











**EEB ASSESSMENT OF THE ENVIRONMENTAL RESULTS OF
THE PORTUGUESE PRESIDENCY OF THE EU, July to December 2007**

***LEADERSHIP ON CLIMATE, PROGRESS ON SOME IMPORTANT
ENVIRONMENTAL DOSSIERS, POOR ON SUSTAINABLE DEVELOPMENT***

SUMMARY OF THE EEB VERDICT ON THE TEN GREEN TESTS

ISSUE:	VERDICT:
1. SUSTAINABLE DEVELOPMENT	
2. BUSINESS AND BIODIVERSITY	
3. CLIMATE CHANGE	
4. AIR QUALITY	
5. MARINE STRATEGY DIRECTIVE	
6. SOIL PROTECTION	 
7. MERCURY	
8. WATER SCARCITY AND QUALITY	
9. PESTICIDES	
10. ENFORCEMENT	no verdict

SUMMARY

On balance, this assessment shows that things were not too bad for the EU during the Portuguese Presidency. With regards to climate, the EU stuck together in Bali so that in the end the USA had to bow. We believe the Portuguese Presidency played an important role in this success. The road to an ambitious Copenhagen Protocol is now open, even if that road will be a difficult one. Other climate related tests could not be assessed, as the Commission decided to postpone the publication of its legally binding proposals to implement the political energy/climate related decisions of the March 2007 European Council.

In another international arena, UNEP, the EU played a positive role in bringing about a decision for a legally binding global agreement on phasing out mercury, although this road is also difficult, in particular, again, because of USA opposition.

The Presidency was involved in finalising discussions on two of the key products of the 6th Environmental Action Programme, legislation on air pollution and on marine protection.

With regards to the Air Pollution Directive the EEB had asked the Presidency not to give in to the European Parliament, which during the first reading had tried to weaken the Commission's proposal to a greater extent than the Environmental Council. In the end the Presidency convinced Parliament to agree on some important improvements, but did not manage to bring the EP to the level of the Council's position.

With regards to the Marine Framework Directive, the Parliament was under pressure from the Council to weaken its position. In the end, the Council gave in on some important points.

The Portuguese Presidency successfully raised attention for increasing water scarcity and drought problems in parts of the EU. Rather than implementing its original idea of launching a special policy to address this problem, they ultimately accepted that a vigorous implementation of the Water Framework Directive and a review of EU agricultural policy would represent essential tools for reducing excessive water use and increasing natural capacity for water storage. Its other initiative, on business and biodiversity, certainly raised awareness about the economic value of biodiversity and the opportunities for business to take part in its protection.

Results on the wide dossier affecting progress on sustainable development in the EU and specific legislation on pesticides were more disappointing. The EEB had urged the European Council to show leadership on sustainable development by demanding specific actions where progress is poor, but December Council instead chose to focus on the transport sector only. On pesticides the EEB thinks the Agriculture Council made a big mistake in not setting reduction targets for their use.

The December Environment Council had two important dossiers on the table, aviation and climate and soil protection. The result was disappointing. The Council did not manage to strengthen the weak proposal from the Commission introducing the aviation sector into the emission trading scheme. And despite the great efforts and persistence of the Presidency, five member states blocked the adoption of an already weakened common position on the proposed Soil Framework Directive.

Finally, making the European Council of December into a flying circus, with stops in Lisbon and Brussels, was a disgrace. Signing a Lisbon Treaty which emphasizes the need to fight climate change clearly called for the entire meeting taking place in one location. Europe's political leadership has to set the right example and not provide fodder for disbelief and cynicism on the part of the general public

EEB'S VERDICT ON THE TEN GREEN TESTS

INTRODUCTION

This is an assessment of the Portuguese 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, comprised of a broad agenda of 'traditional' environmental issues as well as sectoral and horizontal policies with direct or potential environmental impacts or related to 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 Presidencies still have a special impact, related to chairing discussions, prioritising practical work and affecting the profile of specific issues.

But EEB's Assessment is not an overall political assessment of the Portuguese Presidency's performance. We are not assessing its role on foreign affairs, 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 Portuguese Presidency in July. 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 Portuguese members had their own specific activities to promote EEB's ambitions over this period.

Regarding the test on climate, and its assessment, EEB was, as usual, ably assisted by Climate Action Network Europe.

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

1. NEXT STEPS ON SUSTAINABLE DEVELOPMENT

- *Hold a substantial debate about progress on the EU Sustainable Development Strategy at December European Council, leading to:*
 - *Decision to introduce a major initiative for Environmental Tax Reform, and speed up environmentally-harmful subsidy phase-out*
 - *Targets for greening the Lisbon Process, relating to energy and resource efficiency and public procurement*
- *Insist that the Commission produces a Sustainable Consumption and Production Action Plan focusing on action, having clear priority environmental objectives linked to the 6EAP, and including product policy based on robust legislative proposals establishing minimum standards, a 'Top Runner' scheme for Europe to drive forward environmental improvements, and environmental objectives in advertising*

Verdict: Negative

The Portuguese Presidency was not helped by the fact that the Commission delayed publishing its progress report, not releasing it until 19th October, making it impossible to do a thorough preparation for a discussion in the Environment Council on 30th October. This effectively meant that this Council could not kick off the work that would lead to official conclusions by the European Council on 14th December. The Portuguese Presidency set up a special preparatory process, but this did not lead to anything substantial. The EEB had called upon the European Council to urge for new or strengthened policies to make the market work for the environment (subsidies and tax reform), promote ecological innovation via the Lisbon process, substantially reduce the environmental impacts of transport, accelerate the protection of biodiversity, demand an ambitious action plan on sustainable production and consumption, etc. The only sentence that reflects, in a soft manner, EEB's concern was: "*The EU must continue to work to move towards more sustainable transport and environmentally-friendly transport modes.*"

2. A MEANINGFUL BUSINESS AND BIODIVERSITY PROJECT

- *Leading to genuine efforts from business sectors beyond the legally-required minimum*
- *Preventing 'green-washing' by setting clear guidelines. Be sufficiently open to involving several kinds of company ranging from blue-chip to SMEs*
- *Include environmental citizens' organizations in its elaboration*
- *Not distract political attention and resources from the obligations and targets already set, especially by the Birds and Habitat Directives*

Verdict: Neutral

The Portuguese presidency made genuine efforts to include representatives from civil society into the high level conference on Business and Biodiversity which was organised to gather widespread support among business and NGOs for the initiative. It is, however, too early to tell whether or not this initiative will fulfil its high ambitions. Some ideas championed by NGOs were shared by the business sector, particularly the involvement of SMEs. However, the workshops were not as productive and participatory as they could have been and more technical work must continue until establishment of the guidelines is done. The leadership of the next Presidency may be crucial in preventing the interest generated in the business sector from fading away.

The Business and Biodiversity Facility, which the Commission will now set up and run for a certain period of time, will only deliver in the long run if it receives the buy-in and support of the business sector.

3. FURTHER STEPS IN FIGHTING CLIMATE CHANGE

- *Aviation emissions in the EU Emissions Trading System leading to real emission reductions in the sector, it should start at 2010 for all flights landing and arriving, include a multiplier (minimum: 2), ambitious caps (50 per cent below average emissions level of 2004-06) and EU wide harmonised allocation through full auctioning, strong limits for external credits;*
- *Support the Commission in delivering a proposal to amend the EU Emission Trading System giving certainty over emissions reductions through a top-down EU wide cap, sending a clear carbon signal by using auctioning and clear and stringent limits on the use of external credits;*
- *Clear and ambitious EU leadership in UN negotiations leading to an agreement on beginning negotiations on a post-2012 extension of the Kyoto framework;*
- *Lead EU discussions on how to share future emissions reductions targets cooperatively;*
- *Ensure EU-Africa strategy includes EU action to address sustainable Africa's vulnerability to climate change and its development needs.*

Verdict: On balance, Positive

The Presidency managed to bring the Council on one line on the emission trading and aviation proposal from the Commission, but it failed to increase the ambitions, so the result is far from the EEB's demands. It is unlikely this proposal will really reduce the impact of aviation on climate change. The Commission decided to postpone its energy/climate package until the 23rd of January, so discussions on the future of the emission trading scheme and collaborative efforts on future emission reductions could not start at the Council level.

The meeting of the Conference of Parties to the Climate Change Convention in Bali was meant to create a roadmap for a post-Kyoto agreement. The negotiations were very difficult, but in the end the USA, the last opponent to a compromise, bowed to pressure. The EU played a major role in this victory, and the Portuguese Presidency was successful in keeping the 27 Member States in one line throughout the negotiations, helping them come to agreements with developing countries and emerging economies. Therefore, the chance for an agreement on reducing global greenhouse gas emissions has remained open.

The EU-Africa Summit did conclude with a partnership agreement on change and energy, but it is vague and needs to be further developed.

4. AIR QUALITY: NO MORE BACK-SLIDING

- *Stick with the Council Position in first reading treating it as the bottom line in negotiations with Parliament*
- *Take all opportunities to strengthen the proposed limit value for PM_{2.5}*
- *Reject specific exemptions for industry concerning their obligations under IPPC*
- *Put pressure on Commission finally to produce ambitious Euro VI proposal for lorries and buses*

Verdict: Mixed

The Council did push the EP into a more demanding position, but the final result is below the ambitions of the Commission and way below the objectives of the 6EAP. We acknowledge the efforts made by the Portuguese Presidency to align the Council's position on regulating ultra fine particles (PM_{2.5}) with WHO recommendations, but we do not consider the attention that was given to achieving meaningful standards for the protection of citizens' health and the environment to have been sufficient. Still, the Council did not give in to pressure to further delay deadlines for meeting existing standards for coarser particles (PM₁₀), as had been demanded by Parliament. Member States made it clear that the maximum tolerable extension for polluters to clean up their act should be three years after the Directive has entered into force. The dangerous diluting of the air quality law through exemptions for industrial installations holding an operational permit was rejected, preventing any undermining of the IPPC directive. But the remaining monitoring exemptions for hot spots are a disappointment, though the final Directive text is still better than the Dutch and UK proposals. We are also happy to see that some of Parliament's latest proposals that would have made the adoption of short-term action plans very difficult were rejected.

Since we still have not seen any proposal by the Commission on EURO VI controls on heavy duty vehicle emissions we feel that no strong political will has been dedicated to advancing this regulation. EURO VI standards will play a vital role in the successful implementation of the new Air Quality Law and should not be further delayed in view of the pressing problems with ambient particle pollution in most of the MS.

5. STRENGTHEN THE MARINE STRATEGY DIRECTIVE

- *An unambiguous requirement to achieve 'Good Environmental Status'*
- *A list of Good Environmental Status criteria/descriptors which are scientifically sound and politically ambitious*
- *Sufficiently strong provisions for tackling the problem of unsustainable fishery management in the EU*

Verdict: Overall positive

Overall, the results of the final agreement are a significant improvement on the Commission's proposal and can be welcomed. The Council finally agreed to the text '*MS shall take the necessary measures to achieve or maintain good environmental status*'. As regards the criteria/descriptors for assessing Good Environmental Status, the outcome is less positive: some EP criteria were taken up but overall they are not what we have been pushing for. Lastly, as regards provisions for tackling unsustainable fisheries, we see it as positive that population data of commercial fish stocks are among the descriptors. This means that in order to achieve good environmental status, countries will need to ensure that fishing yields are within safe biological limits.

6. MAKE PROGRESS ON SOIL PROTECTION

- *Agreement in the Council for a strong Soil Framework Directive which includes long-term generation targets for specific soil problems and legally-enforceable medium-term targets to be set or agreed at EU level*

Verdict: Negative but with respect for Presidency's efforts

After the German Presidency made little effort on this dossier, negotiations were taken forward with great speed by the Portuguese presidency, which we appreciated. It had to deal with stiff opposition from within its own country as well as the UK, Austria and, to a lesser extent, the Netherlands. The proposal before the December Council was already weakened due to that pressure, but it looked like it would still have sufficient support. Then Chancellor Merkel, pressed by the agricultural lobby in her country, started a lobby at the highest political level, leading to a blocking minority from the four mentioned countries and France. In particular the French position was peculiar, as it defended its opposition by not finding the result ambitious enough, a position that they did not put forth in negotiations running up to the Council meeting.

The file has now been transformed to the Slovenian Presidency, who will have to find a solution. The EEB is seriously concerned about the trend in some major EU Member States to insist on subsidiarity in cases where EU law can help environmental protection move forward in the entire region, and where absence of such law can lead to standstill, in particular in countries without a strong history of domestic environmental protection.

7. PHASE OUT MERCURY

- *Strong promotion at UNEP of a global new, binding instrument to reduce global mercury use by 70% by 2017*

Verdict: Positive

At the first UNEP Open Ended Working Group (OEWG) on Mercury (November 2007, Bangkok), the Portuguese Presidency represented the EU. Although this was not a political decision-making forum, discussions focused on the inter-sessional work that governments would like UNEP to carry out before the second meeting of the OEWG. Overall the EU showed a solid position following on earlier negotiations in February 2007 at the 24th UNEP Governing Council. They contributed successfully to narrowing down the options for implementation instruments by requesting that UNEP further analyse the possibility of adding a new protocol on mercury to the Stockholm convention or developing a new free-standing treaty. Although the possibility of implementing a voluntary system still remains on the table, all approaches looked at a comprehensive instrument that would cover measures to tackle all seven identified priority areas. The EU also ensured that the fragmented approach of tackling different issues through different legal instruments would not be considered.

Overall the Presidency made a positive contribution towards shaping final recommendations on mercury, which will be developed after the OEWG meets for the second time and submitted to the 25th Governing Council (GC) for further critical decisions.

8. WATER SCARCITY AND QUALITY

- *In discussions on the Commission's Communication on Water Scarcity and Droughts provide a high profile to the tools and mechanisms which the Water Framework Directive provides for tackling these problems, the most important one of these being demand management through water pricing*
- *Ensure that the 'good chemical status' of waters becomes well-defined and monitored and that long-term chemical pollution ceases including for water-bodies which are not yet used for drinking water abstraction*

Verdict: On balance Positive

The outcome of the informal council and the first Environment Council in October was positive overall, giving strong support to the Water Framework Directive (WFD) as the principal instrument for dealing with water scarcity and drought issues. Concerns that a small number of mostly southern member states, including Portugal, would use this issue to press for new legislation to address country-specific water shortage situations have been proven to be unfounded, at least thus far. But in the end the Presidency accepted that a majority of Member States want to focus on the WFD. The involvement of environmental NGOs during preparation and the informal Council was also positive.

As regards water quality and the work on a Directive setting environmental quality standards, the Portuguese presidency did not work on this apart from adjusting the recitals to the political agreement reached on the Articles. Second reading on this will now start under the Slovenian presidency.

9. PROMOTE REDUCTION AND SUSTAINABLE USE OF PESTICIDES

- *Set EU quantitative targets for pesticides use and risk reduction*
- *Make Integrated Pest Management (IPM) a minimum for conventional farmland and increase land under organic farming*

- *Introduce levy on pesticides to finance measures under National Action Plans, and advisory services to farmers for implementation of IPM standards*
- *Institute No-spray zones to protection the aquatic environment and sensitive areas*
- *Ban aerial spraying to protect human health and the environment*
- *Ban substances on the basis of their intrinsic hazard (cut-off criteria)*
- *Require comparative assessment and substitution by less hazardous substances and non-chemical alternatives*
- *Protect vulnerable groups, including foetuses, infants and children*
- *Block zonal division of the EU for product approval, and support a mutual recognition system which allows Member States greater discretion to change the proposed conditions of use or refuse to authorise products on the basis of health and environmental protection*
- *Require regular evaluation and monitoring programme for pesticides and including newly-identified effects*
- *Provide greater transparency in the pesticide authorisation process*

Verdict: Negative

The European Parliament voted on the Thematic Strategy on Pesticides, the Framework Directive on pesticide use and the Regulation on the authorisation of pesticides on 23 October, a month later than initially expected. EEB judged the outcome to be a mixed bag, with a strong position taken on the Regulation and some disappointing results on the Framework Directive. The Portuguese Presidency has addressed the two dossiers, with the Agriculture and Fisheries Council hearing a progress report on the Regulation and reaching political agreement on a Common Position on the Framework Directive on 17-19 December. With regards to the Framework Directive, the Council has failed to impose EU-wide mandatory quantitative pesticide reduction targets. EEB considers this to be a lost opportunity and a failure to respect the mandate of the Sixth Environmental Action Programme (EAP) 2001-10 to reduce total pesticide use. Furthermore, EEB is disappointed with the decision to allow aerial spraying in special cases, given that this technique poses clear dangers to the environment and human health. The Common Position on the Framework Directive is due to be adopted by the Council in January, while discussion on the Regulation will continue under the Slovenian Presidency.

10. IMPROVING ENFORCEMENT OF ENVIRONMENTAL LAW

- *Adopt an improved version of the proposed Directive on protecting the environment through criminal law*
- *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*

Verdict: no verdict

The work on the Directive on environmental criminal law was frozen because the European Court of Justice rules that the EU does not have the legal right to rule on

sanctions against crimes under existing treaties. The Lisbon Treaty grants the EU such a mandate, which will only be enforceable after the ratification of this Treaty. EEB prefers that the Council and Parliament continue with their work and include sanctions, pending the Treaty entering into force. The EEB has not yet determined if this is even institutionally possible.

A Communication on enforcement of EU environmental law, announced for this autumn, has still not come been released, so the other points in this Green Test could not be assessed.