the capacity of competent authorities to deliver IPPC permits in order to address this implementation deficit.

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

- 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).
- Make using the BAT Reference Documents (BREFs) by local competent authorities obligatory to the permitting process.
- Ensure that justifications are required for any derogation from BAT at an installation, with the Commission to provide guidance on the parameters for justification;

- Establish BREF review as a trigger for permit review, with a time limit of two years, in order to secure continuous improvement in environmental performance;
- Ensure that both permit applications and the final permits (including any justifications for derogation from BAT) are permanently available online on Member State websites dedicated to IPPC;
- Support the Commission's IPPC Implementation Action Plan, under which competent authorities from the different Member States exchange best practice on IPPC permitting procedures.

## **5.7. Transport and Climate Change**

### **5.7.1. CO<sub>2</sub> Emissions from Passenger Cars**

The personal car fleet in the EU continues to increase, and the average car is getting heavier, making energy efficiency gains more difficult. Most car producers are particularly fond of selling SUVs and other luxury models, as they bring in more money than the small car segment where price matters more to the consumer. As a result, the CO<sub>2</sub>-emissions from this fleet, a major contributor to climate change, is growing every year.

On 19<sup>th</sup> December 2007, the Commission released a draft Regulation intended to increase energy efficiency of passenger cars, expressed in CO<sub>2</sub> emissions per km. This proposal was deemed necessary as it became clear that the auto industry would miss its 1998 voluntary agreement to reduce CO<sub>2</sub> emissions from new cars to an average of 140 g/km by 2008 on the way to a 120 g/km average by 2012. In February 2007, the Commission had already announced it would come up with legislation, despite the opposition of the German car industry in particular, but that it would not stick to the 120 g/km limit by 2012. Instead it would propose a 130 g/km target for 2012, hoping that other measures, including better driver behaviour and more efficient tyres, would bring another 10 g/km reduction. Along with the European Federation for Transport and Environment (T&E), the EEB criticised this step backwards.

Since then, the debate has focussed on methodology, in particular on how to ensure the target average is reached. The EEB has supported T&E in its technical proposals to keep the system as flat as possible (i.e., limiting the number of specific requirements for different types of cars), to reward car-producers that go below the average and to work on the basis of car size (expressed in wheel-print) rather than on weight. We also called for a longer term target.

The December Commission proposal sticks with the 130 g/km target, does not fix a further reduction target and does use weight as measure for the setting of limits for specific car types. It also grants an exception for small car-producers (up to 10,000 cars a year) so that the elite can continue to show off with environmentally devastating vehicles. A positive element of the proposal is the setting of penalties for cars that exceed the limits, although in our view they should be higher in order to have sufficient impact. But the penalties in particular caused an almost hysterical response in Germany, stirred up by the local car-producers, which was echoed by the media and unfortunately also by political leaders.

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

- Propose to limit average CO<sub>2</sub>/km emissions of passenger cars to 120 g/km and set a target of 80 g/km for 2020.
- Include stringent financial sanctions for cars above the limits. Sanctions should be 150 € for each gram of CO<sub>2</sub> above the limit per car.
- Ensure that this goal is not based on the integrated approach, and does not contain biofuels but is reached by technical means only.
- Refuse differentiation on basis of weight of cars, ensuring that higher emitting cars must reduce more, for example by basing it on the car's 'footprint'.

#### 5.7.2. Fuel Quality

The EEB welcomes the support in Council for the inclusion of a quantitative greenhouse gas reduction target for transport fuels in the revised Fuel Quality Directive (FQD). Moreover we share the opinion raised within the Council that such a target must be linked to the most stringent sustainability safeguards and also call for a target that would not lead to unsustainable volumes of biofuels. We therefore believe that both the criteria for the life cycle analysis as well as for sustainability standards should be defined under this Directive which would give a clear mandate to environmental experts deciding on the details of the methodology in comitology. These criteria would constitute a minimum set which can be further developed under the forthcoming Renewables Directive. Lastly, we believe that the proposal to increase the vapour pressure limit should be scrapped.

The European Parliament's Environment Committee already voted in favour of all of the above points, thereby advancing the discussion on sustainability criteria within the FQD. We understand that the Council will start a discussion on whether an agreement during the first reading with the Parliament is possible. The EEB would support a first reading agreement that includes the above mentioned elements. We therefore urge the Council to move ahead with the discussions on sustainability aspects, irrespective of when the Renewables Directive will come out, by improving the European Parliament's position, especially as regards indirect land use impacts. Drafts of the proposal for a

Renewables Directive suggest that sustainability is poorly addressed and we therefore ask the Council to develop better criteria under the FQD.

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

- Take the discussion about sustainability safeguards forward in the context of the Fuel Quality Directive to ensure avoiding negative impacts from biofuels, especially considering the following elements:
  - A minimum performance standard of 60% GHG-saving for biofuels in comparison to fossil fuels.
  - Clear provisions for life cycle analysis, including direct and indirect land use changes and other environmental and social impacts.
  - Sustainability criteria dealing with impacts on water, soil and biodiversity resources as well as social criteria.
  - A review mechanism to assess the impacts that the end target will have on the sustainability of biofuel production.
- Scrap the vapour pressure waiver for fuels containing bio ethanol.
- Call for bringing the 10 ppm sulphur content requirement of inland waterway gas-oil forward from 2011 to 2009.

## **5.8. Air Quality**

Across Europe, exposure of the population and ecosystems to air pollution has been an ongoing health and environmental problem. Air pollution exceeds standards set by the EU and by the World Health Organization (WHO) in numerous places with urban/suburban areas being predominantly impacted (although standards for particulate matter (PM)<sub>10</sub> and ozone are also exceeded in some rural areas). Long-term exposure to air pollution – especially to particulate matter – increases mortality and the risk of developing chronic respiratory illnesses and cancer. At current concentrations, air pollution is responsible for 370,000 premature deaths per year and well over 100,000 serious hospital admissions for acute heart and respiratory problems.

Emissions of all air pollutants fell substantially during the period 1990–2004 in the 27 EU member countries; however, ambient concentrations of particulate matter and ozone in the air have not shown any improvement since 1997. This might be partially explained with meteorological variability and increasingly long distance conveyance of pollutants, but is mostly due to air pollution from transport.

In this regard, EEB draws the attention of the Presidency to two important regulations.

### **5.8.1. EURO-VI – Buses and Heavy Duty Vehicles**

A new proposal to reduce air pollution from lorries and buses was made public in late December 2007. This regulation, known as EURO VI, will set emissions standards for heavy-duty vehicles regarding PM, nitrogen oxides (NO<sub>x</sub>), hydrocarbons, carbon monoxide and ammonia. The standards are particularly important for reducing air pollution in hotspots (along busy streets) and in urban areas, which would also help cities and Member States meet air quality limit values set in the Air Quality Directive.

***EEB calls on the Presidency to ensure that the EURO-VI proposal for lorries and buses is not diluted by Council. We particularly insist that the Presidency:***

- Support the emission standards for particles and NO<sub>x</sub> as proposed by the Commission;
- Support the introduction of particle number standards in addition to a mass-based limit value to account for small particles.

***EEB further wants to see the Presidency***

- Insist that limit values should already enter into force in 2011 since cities need the air quality improvements as soon as possible;
- Demand the introduction of new test-cycle methods to reflect real-world emissions.

#### 5.8.2. Emissions from Ships in the International Maritime Organisation (IMO)

Despite their relatively 'clean' image, sea-going ships cause a lot of air pollution and their emissions are not sufficiently regulated. Emissions of sulphur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> from international shipping in European seas are expected to increase by 42% (for SO<sub>2</sub>) and 47% (for NO<sub>x</sub>) between 2000 and 2020. Meanwhile emissions from land-based polluters are expected to drop as a result of air pollution policies. Consequently, by 2020 emissions from international shipping around and within Europe will have surpassed the total amount from all land-based sources in the 27 Member States. Such a scenario is expected even after the introduction of lower sulphur shipping fuels used in the North Sea, Baltic Sea and the English Channel as required by the IMO and EU Directive 2005/33/EC on sulphur content of marine fuels.

Emissions of NO<sub>x</sub>, SO<sub>2</sub> and PM from ships cause and contribute to severe onshore human health and environmental damage. This includes premature death and heart and lung problems, including heart attacks and lung cancer, as well as atherosclerosis, strokes and permanent respiratory damage. Shipping emissions also contribute to acid rain and eutrophication of coastal and inland areas, impacts on biodiversity in sensitive forest ecosystems and lakes and damage to crops.

If emissions are to be further reduced, specific proposals for reduction of NO<sub>x</sub> and SO<sub>2</sub> in shipping are urgently needed. In 2006, EU Member States and European Parliament called on the Commission to continue cutting shipping emissions and to establish specific NO<sub>x</sub> emission standards. It is important to further work towards this goal in the context of the IMO and to remind the Commission of its commitment to proposing EU regulation soon if the IMO does not establish its own standards, which they have yet to do.

***EEB calls on the Presidency to:***

- Remind the Commission of its commitment to proposing EU NO<sub>x</sub> standards for shipping if the IMO does not;
- Play an active role in ongoing negotiations with the IMO to ensure demanding NO<sub>x</sub> standards are set.

See also: NGO Recommendations to IMO on revision of Marpol Annex VI, the NO<sub>x</sub> technical code and related guidelines (20.10.06)  
<http://www.eeb.org/activities/air/shipping/documents/20061113-2-11-FOEI.pdf>

## **5.9. Noise from Tyres**

Traffic noise disturbs the lives of millions of people in Europe. It is estimated that 44% of Europeans (over 210 million people) are regularly exposed to noise levels considered to have potentially dangerous health effects. Each year 245,000 people in the EU suffer cardiovascular diseases provoked by traffic noise. The European Environment Agency's recent 4<sup>th</sup> Assessment of Europe's Environment also identifies the health impacts of environmental noise as being underestimated and requiring further attention.

Much of this traffic noise comes from roads. As it is set to increase, managing noise from transport sources is crucial if further impacts are to be avoided. The biggest source of traffic noise – and the one we need to tackle first – is that of car tyres during speeds in excess of 30 kph, which could be addressed in the review of the respective tyre noise Directive (2001/43/EC).

***EEB asks the Presidency to keep up pressure on the Commission, which intends to submit a new tyre noise Directive proposal in 2008, especially taking into account the October 2007 Environment Council where many Member States expressed support for stringent tyre noise limit values.***

***EEB calls upon the Presidency to:***

- Support the FEHRL (Forum of European National Highway Research Laboratories) recommendation for reducing the noise limits with up to 6.5

dB(A)<sup>1</sup> which would make road traffic 2-3 dB(A) quieter. Reducing tyre noise to this recommended level would have no impact on road safety or energy consumption and would complement the action plans based on EU Directive 2002/49/EC on environmental noise.

- Propose more stringent requirements for rolling resistance of 10kg/tonne for C1 and C2 (car and light van) tyres.
- Require the Commission to complete the evaluation of the Directive within the Presidency's mandate and ensure a swift legislative process on this file.
- Demand the elaboration and adoption of a quality label for tyres, including energy efficiency, rolling resistance, noise levels and safety parameters.

## 5.10. Biodiversity

Biodiversity has been set as a priority issue by the triple presidency of Germany, Portugal and Slovenia. The focus under the Slovenian presidency will be on the negotiations for the 9<sup>th</sup> Conference of Parties of the Biodiversity Convention (COP9) in Germany in May. Apart from making progress on the dossiers on the negotiating table, such as a global network of protected areas with a financing facility, the EEB thinks that COP9 is an opportunity to showcase current, successful conservation practices in the EU and to commit to increased efforts where they have been found wanting so far.

The EU's most important achievement in conservation has been the adoption and application of a protection regime for both protected areas and species under the Habitats and Birds Directive and through the Natura 2000 network. Although the implementation of these Directives is only partially complete, it has already led to significant successes. For example, a recent article in Science magazine found that the Birds Directive has improved the conservation status of birds. The most important achievement is perhaps outlining a strict scientific approach for the identification of sites (i.e., protecting nature where it is ecologically valuable, not where it is politically convenient) and establishing mechanisms through which all relevant stakeholders are involved in the protection of the site. This approach also allows for making the necessary trade-offs between different public interests, including the application of exemptions.

However, as stated before, implementation of the Habitats and Birds Directive is only partially completed with the designation of sites almost finalised in most countries. The next step is to ensure that all the identified sites are put under effective protection and that species protection measures are taken into the wider

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<sup>1</sup> The intensity (loudness) of sound is measured in Decibels (dB). With dB(A), the (A) denotes that the scale is adapted for the human hearing range.

countryside. In order to take this step, strong political commitment from EU member states at the highest political level will be needed. In the run up to COP9, the EEB therefore calls on the Presidency to take the initiative in gathering high level commitment among EU leaders to double efforts to implement Natura 2000 as a last sprint towards the target of halting the loss of biodiversity by 2010.

***The EEB therefore calls on the presidency to use the COP 9 to:***

- Showcase protection regimes as established under the Birds and Habitats Directive as effective tools for nature conservation and key drivers for sustainable development.

### **5.11. Water Protection**

The proposal for a Directive setting environmental quality standards for water will determine how the pollution in Europe's water bodies will be defined. The importance of a timely political agreement that will allow Member States to design their River Basin Management Plans on the basis of these standards must be underlined.

When the Environment Council adopted its first reading common position in June 2007 the EEB felt the position fell short on a number of crucial points. Most importantly, we believe that the list of substances proposed by the Commission for which Environment Quality Standards (EQS) must be developed is completely inadequate and must, at a very minimum, be expanded to include the pollutants identified by the HELCOM (Helsinki Commission) and OSPAR (Oslo Paris) conventions. We therefore urge the Council to accept the list of substances proposed by the European Parliament. Apart from quality standards for water, the EEB would like to reiterate the importance of setting such standards for biota and sediments, since chemicals that accumulate in both these places damage ecosystem functioning. We therefore support in principle the Council's text requiring Member States to arrange for long-term trend analysis and take measures that ensure that chemical concentrations in biota and sediment do not significantly increase. EQS for biota and sediments should be in addition to, rather than replacing, those for water.

As regards the transitional or mixing zones, the EEB supports the Parliamentary amendment setting a deadline of 2018 for phasing out these zones. We also urge the Council to exclude any reference to best available technologies under Article 3.3b of the Quality Standards Directive. Article 10.3 of the Water Framework Directive (WFD) is meant to act as a driver for setting stricter conditions where necessary to meet WFD objectives. Referring to best available technologies would undermine this effect and work against meeting WFD objectives.

The EEB is strongly supportive of the Commission's proposal under Article 4 of the Quality Standards Directive, dealing with emissions, requiring Member States to comply by 2025 with the reduction or cessation obligations laid down in Article 4.(1)(a)(iv) of the WFD. We are therefore concerned by the weakening of this requirement to merely checking whether or not progress is being made and making it subject to the exemptions under Article 4.4 and 4.5 of the WFD. Considering the poor state of our water bodies and the high level of ambition set by the WFD, such a lowering of protection standards is unacceptable.

As a last point we find the introduction, under part B of Annex I of the Quality Standards Directive, to statistical methods for calculating concentration levels which deal with 'outliers' (i.e., extreme deviations from the mean) to be worrying, especially since the detailed methodology for this type of calculation will be worked out through comitology.

***The EEB therefore calls on the Presidency to seek improvements in the second reading process, in particular to:***

- Significantly strengthen the approach to improving emissions reductions, including implementing the requirement under article 4.5 to fulfill the 2025 objective instead of just requiring progress and adding reporting standards;
- Expand the list of substances subject to EQS, including, as a minimum, the OSPAR & HELCOM pollutants and the European Parliament's list;
- Set Environmental Quality Standards for biota, water and sediment;
- Reject loopholes for MACs (Maximum Acceptable Concentrations) introduced in Annex I.B., par.2;
- Set a deadline for phasing out transitional or mixing zones by 2018 and delete all reference to best available technologies under Article 3.3b.

## **5.12. Supply, Demand and Emissions from Mercury**

Mercury and its compounds are highly toxic, damage the central nervous system and are particularly harmful to foetal development. Mercury builds up in humans and animals and becomes concentrated through the food chain, especially in certain fish. It is widely diffused through the atmosphere, and has contaminated global food supplies at levels which pose a major risk to human health, wildlife and the environment. The EU has so far played an important role, pressing for global legally-binding solutions to achieve adequate control and reduction of mercury use, supply and demand.

At the EU level, discussions continue on legislative proposals to implement the Mercury Strategy adopted in 2005. The Environment Council adopted the Common Position on the proposed regulation for an EU mercury export ban and the storage of surplus mercury (mainly from decommissioned chlor-alkali plants)

on 20 December 2007, on the basis of the political agreement reached on 28 June 2007. EEB expects the Council to continue working on the issue with a view to coming closer to the European Parliament's first vote suggestions.

At an international level, mercury has been on the United Nations Environment Programme's agenda since 2001 in the context of discussing global measures to reduce mercury's health and environmental impacts. EEB, along with a range of organisations worldwide, advocates reduction with a view to eliminating supply, demand and emissions from mercury.

The 24<sup>th</sup> UNEP Governing Council decided that a working group on mercury would be set up to explore "enhanced voluntary options as well as legally-binding regulations for long-term international action" to reduce mercury's threat to health and the environment. The working group met in November 2007 in Bangkok and decided to focus on exploring the possibility of adding a new protocol on mercury to the Stockholm convention, starting a new free-standing treaty and/or enhanced voluntary approaches. The working group will send the report from this meeting to the Governing Council's 10<sup>th</sup> Special Session in February 2008, at which time governments may wish to provide further guidance. The working group will meet for the second and last time in October 2008 in view of developing a final set of recommendations to the 25<sup>th</sup> UNEP Governing Council in February 2009.

EEB expects the EU to take the lead in this process, reflecting concern over the harm mercury does and the potential for making it redundant.

***As Parliament heads towards a second reading, EEB urges the Presidency to call for:***

- EU mercury ban on export and storage of surplus mercury, including: metallic mercury, cinnabar, mercury compounds and mercury-containing products which are currently prohibited for sale on the EU market, to be implemented as soon as possible, but no later than January 2011.
- Ensure, as soon as possible, temporary storage of surplus mercury in continuously monitored secure sites, located where immediate intervention can occur if necessary until safe disposal techniques have been developed and fully evaluated.
- Periodically provide information from industry and Member States on the movement of mercury and the quantities involved, including exports and imports of metallic mercury, mercury compounds and mercury-containing products between Member States and between the EU and external countries. Information should start being collected immediately and before the effective export ban date.
- Regulation should be based on Article 175 of the EC-Treaty in relation to the export ban, allowing Member States to implement stricter measures, faster.

***Regarding the international process, EEB calls for:***

- Continuation of EU and Member States' positive, pro-active role at the 10<sup>th</sup> Special Session of the UNEP Governing Council (February 2008, Monaco), to develop international legal instruments to address mercury and in parallel press for:
  - Establishing a global mercury-use reduction goal of 70% by 2017 by banning mercury-use in electronics, button cell batteries, thermometers and other non-electronic measuring equipment.
  - Phase out mercury-cell chlor-alkali processes and manage mercury from defunct chlor-alkali facilities.
  - Develop a roadmap for increased use of mercury-free technologies in small-scale and artisanal gold mining, including establishment of a sector-specific demand reduction goal of 50% by 2017 as recommended by UNIDO's Global Mercury Project, which can be achieved largely by eliminating mercury-use in whole-ore processing.
  - Ensure mercury-reduction approaches/technologies are key components in existing artisanal and small scale gold mining development projects.
  - Reduce the supply of mercury by halting primary mining, except where mercury is produced as a by-product from other ore processing.
  - Restrict mercury exports from developed nations.
  - Provide new and additional financial resources from developed nations to support these activities in developing nations.

### **5.13. Framework Directive on Soil Protection**

The EEB has strongly condemned the blocking minority of Germany, France, the UK, the Netherlands and Austria that thwarted a Council agreement at the Environment Council meeting on December 20, 2007 on a Soil Framework Directive. Especially disturbing was the fact that the same country that argued most strongly on principled grounds against a Soil Directive in any shape or form is the same country that in 1998 pushed the EU most strongly to create soil policy by organising a major conference on the subject. Furthermore, it is peculiar, to say the least, that the principle of subsidiarity that was used as the basis for these 5 countries to reject the compromise was seen by 21 member states a reason to accept this Directive. The EEB sees these efforts to block the Soil Framework Directive as part of a wider push for a roll back of environmental protection at the EU level.

We therefore urge all Environmental Ministers to demonstrate their leadership by strongly rejecting this push.

***The EEB calls upon the Presidency to work towards a solution, preventing a weakening of the compromise the Portuguese Presidency presented.***

#### **5.14. Waste Framework Directive**

After a decade of progressive steps, oriented to specific waste streams, EEB was disappointed by the Commission's Thematic Strategy on Waste Prevention and Recycling published in late 2005 and the proposal for a new Waste Framework Directive. Under the agenda for simplifying and streamlining EU waste legislation, the European Commission has proposed numerous elements of deregulation and roll-back, weakening the ambition of the waste hierarchy and re-nationalising EU waste policy at a time when discrepancies are increasing between Member States.

The revised Waste Directive went through the first reading of the codecision process in 2007. Although the European Parliament strengthened many of the measures initially proposed by the Commission, the Council remained much closer to the Commission's views which fail to set long-term goals and drivers to ensure that waste production is prevented as far as possible and that what remains is re-used, recycled or composted.

For many Member States, including Slovenia, the timing to provide further incentives for prevention and recycling of waste is critical given the imminent waste diversion obligations of the Landfill Directive and the investment of Structural Funds in new waste management infrastructure.

***In this context, the Presidency has an important role to play in ensuring that the Council fully takes into account the position, in first reading, of the European Parliament during a full second reading process, in particular on:***

- Parliament's proposal to include an overall EU objective of stabilisation of waste generation by 2012 and minimum recycling rates (50 per cent by 2020 for municipal solid waste and 70% for industrial, commercial, construction and demolition waste).
- Continuous support for specific waste stream legislation and targets for collection and recycling with clear priority given to the regeneration of waste oils and a strong call for a biowaste directive.
- The proposal for a 5-step waste hierarchy as a binding rule of waste policy-establishing clear rules to allow deviation from the hierarchy with the use of life-cycle instruments.
- Opposition to the re-classification of municipal waste incinerators as energy recovery. Energy efficiency requirements should be set in the ongoing revision of the Waste Incineration Directive.

- Creation of a permanent Waste Stakeholders Consultative Forum as exists for all complex environmental policy areas, to monitor and facilitate the implementation of EU waste legislation.
- Clarify the procedure for differentiating waste by-products by supporting an EU common approach, avoiding potential loopholes in waste definition. The scope of waste legislation should not be seriously undermined by exemptions or new definitions on by-products and end-of-waste. Any criteria should be set with full co-decision, with scrutiny on a case-by-case basis and the strict requirement that, in the absence of EU legislative measures or jurisprudence, waste, in particular process waste, remains waste.

### **5.15. Access to Justice Directive**

In October 2003, the European Commission published a draft Directive on Access to Justice. This Directive sets minimum standards for access to justice in environmental matters. It intended to implement the ‘third pillar’ of the Aarhus Convention for EU Member States, which would help improve opportunities for the public and environmental citizens’ organisations to insist on respect for environmental law. The Environmental Council so far has not started to discuss the proposal, due to resistance of a number of Member States that do not view this issue as an EU responsibility.

The EEB welcomed the proposal, but voiced a number of specific concerns, including:

- The proposal gives too much leeway to national authorities on how to define the criteria for cases against private entities, which could conflict with the EU objective of creating 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 outsourcing of functions previously carried out by public authorities;
- The draft is too limiting about the natural and legal persons who can have legal standing. The Commission leaves scope for restrictions that are not in agreement with the spirit of the Aarhus Convention;
- The Directive should state explicitly that it sets minimum requirements and that no Member States should use the Directive as a reason to reduce existing access to justice for members of the public in environmental matters.

In April 2004, the European Parliament came up with a set of amendments to the draft Directive which went in the right direction, bringing it more in line with the provisions of the Aarhus Convention. But the Council never took up work on a Common Position. Several governments considered the Directive unnecessary.

In 2006, the Commission launched a study of the practices on access to justice in environmental matters in the (then) 25 Member States. The results show a clear deficit in at least 15 of the 25 Member States (with only Denmark fully fulfilling the expectations laid down in the Aarhus Convention.) The EEB itself did a survey on the implementation on the Aarhus Convention in 20 Member States. It included a question to environmental organisations on whether an EU Directive on Access to Justice is needed. The answer was clearly: Yes.

These two surveys confirm EEB's conviction that adoption of this Directive is important to set minimum standards for the implementation of the right to access to justice in environmental matters as the Aarhus Convention requires.

***Therefore, the EEB calls on the Presidency to:***

- Finally launch negotiations on this Directive. It should lead the Council to accept the amendments made by Parliament bringing the Directive in line with the Aarhus Convention and making clear that the Directive establishes a minimum framework for access to justice. The Council should impose no requirements for 'qualified entities' which would introduce new barriers to access to justice for citizens and their organisations.

For the Commission funded study, see:

[http://ec.europa.eu/environment/aarhus/study\\_access.htm](http://ec.europa.eu/environment/aarhus/study_access.htm)

For the EEB survey, see:

<http://www.eeb.org/activities/transparency/AARHUS-FINAL-VERSION-WEBSITE-12-07.pdf>

See also: EEB and Birdlife International briefing on the Directive on Access to Justice in environmental matters – "Schoerling" report (27 January 2004):

<http://www.eeb.org/activities/transparency/BL-EEB-briefing-AtoJ-Directive-jan27-2004.pdf>

EEB's input for Environmental Council discussions on "the Aarhus Package" (22 July 2004): <http://www.eeb.org/activities/transparency/EnvMinisters-Aarhusmemo-22072004.pdf>