EEB MEMORANDUM
TO THE MALTESE
PRESIDENCY

Prepared in cooperation with
BirdLife Europe and Seas At Risk

Including the
Ten Green Tests
The European Environmental Bureau (EEB) is the environmental voice of European citizens, standing for environmental justice, sustainable development and participatory democracy. We seek to ensure a healthy environment and rich biodiversity throughout the European Union and beyond.

Prepared in cooperation with:

BirdLife

SEAS AT RISK

We gratefully acknowledge financial assistance from the European Commission.
The sole responsibility for the content of this publication lies with the EEB and does not commit any funders.

Published in December 2016 by the EEB.
## CONTENTS

### INTRODUCTION

3

### TEN GREEN TESTS FOR THE MALTESE PRESIDENCY

4

### 1. EUROPEAN COUNCIL

8

1.1 BETTER REGULATION

8

1.2 IMPLEMENTING THE GLOBAL SUSTAINABLE DEVELOPMENT AGENDA IN EUROPE

9

1.3 REFORM TRADE POLICIES: TTIP AND CETA

12

1.4 STATE OF PLAY OF THE 2030 CLIMATE AND ENERGY FRAMEWORK

13

### 2. ENERGY AND TRANSPORT COUNCIL

14

2.1 TOWARDS STRONGER CLIMATE AND ENERGY POLICIES

14

2.2 SUSTAINABLE RENEWABLE ENERGY AND BIOENERGY

15

### 3. COMPETITIVENESS COUNCIL

16

3.1 UPDATED TYPE APPROVAL AND MARKET SURVEILLANCE RULES FOR ROAD VEHICLES

16

### 4. AGRICULTURE COUNCIL

17

### 5. FISHERIES COUNCIL

19

5.1 FISHERIES DATA COLLECTION

19

5.2 NORTH SEA MULTI-ANNUAL PLAN

19

5.3 TECHNICAL MEASURES REGULATION

20

### 6. ENVIRONMENT COUNCIL

21

6.1 DEFEND AND DEVELOP EU ENVIRONMENTAL POLICIES

21

6.2 GREENING THE EUROPE 2020 STRATEGY AND DEVELOPING A NEW EU SUSTAINABLE DEVELOPMENT STRATEGY

21

6.3 CHALLENGE THE THREAT COMING FROM TTIP AND CETA

21

6.4 TOWARDS A STRONGER CLIMATE POLICY

22

6.5 PROTECT THE PUBLIC FROM HAZARDOUS CHEMICALS

23

6.6 GLOBAL MERCURY TREATY AND EU STRATEGY

24

6.7 CIRCULAR ECONOMY AND WASTE POLICY

26

6.8 EU BIODIVERSITY POLICY

27

6.9 SOIL POLICY

28

6.10 FITNESS CHECK ON ENVIRONMENTAL REPORTING AND MONITORING

29

6.11 APPLICATION OF THE AARHUS CONVENTION TO THE EU INSTITUTIONS

29

6.12 RE-LAUNCH DISCUSSIONS ON AN ACCESS TO JUSTICE DIRECTIVE

30

6.13 IMPROVE IMPLEMENTATION AND ENFORCEMENT

32

6.14 ENVIRONMENTAL INSPECTIONS

33

6.15 2030 SUSTAINABLE DEVELOPMENT AGENDA

34
INTRODUCTION

MALTA has taken over the Presidency of the European Union after several electoral shocks in 2016 and anxiety over what elections in several European countries will bring in 2017. It is the outcome of the UK referendum that represents the biggest setback to the process of European integration since the foundation of the European Economic Community, challenging the values underlying the EU and threatening to stall or even put into reverse the development of a common set of laws, policies and standards which have been built up over several decades. It is likely to affect the evolution of the EU over the next few years. The crisis precipitated by the Brexit vote has come on top of continuing political instability at Europe’s borders leading to a refugee crisis that continues to be characterized by human tragedies.

After the first informal summit in Bratislava among EU 27 leaders the only agreement reached was that of a process by which the EU would prepare a new vision for the future of Europe, to be discussed at another informal summit in early February in Valetta to be adopted in Rome during the celebrations of the 60 year anniversary of the treaty of Rome.

The lack of popularity of the EU among large sections of the public is partially the outcome of a decades old tendency among EU leaders to take personal credit for the EU’s success and put all blame and responsibility on ‘the EU’ for its failures. This applied in particular to the UK, but the same happens in the rest of Europe as well. In addition to that, the EU and its leaders have failed at a more substantive level to give sufficient priority to addressing issues that are of direct concern to citizens. Successful opinion polls show that the environment is high among the issues that the public care about and that there is broad support for more action on the environment at EU level.1

So the Brexit vote, rather than being allowed to distract the EU from pursuing its environmental agenda, should rather be a reason for the EU to increase its efforts to address environmental challenges. It must be seized on as an opportunity to realign the EU around an agenda of transformational change, one that puts the interests of people and planet first in everything that it does, guided by the global 2030 Agenda for Sustainable Development and the Paris climate deal. This implies a significant change in political emphasis and direction, away from the deregulatory jobs-and-growth agenda that so clearly failed to convince British voters that belonging to Europe is a good thing.

Instead, it means strengthening the accountability of the EU institutions, which urgently need to regain public confidence. This shift in priorities needs to be reflected in short-term instruments such as the Commission’s Work Programme for 2017, medium-term instruments such as the Commission’s Political Guidelines and Europe 2020, and longer-term instruments such as a new Sustainable Development Strategy that should address the implementation of the SDGs in the EU. Most importantly, however, this shift in direction needs to be reflected in the outcome of the ‘Future of Europe’ debate. By the end of 2016, the Juncker Commission concluded, after much uncertainty and debate, that a number of crucial EU policies are fit for purpose; the Birds and Habitats Directives, Ecodesign and the Energy Label with negotiations continuing on revised recycling laws. 2017 therefore now provides a unique opportunity to move away from questioning and undermining EU environmental policies to recognizing them for what they are: one of the EU’s strongest success stories that should be continued and strengthened.

As important as this change in political direction and priorities is the need to ensure that all EU leaders will stand up for the rule of law, not only in theory but especially in practice when the Commission is carrying out its task to ensure that Member States comply with the laws to which they agreed. The so-called Better Regulation agenda has had a paralysing effect on many badly needed new proposals such as in the area of endocrine disrupting chemicals (EDCs), environmental inspections and even straightforward implementation, as in the case of REACH. It also threatens to undermine the prospects for the EU to meet its climate commitments under the Paris agreement, which will require an ambitious and enforceable legal framework covering energy efficiency, renewables and GHG reductions.

This Memorandum, prepared in cooperation with BirdLife Europe and Seas at Risk, reflects on the issues that the EEB would like to see advanced during the Maltese Presidency. The most important issues are highlighted in the Ten Green Tests. These have been prepared in consultation with the EEB Board which has representatives from more than 30 countries and several European networks. At the end of June 2017, the Ten Green Tests will be used to evaluate the Presidency’s performance over the next six months. While the Memorandum is directly addressed to the Presidency, we recognise that progress depends upon the cooperation of the European Commission, the European Parliament and other Member States. However, Presidencies can often make a difference if they invest their political and technical capacities in the right issues and if there is sufficient political will.

We look forward to engaging in a constructive dialogue with the Maltese Government throughout the Presidency and beyond.

Jeremy Wates, Secretary General

---

1 In early 2016, the EEB published ‘The Juncker Commission Political Priorities Revisited’ to demonstrate what a set of post-2030 Agenda priorities could look like.

2 Horizon 2020, for example, which is the EU’s largest research and innovation programme ever, is the outcome of more than a decade of negotiation and compromise. It is therefore essential that it should be used to deliver EU climate targets, rather than to undermine them.
We call upon the Maltese Presidency of the European Union to help restore public confidence in the European Union following the Brexit vote by promoting a greener, more sustainable Europe, where our impact on the climate, biodiversity and public health in Europe and beyond is rapidly decreased in line with citizens’ expectations and scientific imperatives, through the following measures:

### TEN GREEN TESTS FOR THE MALTESE PRESIDENCY

1. **MAKE SUSTAINABLE DEVELOPMENT CENTRAL TO THE FUTURE OF EUROPE**
   - Use the Treaty of Rome celebrations to promote a people-centred agenda of transformational change in the European Union based on the global 2030 Agenda for Sustainable Development with full respect for planetary boundaries;
   - Press the Commission to revise its Political Guidelines to reflect this new agenda, and follow up on its Communication on implementing the SDGs to carry out an in-depth gap analysis and put in place a solid, transparent, participatory mechanism for implementing the Sustainable Development Goals;
   - Recognize the limitations of the EU Better Regulation agenda in countering rising Euroscepticism and ensure that national leaders take responsibility for the EU including in sharing credit where credit is due.

2. **REFORM TRADE POLICIES, IN PARTICULAR TTIP AND CETA**
   - Ensure that the European Court of Justice will receive a request to rule on the legality of the Investor Court System under CETA;
   - Press for the suspension of the TTIP negotiations to initiate an in-depth and open-ended review of the state of play, including an assessment of compatibility with the Sustainable Development Goals and the precautionary principle, with a view to addressing the most controversial elements, notably investment protection and regulatory cooperation, in a more appropriate context than a bilateral trade agreement.

3. **FIGHT CLIMATE CHANGE**
   - Ensure the environmental integrity of the EU climate objective for 2030 having in mind the need to bring the EU’s contribution in line with the Paris commitment to pursue efforts to limit global warming to 1.5°C above pre-industrial levels. This requires a push for strengthened targets of at least 60% greenhouse gas emission reductions, 40% energy savings and 45% renewable energy by 2030 at the latest;
   - Support consistent, transparent and reliable climate action enshrined in the Emissions Trading System, the Effort-Sharing Regulation and a separate pillar for Land Use, Land Use Change and Forestry (LULUCF), which should ensure that efforts required by the agriculture sector are not watered down but rather lead to a strengthening of climate ambition.
4. REFORM ENERGY POLICY

- Put Energy Efficiency first in the revision of the Energy Efficiency Directive and the Energy Performance of Building Directive, taking into consideration the full body of evidence on the multiple benefits of energy efficiency and the position of the European Parliament as co-legislator calling for a binding 40% energy efficiency target with individual national targets;

- Collaborate with the Commission on how to tap the cost-effective potential for energy efficiency in all Member States through the revision of the Energy Efficiency Directive and the Energy Performance of Buildings Directive, in the latter case by enshrining the ‘efficiency first’ principle and the vision of EU-wide nearly Zero Energy Building (nZEB) stock by 2050 in legislation;

- Finalise the energy label reform without watering down the timelines for rescaling obsolete energy labels for televisions, white goods and lamps, and make sure the re-started ecodesign implementing measures effectively help to transform the market and reduce EU dependency with regards to energy and natural resources;

- Push for ambitious support schemes that promote the growth of the sustainable renewable energy sector while ensuring full application of environmental safeguards.

5. RESTORE ECOSYSTEMS AND BIODIVERSITY

- Use the outcome of the Nature Directives Fitness Check to push for decisive action to ensure the full and effective implementation of the EU Nature Directives, supported by adequate financing and effective enforcement, as well as a set of additional fast-track measures to address key gaps and failures preventing the achievement of the EU’s 2020 biodiversity targets;

- Ensure commitments made by the EU at CBD-COP13 in Mexico, notably in the Cancun Declaration on mainstreaming biodiversity, translate into a renewed effort and concrete action to meet the Aichi biodiversity targets domestically, in particular through further action to mainstream biodiversity in other sectors, and in particular agriculture, and on removing subsidies and incentives harmful to biodiversity by 2020.

6. TRANSFORM AGRICULTURE POLICY

- Continue the debate on the future of the Common Agricultural Policy (CAP) and EU Food Policy initiated by the Dutch Presidency in a more inclusive manner, taking the five Fitness Check questions as a basis;

- Focus the CAP simplification debate on outcome and what the new CAP delivers on the ground rather than its administrative burden.

7. SUPPORT THE CIRCULAR ECONOMY AND WASTE POLICY

- Ensure the setting of high prevention and recycling targets within the revision of EU waste legislation, addressing municipal and commercial waste, levered by product design requirements and incentives and based on common unique EU-wide methodologies;

- Promote the mandatory implementation of green public procurement (GPP) targets at the national level and develop a coherent product policy framework based on a set of criteria defined at the EU level to be applied in ecodesign, Extended Producer Responsibility, GPP and Ecolabel policies;

- Propose a resource efficiency headline target with an associated EU-wide dashboard of indicators on CO2, material, water and land use footprints to measure progress towards a circular economy.
8. **PROTECT THE PUBLIC FROM HAZARDOUS CHEMICALS AND MERCURY**

- Encourage the Commission to step up its work towards achieving the 7th Environmental Action Programme (7EAP) goals in relation to chemicals by developing new EU tools to achieve a non-toxic environment and non-toxic material cycle goals. This means, for example, closing the knowledge gap on chemicals in products, waste and recycled materials, rejecting toxic recycling in the circular economy package and ensuring the delivery of concrete measures to promote the substitution of hazardous chemicals by safer solutions such as the cooperation between different authorities, capacity building and support to the key actors and the creation of economic incentives;

- Ensure that the Commission’s criteria to identify endocrine disrupting chemicals (EDCs) will be protective enough so that it catches all EDCs to which the public and the environment are exposed. To this end, the Commission should develop scientific and horizontal criteria for the identification of EDCs that are consistent with the EU identification system for substances that are carcinogenic, mutagenic or toxic for reproduction (CMRs);

- Call on the Commission, the European Chemicals Agency (ECHA) and Member States to address the obstacles in the implementation of the REACH regulation. In particular to: develop effective measures to ensure the compliance, quality and reliability of the registration information; the proper application, implementation and enforcement of REACH article 33 (the right to know on substances of very high concern [SVHC]); the effective restriction and phase out of substances of most concern through restriction and authorisation processes; and the creation of a comprehensive Candidate List;

- Encourage the development of a nanomaterials framework regulation to govern human health and environmental protection for all potential uses of nanomaterials in a harmonised way and to call on the European Commission to develop proposals to ensure that all nano-containing products placed on the market (after having undergone assessment procedures) are registered for identification and traceability purposes and included in an EU-wide public inventory.

- Urge the European Commission to stop delaying action on hazardous chemicals, including its obligations referred to in REACH article 138 and the cosmetics Regulation, the assessment of chemical mixtures, horizontal measures for a non-toxic environment and the REACH annexes on nanomaterials.

- Maintain EU leadership in relation to the Minamata Convention on Mercury by working towards establishing an effective international operational framework to achieve significant mercury reductions, ensuring swift ratification of the Convention by the EU and its Member States and promoting further actions to address mercury in the EU.

9. **SAFEGUARD FISHERIES**

- Improve the EU data collection regime to make relevant data publicly available for end-users in a harmonised and transparent way, to provide the basis for achieving good environmental status under the Marine Strategy Framework Directive;

- Ensure that the North Sea Multi Annual Plan supports the objectives of the reformed Common Fisheries Policy (CFP) and, in particular, that fishing rates are set below the rate of fishing mortality consistent with maximum sustainable yields ($F_{msy}$) in order to provide at least a chance to restore and maintain fish stocks above levels capable of producing the maximum sustainable yield;

- Ensure that the discussions on the proposal for a revision of the Technical Measures Regulation are: based on a European framework of principles and requirements; support the objectives of the Natura 2000 network and other Marine Protected Areas; do not provide permission to conduct previously prohibited, destructive fisheries; lead to the avoidance or at least the minimisation of unwanted catches including through tactical selectivity measures; and minimise the ecosystem impact of fishing in general, including on seabirds.
10. STRENGTHEN DEMOCRATIC GOVERNANCE

— Seek to attempt to restore confidence in Europe’s regulatory systems following the ‘dieselgate’ scandal by calling on the Commission to come forward with new legislative proposals on environmental compliance assurance, aimed at strengthening inspection and enforcement capacities at EU and Member State level;

— Push the Commission to come forward with ambitious interpretative guidance followed by a new legislative proposal on access to justice and to respond positively to the draft findings of the Aarhus Convention Compliance Committee issued in June 2016 to the effect that the EU is not in compliance with the Aarhus Convention by starting to prepare proposals to strengthen the Aarhus Regulation.
1. EUROPEAN COUNCIL

1.1 BETTER REGULATION

On 19 May 2015, the European Commission’s First Vice-President Timmermans presented the Commission’s plans for a new Better Regulation agenda. Most elements of this package apply directly to the Commission’s internal procedures without further negotiations, but one crucial element, a new Inter Institutional Agreement on Better Lawmaking (IIABLM), was subject to negotiations with the EP and Council.

The Communication that accompanied the IIABLM contained encouraging language about the body of EU law being one of Europe’s strengths and an insistence that the agreement is not about deregulation or the lowering of existing environmental standards. However, all the proposals for new procedures and bodies both for the Commission and under the IIABLM create the risk that it will become more cumbersome to develop new and much-needed rules to support key environmental objectives.

The IIABLM was adopted at the end of December 2015, following negotiations with the EP and Council which led to some significant changes to the Commission proposal. Although the final IIABLM improved in a number of important points, including a more appropriate use of Impact Assessment and the removal of President Juncker’s political guidelines as a basis for joint work programming, some rather worrying new elements have been added as well. In particular, a commitment by the Commission as part of a ‘simplification’ effort to systematically quantify regulatory costs to business and to assess the feasibility of putting in place targets to reduce those costs in certain sectors is alarming. This was given a further push during the Dutch Presidency with the adoption of conclusions from the Competitiveness Council to press the Commission to not only assess feasibility, but also commit to put them in place by 2017.

The goal of cutting so-called red tape also formed a central part of David Cameron’s negotiation on a new settlement for the UK in the EU. The settlement package, which was subsequently annulled by the outcome of the UK referendum vote, contained a number of similarly problematic provisions. The post-referendum demographic analysis suggests that it is doubtful whether these business-driven efforts to weaken the EU’s regulatory role had any significant impact in convincing British Eurosceptics to vote ‘remain’.

Setting a target to reduce the burden of regulation is the wrong approach for a number of reasons.

Addressing global challenges such as climate change, ecosystem collapse, antimicrobial resistance, inequality or resource depletion will require the EU to adopt new, effective and legally binding policies. A blanket requirement to offset any new regulatory cost arising from such new policies by slashing costs elsewhere irrespective of the benefits arising would seriously hamper these efforts.

Second, the premise that the EU regulatory system is overly burdensome and a major barrier to economic development is a highly subjective one, underpinned by little, if any, evidence. In fact, the available evidence, in particular in the environmental field, shows that a competitive industry is easily able to absorb and adjust to the costs of new regulations. Further, a continuous focus on reducing regulatory costs would mean the subsidising of Europe’s least competitive enterprises by allowing them to externalise part of their production costs. As a result, consumers and tax payers would foot the bill through, for example, increased health care costs, while efforts by leaders and frontrunners within industry would be undermined.

We therefore urge the Maltese Presidency to take a more balanced approach to much needed efforts to improve the EU regulatory system, most crucially, by opposing the setting of a target to reduce regulatory burdens and by ensuring that the public benefits of regulatory action are given sufficient weight and that rules, once in place, are effectively enforced irrespective of whether they address competition law, pollution or workers’ protection.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Rethink the EU’s approach to Better Regulation in favour of a more balanced approach that ensures that the public benefits of regulatory action are given sufficient weight;

— Support more efforts to improve compliance and the enforcement of EU legislation through the adoption of legally binding minimum standards for inspections and by providing citizens with access to justice.
1.2 IMPLEMENTING THE GLOBAL SUSTAINABLE DEVELOPMENT AGENDA IN EUROPE

The EU has for a number of years been ambivalent in its approach towards the concept of sustainable development. At a rhetorical level, it strongly endorses the concept, presents itself as a leader in the global debate on sustainable development, and indeed has been one of the more progressive forces among the developed countries in that debate. On the other hand, since the economic crisis began in 2008, European leaders have increasingly tended to prioritise short-term economic considerations over environmental and social ones, which led to a gradual slowdown in environmental policy initiatives during the Barroso Commission and worsened further under the Juncker Commission. Furthermore, Europe continues to consume considerably more than its fair share of the Earth’s resources and outside planetary boundaries, without demonstrating a serious commitment to reduce its ecological footprint in absolute amounts within the short to medium term to the extent required to allow the poorest countries the ‘environmental space’ to develop. Our European lifestyles are built on the account of the natural resources from those countries, which blocks them for endogenous development.

The adoption in September 2015 of the Global 2030 Agenda for Sustainable Development (2030 Agenda) with its 17 Sustainable Development Goals (SDGs) was a major milestone on the path to international recognition of the need for a more sustainable way of living. Whereas developing countries were the primary target of the Millennium Development Goals, the SDGs are universally applicable, reflecting the fact that developed countries need to change their model of development in order for humanity’s environmental footprint to remain within planetary boundaries. Thus the 2030 Agenda and the SDGs provide an opportunity and indeed an obligation for Europe to look at its own model of development and steer it in a sustainable direction. A completely new narrative on development needs to be put in place, where achieving well-being, social and environmental justice and respect for human rights enjoyed within planetary boundaries replace an excessive focus on material wealth. It should also support and allow developing countries to achieve a decent standard of living without repeating the mistakes made by the developed countries.

Despite the EU having played an important role in the development of the 2030 Agenda, the Commission did not appear to give its implementation high priority in the following months. Less than one year after its adoption, Commission President Juncker’s 2016 State of the Union address failed to even mention the 2030 Agenda or the SDGs. However, in November 2016, the Commission came forward with a package of proposals on how to carry the 2030 Agenda forward, including a Communication “Proposal for a new European consensus on development: our world, our dignity, our future” and a second Communication “Next steps for a sustainable European future: European action for sustainability.” The latter of these Communications is the most relevant to policies shaping the future development of the EU itself (as opposed to its overseas development policies). It distinguishes between the period up to 2020, where it describes the aim to “fully integrate the SDGs in the European policy framework and current Commission priorities, assessing where we stand and identifying the most relevant sustainability concerns”, and the period after 2020 where it identifies the need to “launch reflection work on further developing our longer term vision and the focus of sectoral policies after 2020” but actually does little more than signal that this should be done in the future.

The Communication affirms many positive policy principles such as the commitment to development that meets the needs of the present without compromising the ability of future generations to meet their own needs, inter alia through accelerating the transition to a low-carbon, climate resilient, resource-efficient and circular economy. However, it is disappointing in a number of respects. Given that it comes out more than a year after the adoption of the 2030 Agenda, it is very thin on detail about how the implementation will be delivered, and essentially only covers the period up to the 2020, where the existing priorities and actions of the Commission are claimed to be largely adequate.

Regrettably, the call by many civil society organisations for an overarching sustainable development strategy for the EU mirroring the global 2030 strategy has been ignored, at least so far. Instead the Communication goes to great lengths to describe synergies between the SDGs and the Juncker priorities while significantly overstating the extent to which the EU’s policies already promote sustainability. It argues that under the current Commission “sustainable development is mainstreamed in key cross-cutting projects as well as in sectoral policies and initiatives”, that “many of the SDGs are at the heart of the highest political priorities of the Juncker Commission” and that “The SDGs are already being pursued through many of the EU’s policies and integrated in all the Commission’s ten priorities”.

These last claims are particularly unconvincing; the reality is that with their narrow focus on growth and jobs, the ten priorities contained in Juncker’s Political Guidelines virtually ignore sustainable development and environmental issues other than climate change.

As a face-saving exercise, such ‘spin’ could be harmless enough even if it stretches credibility but the concern is that it reflects a genuine failure at the top of the Commission to grasp the extent to which current trends are unsustainable and the scale of the transition that is consequently needed. The correct and logical reaction to the adoption of the 2030 Agenda would have been for the Commission to present a revised set of political priorities to the Parliament and Council reflecting a new era heralded in by the 2030 Agenda. Given the Commission’s refusal to do that, looking for synergies between the Ten Priorities and the SDGs is perhaps better than not doing so but comes across as unwillingness to concede that the Commission’s Priorities lack

---

2 In early 2016, the EEB published The Juncker Commission Political Priorities Revisited to demonstrate what a set of post-2030 Agenda priorities could look like.
a sustainability perspective and need to be changed, replaced or superseded.

The Communication attempts to justify this attempt to link the SDGs to the Juncker priorities through the argument of political relevance, namely that “exploiting these synergies between the SDGs and the Commission’s highest priorities ensures strong political ownership and avoids that implementation of the SDGs takes place in a political vacuum”. However, it is questionable whether the SDGs are seen by the Commission as having the central political role that they deserve. The lack of any connection being made in the Communication with the political debate on the future of Europe triggered by the Brexit vote leading up to the Rome Summit in March 2017 suggests otherwise and is a matter of concern.

Several existing strategies that the Commission is executing will support part of the whole 2030 Agenda, but what is urgently needed is policy coherence amongst them all, filling in the gaps where the EU is lagging behind and making all action in line with the SDG ambitions. The value in having some of the current policies and priorities supporting sustainable development is undermined if others directly work in the opposite direction. The new Communication implies in some places that the fact that the EU has a policy in a field covered by an SDG (e.g. the Common Agriculture Policy) means that it is implementing that SDG (SDG-2), irrespective of the fact that the policy manifestly fails to achieve the result prescribed in the SDG.

Among the positive elements in the Communication are the commitment by the Commission to “explore how EU budgets and future financial programmes can best continue to adequately contribute to the delivery of the 2030 Agenda and support Member States in their efforts” (though the words ‘continue to’ again imply that the Commission considers the current approach is already adequate); and its recognition of the important role of impact assessments in ensuring mainstreaming of sustainable development in EU policies.

As the Communication does not provide new and concrete details about whether an EU-wide SDG implementation plan with specific targets and deadlines will be developed, how stakeholder engagement will be assured and operationalised, or address the period after 2020, these issues remain open and urgent. The Semester should also become more transparent and democratic with a stronger role for the European Parliament.

Assuring policy coherence for sustainable development implies the institutionalisation of the treaty-based objective of sustainable development in the governance structures at EU and member state level. At European level there is a need for an overarching Sustainable Development Strategy (SDS), with concrete planning of the implementation of all goals, targets and timelines. A central focus should go to multi-sectoral policymaking and guaranteeing policy coherence. Introducing a new SDS could to some extent compensate for and address the deficiencies of the Commission’s ten political priorities.

The Europe 2020 Strategy on competitiveness and growth has some elements relating to environmental sustainability. In 2011 and 2012, the Strategy was given shape through a series of Flagship Initiatives, EU budget proposals, the Annual Growth Surveys, economic ‘Semesters’, National Reform Programmes and national budget consolidation plans. Having a strategy to bring about recovery from Europe’s economic crisis is clearly important but it must be done in a way that secures sustainability from environmental and social points of view as well.

In the Semester exercise, the primary driver was the euro crisis and the need to restore investors’ confidence in the euro. The focus in 2011 was therefore strongly on balancing national budgets and cutting deficits. In the subsequent years, the focus of the semester became broader, aiming to align national budgets and national reform programmes with the EU 2020 objectives using the tool of country-specific recommendations (CSRs), until in 2015 and 2016 when the focus again was placed on macro-economic reform. In 2016, the CSRs only provided energy related recommendations to five Member States and even then without making the link to their climate obligations. Only one Member State, Latvia, was recommended to undertake “a growth-friendly tax shift towards environmental and property taxes”. This was despite the fact that Country Reports identified 21 EU member states with potential for environmental tax reforms, 14 states that needed to phase out environmentally harmful subsidies and another 18 that were recommended to act on circular economy.

There is clearly significant potential to make better use of the Semester as a tool to steer the economy in a more sustainable direction. Environmental accounting could and should be further integrated into national budgets. Although there is broad recognition that a shift in the tax base from labour to pollution and resources is an effective market based instrument, little progress has been made in implementing this. Phasing out environmentally harmful subsidies, while protecting against adverse social effects and short sighted cuts in investments in environmental protection and public services, is also important but again little progress is made. The Semester should also become more transparent and democratic with a stronger role for the European Parliament.

Notwithstanding the possibility, and indeed the necessity, to achieve more under the Europe 2020 Strategy, including the Semester, in delivering on environmental and social objectives, it can hardly be considered a Sustainable Development Strategy given its clear focus on competitiveness and growth and its lack of an external dimension. The fact that the growth is supposed to be smart, sustainable and inclusive does not make Europe 2020 a sustainable development strategy.

The existing EU SDS has never enjoyed the same level of prominence or priority as the Europe 2020 Strategy. Adopted in 2001, the SDS was reviewed and renewed in 2006, with a further review carried out in 2009. The European Council was expected to take a decision on the future of the SDS by the end of 2011, when a comprehensive review was due to be undertaken. In fact, it was October 2012 before the Council returned to the issue in the context of discussing the follow-up to Rio+20. It called for the SDS to be reviewed “as soon as possible, at the latest in 2014”.
The Maltese Presidency should play its part in supporting the development of a new EU SDS, as mentioned above, based on the 17 goals and 169 targets, with a concrete and legally binding implementation plan. The Presidency should also press for bold review mechanisms for all goals, considering all existing policies, strategies and programmes in order to guarantee policy coherence. It should also follow up on how Vice-President Timmermans is approaching his sustainability mandate; the results of his request to all Commissioners to carry out gap analyses to check where, and where not, the EU is implementing the SDGs, are still awaited. This information should be the basis for the timely drafting of a coherent EU SDS and a plan of action in active consultation with civil society organisations.

Finally, an appropriate structure facilitating active and full multi stakeholder civil society participation needs to be set up, based on the principle of self-organising representation. The newly-established SDG-Watch Europe can play an important role in this regard. Through the Communication “Next steps for a sustainable European future: European action for sustainability”, the Commission has announced the creation of a multi-stakeholder platform with a role in the follow-up and exchange of best practices on SDG implementation across sectors, at Member State and EU level. Such a platform could play a useful role provided that it is set up with balanced participation of stakeholders representing the three dimensions of sustainable development (environmental, social, economic).

Aside from implementing the 2030 Agenda within Europe, the EU needs to continue playing an active and constructive role in the global follow-up processes. In this regard, having welcomed the establishment of the UN’s High-Level Political Forum on Sustainable Development (HLPF), the EEB wants to underline the importance of it being given adequate authority and resources, with a board and a well funded secretariat and active participation modalities for all stakeholders.

Another concern is that since the HLPF is mainly under ECOSOC structures, trade and development ministers will be mostly present during the meetings, while ministers representing environmental and other relevant policy areas will be less actively involved.

**WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:**

- Urge the Commission to follow up on its recent Communication on SDG implementation by:
  - Developing an EU Sustainable Development Strategy as the overarching strategic framework guiding Europe’s future and to thereby ensure effective regional implementation of the 2030 Agenda for Sustainable Development, promoting a transformation of consumption and production patterns in the EU to an economy that respects planetary limits and is not at the expense of livelihoods in the Global South;
• Putting in place a more detailed SDG implementation plan with specific targets and deadlines, prepared with meaningful public participation and ensuring effective co-ordination within and between the EU institutions and Member States;

— Promote the establishment of innovative governance structures for the implementation of the 2030 Sustainable Development Agenda at EU and Member State level that include at EU level intersectoral working groups between the DGs, joint Council ‘Jumbo’ meetings and civil society engagement policies and structures;

— Seek to guarantee coherence between all European policies and strategies and sustainable development objectives, inter alia by seeking a strengthened role for sustainability considerations in the Commission’s internal impact assessment process with a view to ensuring that new policies advance or at least do not compromise environmental protection or social justice;

— Ensure that the eventual outcome of the delayed interim review of the Europe 2020 strategy is consistent with delivering on the SDGs and that the European semester is used to give maximum support to the transformation to a green and fair economy, in particular through integrating environmental accounting into the national budgets, socially just environmental fiscal reform and the removal of environmentally harmful subsidies;

— Ensure effective and inclusive modalities for civil society participation in the global (HLPF), pan-European and EU sustainable development processes, in all cases with full respect for the principle of self-organisation.

### 1.3 REFORM TRADE POLICIES: TTIP AND CETA

**Negotiations on a proposed Trans-Atlantic Free Trade Agreement (TAFTA), also referred to as a Transatlantic Trade and Investment Partnership (TTIP),** have progressed at a snail’s pace, and with the election in the US of Donald Trump, who ran on an anti-trade ticket, are now in limbo. Whether this is a temporary hiatus or a permanent standstill will depend on the future political orientation of the US, the outcome of a series of elections in the EU and the interactions between these various events. What is reasonably certain is that trade will remain high on the Maltese agenda if only because of the uncertain future of CETA, the outlook of EU-UK negotiations for a new post-Brexit relationship, and the deals both the UK and the EU will be seeking with the rest of the world.

Unlike other trade negotiations, the focus in TTIP is on “regulatory issues and non-tariff trade barriers,” which is also the main reason why large sections of society are concerned about any potential deal. What is a “trade irritant” to a firm operating in a different market can, at the same time, be a vital legal safeguard for consumers and offer environmental protection for citizens. Indeed, the purpose of these negotiations, namely to remove these ‘trade irritants’ in order to facilitate trade, often conflict with the democratic principle that citizens should be able to influence the setting of standards through the democratic process, even if this results in divergent standards that businesses may find inconvenient.

The EEB shares the widespread concerns about the possible inclusion of a number of mechanisms in this agreement which would drastically reduce the regulatory space of the EU to continue developing public interest policies including environmental policies.

In particular, a potential agreement between the US and EU must not include an investor-state dispute settlement (ISDS) mechanism, either in the form of an Investment Court System (ICS) as proposed by the EU under TTIP or as it has now been agreed under CETA with some small differences. Investors should not be empowered to directly challenge sovereign governments over public interest policies, especially not in off-shore private tribunals typically comprised of three private sector attorneys, skirting the well-functioning domestic court systems and robust property rights protections in the US and the EU. The inclusion of such provisions in prior trade and investment deals has enabled powerful interests, from tobacco companies to corporate polluters, to use ISDS resolution to challenge and undermine consumer, public health and environmental protections. Investor-state tribunals have ordered taxpayers to compensate foreign corporations with billions of dollars for the domestic, non-discriminatory enforcement of such protections. The last 10 years, in particular, have seen the number of such cases increase significantly. Seventy claims were launched in 2015 alone, the highest number ever in one year. At least 37% of those were against European governments. By the end of 2014, total payouts to foreign investors by EU member states had reached at least €3.5 billion. If such an ISDS were to be included in the four major bilateral trade deals that are currently in the pipeline (TTIP, Trans-Pacific Partnership (TPP), US-China, EU-China) 70% of global foreign direct investment would be covered by ISDS from 20% today. It is hard to overstate the negative implications that this would have on the ability of governments worldwide to act in the public interest. Pursuing this in the face of the public backlash in Europe against globalization, the EU and open societies and economies in general would be reckless and irresponsible at best.

To avoid such overreaching procedural and substantive investor privileges, greater than those afforded to domestic firms in either the US or the EU, any deal must exclude investor-state dispute resolution. It is noteworthy that an increasing number of countries, including Australia, India, Indonesia, Brazil and South Africa are seeking to end or amend such provisions in bilateral treaties to which they are party.

An equally problematic element is a proposal for regulatory cooperation which foresees the development of a new system of governance and mechanisms that would give undue opportunity to industry on both sides of the Atlantic to influence how regulations are written. In addition to this, the Commission is
considering this to be an open-ended agreement with the option to add new elements to the deal through a fast-track procedure, for example on issues that were deemed too controversial to include in the first round with public concern being as high as it is today.

Whereas the EU-US negotiations are at a relatively early stage, negotiations on a free trade agreement between the EU and Canada (Comprehensive Economic and Trade Agreement or CETA) have now been concluded and been provisionally approved by Council. Although there have been some unusual efforts and a show of goodwill from the side of the Canadians to improve the contested investment protection provision, the fact is that the Investment Court System as proposed under TTIP and as it has been included now under CETA (with some small adjustments) continues to suffer from the same fatal flaws as the ISDS system it seeks to replace. The ICS judges would still be paid through a system of daily fees thereby creating an incentive to ensure future claims, they would continue to operate under the usual ISDS arbitration rules, would not have to meet requirements for judicial appointment in any country and they would not even be barred from working on the side as ISDS arbitrators. Second, the Commission has still failed to make the case for including an investment protection system in TTIP or CETA which is astonishing given the number of respondents in their consultation who expressed their opposition to ISDS under TTIP and the fact that the Sustainability Impact Assessment for CETA advised against it. And it fails to include any proposals to ensure that the protection of investor rights is coupled to investor responsibilities. Third, the Commission’s proposal in relation to ensuring that the right to regulate is upheld contains a number of highly problematic formulations for example by exempting compensation orders for new laws, regulations or other decisions from the prohibitions introduced including the blocking of awards of expected profits. A group of NGOs that examined whether the new ICS would have prevented five of the most controversial and iconic ISDS cases in recent years — Philip Morris vs Uruguay, TransCanada vs USA, Lone Pine vs Canada, Vattenfall vs Germany and Bilcon vs Canada – found this not to be the case.³ The Council was only able, however, to provisionally apply CETA after a special deal was made with Belgium, where the deal had to be approved by all six regional parliaments and ran into severe opposition in several of them. The deal agreed that the European Court of Justice would have to first rule on the legality of the ICS mechanism under CETA. The formal request for this still has to be made though and the Maltese Presidency should encourage this to be done as soon as possible so that legal clarity can be provided.

3 See: foeeurope.org/sites/default/files/eu-us_trade_deal/2016/icst-est_web.pdf
2. ENERGY AND TRANSPORT COUNCIL

2.1 TOWARDS STRONGER CLIMATE AND ENERGY POLICIES

With the publication of the “Clean Energy for all Europeans” package, the European Commission has set the course for a comprehensive revision of EU energy legislation. Despite the improvement in energy efficiency, the overall package leaves the EU way off track to meet its international climate commitments by still rewarding fossil fuel companies and showing a lack of dedication for the transition towards renewable energies.

We welcome the announcement of the Maltese Presidency to focus on the energy efficiency aspects of the package. This is the perfect opportunity for the Presidency to show how to put energy efficiency first in the Council debate on the package.

On energy efficiency, the Commission has delivered its pre-Paris promise to increase ambition. This is a step forward, but falls short of tapping the full energy savings potential and more benefits if the level of ambition is included.

For the discussion of the level of ambition for 2030, the Presidency must take into consideration the full body of evidence and the position of the European Parliament as co-legislator. In the European Parliament’s Implementation report, it calls for a binding 40% energy efficiency target with individual national targets and an improvement of existing measures and the eradication of contradictions and loopholes in order to ensure regulatory predictability and enable investor confidence in the long term.

The Presidency will now have to finalise negotiations with the European Parliament and the Commission on the revised Energy Labelling Framework law. The last remaining issue is the decision regime according to implementing or delegated acts. While the EEB is neutral vis-a-vis this, we consider that any compromise towards the preferred delegated acts regime by the European Parliament should not lead to a watering down of the timelines for rescaling existing ineffective labels. In particular, the update of labels for televisions, white goods and lamps should not be further delayed.

Now that the new ecodesign work plan has been communicated and that the implementation of ecodesign policy should properly re-start, we expect the Presidency to encourage this through public statements and push for positive communication at the national level. We also want to see the strengthening of ecodesign policy towards energy and resources savings to accelerate the transition to a low carbon circular economy. With that perspective, the Presidency should defend the setting of stringent energy efficiency requirements, as well as ambitious provisions for resource conservation in future implementing measures.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Lead the Council discussions to deliver robust, reliable and transparent rules to deliver the EU target for energy efficiency through the building blocks of the revised legislation that will allow and encourage Member States to tap the cost-effective potential for energy savings and follow the Energy Efficiency First principle;

— Ensure that the Council is aware of the need to adjust the 2030 climate and energy framework to be in line with the Paris Agreement and the need to achieve emissions reductions of at least 95% and to source most of the EU’s energy from renewables by 2050;

— Take into consideration the full body of evidence on the multiple benefits of energy efficiency and the position of the European Parliament as co-legislator calling for a binding 40% energy efficiency target with individual national targets;

— Improve the existing measures of the Energy Efficiency Directive and remove contradictions and loopholes in order to ensure regulatory predictability and enable investor confidence in long-term investments;

— Establish a clear milestone for 2030 and a strong long-term vision for a nearly zero energy building stock in 2050 as part of the revision of the Energy Performance of Buildings Directive;

— Improve and harmonize the provisions for Energy Performance Certificates to ensure added value for consumers;

— Finalise the EU Energy Labelling law revision without delaying the re-scaling of energy labels for televisions, white goods and lamps.

— Support the speeding up of the finalisation of stalled measures notably for displays, commercial refrigeration, taps and shower heads.
2.2 SUSTAINABLE RENEWABLE ENERGY AND BIOENERGY

The Clean Energy Package of the European Commission published in 2016 includes new and revised policy proposals on how to increase the uptake and production of renewable energy in the EU, namely the recast of the Renewable Energy Directive.

In order to live up to the commitments made at the Paris Climate Summit in 2015, the EU should gear up its ambition and include a long-term commitment to fully decarbonize the energy sectors. Just as importantly, the EU needs to ensure that the development of renewable energy does not happen at the cost of the environment, biodiversity and other EU environmental commitments.

There is sufficient potential to have clean and green renewable energy without damaging Europe’s habitats and species. However, there are currently insufficient environmental safeguards in the legislation for the adequate deployment of renewable energy. Renewable energy capacity can be built quickly and efficiently with intelligent strategic planning that identifies low ecological risk areas for the different technologies, and safeguards that ensure environmental conservation. Environmental constraints must be factored into strategic planning for renewable energy development to ensure coherence with the Nature Directives and that measures do not contribute to the global biodiversity crisis.

On bioenergy, this plays a significant role in mitigating climate change by replacing fossil fuels, and should continue to do so, but it is evident that clear and unacceptable negative impacts on, for instance, biodiversity and emissions of greenhouse gases occur in a number of cases and must be avoided. The Clean Energy package failed to bring forward measures that would ensure that unsustainable bioenergy use is not continued. According to the latest renewable energy progress reports, bioenergy constituted 57% of the EU’s renewable energy mix in 2014. It is therefore crucial to ensure that bioenergy delivers climate and environmental benefits.

An effective policy should ensure a level of biomass use for energy in line with the environmental sustainable potential and ensure that the bioenergy used delivers true and significant GHG savings and minimises harm to biodiversity, water and soil. It should guide the use of valuable biomass resources with a view to furthering environmental objectives by taking into account the cascading use principle and without distorting the waste hierarchy.

If the EU is to avoid repeating the debacle of the biofuels policy, the Council should take the initiative to improve the policy so that biomass sources that are known not to deliver sufficient emissions savings are quickly phased out. To limit the wasteful use of biomass, the initiative of the Commission to cut public support for inefficient electricity-only production should be supported.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Push for ambitious support schemes that promote the growth of the sustainable renewable energy sector while ensuring in particular cross compliance between the Renewable Energy and the Birds & Habitats directives and establish legislation on the governance of the Energy Union that a Strategic Environmental Assessment is carried out within the national climate and energy action planning that Member States are required to produce

— The overall use of bioenergy should be aligned with what the EU can sustainably supply and the proposed policy should be improved to ensure that damaging land based biofuels are phased out to zero by 2030 and only the use of biomass with low environmental risks and climate impacts is incentivised by the EU’s climate and energy policies.
3. COMPETITIVENESS COUNCIL

3.1 UPDATED TYPE APPROVAL AND MARKET SURVEILLANCE RULES FOR ROAD VEHICLES

Each year, air pollution is responsible for over 400,000 premature deaths in the EU, as well as serious illnesses, millions of lost working days, and damage to Europe’s natural environment. Despite the existence of air pollution limits for cars, road traffic remains one of the major reasons for poor air quality in the EU and for breaches of air quality standards in the majority of EU Member States. It is now well known that emissions of vehicles are much higher on the road than on paper: even new Euro 6 diesel cars put on the market today emit four to five times their official limit for nitrogen oxides (NOx) when driven on the road. In total, over 90% of new cars fail to meet their legal NOx limits.

A major cause of euro standards’ failure on the road lies in the weak enforcement of EU rules for approving new vehicles on the market in Member States. The approval of new cars and enforcement of the rules are currently the sole competency of national Type Approval Authorities (TAA) which do not operate as independent regulators, as does the US Environmental Protection Agency (EPA) for instance. TAAs are financed by car manufacturers so it is their business to attract and please those clients. Also, emission and safety tests often take place in carmakers’ own laboratories and on “golden vehicles”, i.e. vehicles which are not representative of the ones in use. The absence of independent testing and verification of results are the biggest flaws of the current system. It is therefore not surprising that TAAs have not taken any action to prevent ongoing breaches of euro standards, despite being aware of the problem for years.

In 2015, after the Volkswagen (VW) scandal broke, the weaknesses of the EU vehicle testing regime became widely known and it became clear that action was urgently needed to fix the rules.

The EEB therefore welcomes the European Commission’s proposal for a Regulation on the approval and market surveillance of motor vehicles published on 27 January 2016. In particular, we support provisions that would allow the Commission to test cars that are on the road and to sanction carmakers, making the tests more independent and rigorous, as well as the introduction of an EU oversight on the work of national testing regulators.

While the proposal is a first step in the right direction, the EEB supports the recommendations of Transport and Environment (T&E) and believes that the European Parliament and Council could make the proposal much more effective.

IN PARTICULAR, WE CALL UPON THE MALTESE PRESIDENCY TO:

— Support the establishment of an EU agency which would check the compliance of cars on the road, oversee EU-wide recalls and compensation and control national authorities’ work. The agency could be financed through a 10 euro levy on each new vehicle sold, which would raise over EUR 100 million annually. In the absence of such an Agency, Article 9 as currently proposed by the Commission is the bare minimum necessary to inject long-needed independence into EU type approval regime.

— Support effective market surveillance. TAAs should be obliged to re-test 20% of new models entering the market each year, taken at random. Tests must be performed in the technical services’ independent laboratories.

— Support regular independent reviews of national TAAs and joint audits of technical services. All actors involved in approving vehicles must undergo regular audits and be sanctioned in case serious failures are found.

— Support increased transparency. A single European register with public access to all type approvals issued across the EU should be established. This should include key testing specifications to allow third-party verification of test results.
Follow the announcement by Commissioner Hogan on the launch of the consultation about the future of the CAP in the first semester of 2017 and the publication of the CAP White paper in autumn 2017, discussions around the next reform of the CAP will intensify along with talks on the future Multi Annual Financial Framework. We urgently need an open, frank and inclusive debate about the CAP based on the five Fitness Check principles and together with all relevant players in society, not just with the biggest lobby group. We hope this suggestion will be a good basis for the Council debate in March where the CAP will be discussed.

Finally, the second semester of 2016 was also critical as regards the climate and energy package. In July 2016 the European Commission, in the framework of it climate and energy package, published two proposals for Regulation (ESR and LULUCF Regulation) that concern agriculture. As agriculture contributes 10% of total EU GHG emissions, it is important that it plays a role in addressing climate change challenges. Emphasis should be put on ensuring that the sector plays its part in a nature-friendly way.

The REFIT exercise of the Nature Directives confirmed (College of Commissioners agreed on 7th December) that the legislation is fit for purpose, and it is the implementation that needs to be improved. A Better Implementation Action plan will be developed by the Commission services to address these shortcomings. The pressures from agriculture are among the biggest challenges and the coherence of the policy with the objectives of EU nature legislation needs to be ensured.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Continue the debate on the future of the CAP (food policy), but to make it more inclusive, taking the five fitness check questions as a basis for discussion, especially during in the debate on the future of the CAP in Council in March. This also means allowing NGOs to express their concerns and recommendations ahead of the ministers’ debates as we understand that other stakeholders have already been invited; ensure coherence with existing policies, namely the nature directives and the nitrate and water framework directives considering that the former has been confirmed by the Commission to be fit for purpose.

— Following the EC staff document on simplification of CAP, ensure that discussions in the Council are not just focusing...
on the cost or difficulty of implementation, but on the relationship between delivery on the outcomes and the administrative burden;

- Ensure that the debate around the EFAs going from 5 to 7% will not just be about the quantity of EFAs but rather about the quality of EFAs.

- Ensure that efforts required by the agriculture sector within the climate and energy package are not watered down and that the legislation is a win-win situation both for climate and environment and biodiversity. When debates are had on the issue of the climatic impact on agriculture, as is planned for the informal council, ensure that it focuses on both strong mitigation action as well as adaption in a way that is also ecologically sustainable.
5. FISHERIES COUNCIL

5.1 FISHERIES DATA COLLECTION

The Commission released its recast of the Data Collection Framework Regulation (EC) 199/2008 in June 2015. The implementation of Regulation 199/2008 was intended to improve the amount and quality of data available to researchers (notably ICES and STECF) and European institutions, enabling these and other end-users to enhance their evaluation for policy and research purposes. A number of elements (notably the métier approach, the collection of biological and economic data of higher quality than previously, and improved fishery observer protocols) have facilitated the provision of more informed policy advice, ultimately enhancing legislative proposals and management measures for European fisheries.

However, the Commission proposal from summer 2015 fell short of previously published intentions such as making data more easily available for end-users.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO ENSURE AN AMBITIOUS COUNCIL POSITION AIMING AT A REVISED DATA COLLECTION FRAMEWORK THAT INCLUDES:

― Public access to data: Collected data must be accessible and the data collection process must be transparent. All Member States must implement a system that moves from a bureaucratic and burdensome data request system to having freely available and easily accessible data for public use.

― Broad scope of the data: Data on the impact of fisheries and aquaculture on the wider ecosystem should be collected to better inform fisheries management, including the development of synergies with delivering Good Environmental Status under the Marine Strategy Framework Directive.

― Stakeholder engagement: End-users should include Advisory Councils and NGOs. They must form part of the bodies providing recommendations to decision makers such as the Regional Coordination Groups (RCGs).

― Data harmonisation: Methodologies for data collection must be guided at an EU level and set at a regional level to ensure coherence between national data sets and deliver regional level cooperation.

5.2 NORTH SEA MULTI-ANNUAL PLAN

The position of the Council on the Commission’s proposal for a Multi-Annual Plan (MAP) for the North Sea fisheries is foreseen to be adopted during the Maltese Presidency. This MAP should follow a similar structure as the Baltic Sea MAP [2014/0285 (COD)]. Nevertheless, the North Sea, being ecologically more complex than the Baltic Sea, should still present an opportunity for Member States to ensure that the Council supports the ambitious CFP objectives during the formulation of its position. It is important that Member States ensure that the objectives of the reformed CFP are not undermined in the new MAP.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

― Ensure that the objectives of the North Sea Multi-Annual Plan include restoring and maintaining fish populations above levels which can produce the maximum sustainable yield (B_{msy}), and integrating the ecosystem based approach;

― Ensure that Council agrees on fishing limits below F_{msy} in order to achieve the B_{msy} objective consistent with Article 2 of the CFP;

― Ensure that the reference points for fisheries management measures are set to safeguard maintaining stocks above B_{msy} levels, as agreed in the CFP;

― Ensure that the plan is coherent with the Birds and the Habitats Directives, including that that the negative impacts of fishing activities on the marine ecosystem are minimized and, where possible, eliminated (e.g. minimizing, and where possible, eliminating incidental catches of seabirds), and that degradation of the marine environment is avoided as part of integrating the ecosystem-based approach into fisheries management.
5.3 TECHNICAL MEASURES REGULATION

As part of the Common Fisheries Policy (CFP) reform, the Commission has proposed a new over-arching framework for the protection of the marine environment through technical fishery conservation measures (COM(2016) 134). The proposal foresees a set of objectives, targets to achieve the objectives and baselines as a minimum to achieve the targets. To deviate from the regional baselines, Member States can propose joint recommendation regionally. Therefore this proposal gives the EU a unique opportunity to take a systematic approach to minimise and where possible eliminate the environmental impacts of fisheries.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Ensure that the Council position supports establishing strong and robust baselines, based on targets and objectives, which Member States will need to apply unless they decide to jointly recommend other measures that will also achieve the targets and detailed objectives;

— Ensure that the Council position supports the objectives of the Natura 2000 network and other Marine Protected Areas, including the prohibition of fishing where this has been decided pursuant to an appropriate assessment;

— Ensure that the Council position contains measures for the avoidance or at least minimisation of unwanted catches including through tactical selectivity measures, and minimizes and, where possible, eliminates the ecosystem impact of fishing in general, including on seabirds.

— Ensure that the Council position does not provide permission to conduct previously prohibited, destructive fisheries and the agreement on the use of innovative fishing gears will be based on an assessment based on the best available science of the likely impacts on the marine environment. These innovative fishing gears shall also contribute to achieving Good Environmental Status as per the Marine Strategy Framework Directive.
6. ENVIRONMENT COUNCIL

6.1 DEFEND AND DEVELOP EU ENVIRONMENTAL POLICIES

The outcome of the UK Referendum, as well as the US elections which has brought a climate denier into power, has brought a new urgency to discussions on the future direction of the European Union. These started off with an informal summit in September in Bratislava and will continue with two further summits during the Maltese Presidency in Valletta and in Rome where a new vision for the future of Europe will be adopted (see section 1.1). This new vision is likely to be the ‘de facto’ political programme of the EU for the remainder of this mandate and will therefore have major implications for environmental policy, either positive or negative. Environmental considerations rarely feature prominently in discussions at the level of heads of government. However, collective action by environment ministers through the Environment Council can help to bring greater attention and priority to such considerations.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Reminding about the Environment Council’s support for a new EU Sustainable Development Strategy as the overarching strategic framework guiding Europe’s future, combined with a concrete plan of actions, ensure the Environment Council’s view play a central role in the ‘Future of Europe’ debate;

— Ensure that structures are in place that allow meaningful multi-sectoral civil society participation in the follow up and implementation of the new SDS;

— Ensure that the European Semester remains on the agenda of the Environment Council with a view to positively influencing the preparation of the next Annual Growth Survey.

6.2 GREENING THE EUROPE 2020 STRATEGY AND DEVELOPING A NEW EU SUSTAINABLE DEVELOPMENT STRATEGY

In sections 1.1 and 1.2, we put forward proposals for the development of an EU SDS as a regional response to the global 2030 ASD and ensure this agenda is adequately reflected in the debate on the Future of Europe with 27 Member States. The EEB considers it essential that the Environment Council plays an active role in debates with the Commission on these issues and in the evaluation of national reform programmes as well as in discussions regarding the budget stabilisation programme. We also believe the Environment Council should take a lead in promoting the establishment of National Sustainable Development Councils, as already agreed in the Johannesburg Plan of Implementation (Rio+10).

6.3 CHALLENGE THE THREAT COMING FROM TTIP AND CETA

As described in section 1.3 above, the EEB shares the widespread concerns about TTIP and CETA, both of which could have very serious and negative consequences for the EU’s ability to further develop the environmental policies that are needed to address global problems such as climate change, ecosystem collapse and resource depletion.

It is essential that environment ministers and ministries individually and the Environment Council per se play an active role in ensuring that environmental considerations are not marginalised in the respective negotiating processes, having regard to the points made in section 1.3 above.
WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO REQUEST:

— EU negotiators to provide full public access to negotiating documents including consolidated texts;
— EU negotiators to fully inform the Environment Council about environment-related aspects under TTIP;
— The European Parliament and EU Member States to firmly reject the recently agreed CETA deal with Canada since the Investor Court System it includes has the same critical flaws as ISDS;
— The European Commission to work to ensure that any TTIP agreement excludes mechanisms for regulatory cooperation, investor state dispute settlement and fast track ratification as well as deeper forms of regulatory cooperation in the fields of energy, climate, chemicals, agriculture and food, and other areas where environmental policies are at risk of being weakened;
— The European Parliament and Member States to stand ready to reject a final TTIP deal should the Commission fail to exclude any of the above contentious issues.

6.4 TOWARDS A STRONGER CLIMATE POLICY

The 2016 COP in Marrakech has fully confirmed the importance of the achievements of the Paris Agreement. The pace of international action to ratify the Paris Agreement needs to be matched with action to deliver the objectives of the Paris Agreement. Only if the EU successfully demonstrates how to deliver on the commitments and promises made will Europe be able to hold international partners responsible for their commitments and promises. This requires a comprehensive global transformation with deep emission cuts enabling a zero carbon society by 2050, or shortly thereafter, in line with the Earth Statement. If the EU wants to be a global leader in this endeavour, EU net carbon emissions should reach zero by 2040.

In the coming months, the Maltese Presidency has the opportunity to maintain the momentum in a number of ways. With the proposals on the Effort Sharing Regulation and the proposal on the inclusion of Land-use, Land-use-Change and Forestry all three elements of the 2030 framework are on the table. The ambition of the proposals, aiming at a 40% reduction of GHG by 2030, does correspond to “temperature compatible” emission reduction targets that will not only enable the international community to keep global warming well below a 2°C rise but show that the EU is willing to play its full part in pursuing efforts to limit the rise to 1.5°C.

Having the shortcoming of the current 2030 target in mind, the Presidency needs to consider the Commission proposal as the minimum level of ambition and continue exploring options to increase ambition. As a minimum the Maltese Presidency needs to ensure consistency between all three proposals and safeguard the environmental integrity of the 2030 greenhouse gas reduction target by closing the loopholes present in the Commission proposal.

Given that an agreement on the Emission Trading System has not been reached under the Slovak Presidency a comprehensive agreement on all three files should be pushed for by the Environmental Ministers during the Maltese Presidency.

It should also initiate a debate on the need to reform the Energy Taxation Directive, implement earlier decisions on phasing out environmentally harmful subsidies, and develop mechanisms allowing like-minded Member States or the Union itself to carry out an environmental tax reform, including amending rules for state aid preventing implementation of the polluter pays principle.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Recognise that the EU’s climate policy commitments prior to Paris, being based on the goal of limiting warming to 2°C, now need significantly strengthening in the light of the new commitment to pursue efforts to limit warming to 1.5°C;
— Continue to explore options to increase ambition to be consistent with climate science and the Paris Agreement by including a trajectory to at least 95% emission cuts by 2050 supported by, at a minimum, 45% reductions in the non-traded sectors by 2030;
— Safeguard the environmental integrity of the Commission proposal for the Effort Sharing Regulation:
  • Start counting from the right point, either on the basis of the actual 2020 emissions, or the 2020 targets, whichever is lower;
  • Close loopholes that undermine the low-carbon transition and bring the risk of not achieving the 2030 target in the ESR sectors as follows:
    • Reject the use of forestry offsets that undermine climate actions in other sectors and ensure that all sectors, including the agriculture sector, contribute their fair share
    • Promote carbon removals from forests in addition to, not instead of, the efforts to cut emissions;
    • Do not allow surplus ETS allowances to stall the transition of the non-traded sectors.
  • Include five-yearly review and ratchet mechanisms;
  • Strengthen compliance by continuing annual compliance checks;
Raise ambition in the LULUCF sector by:

- going beyond the ‘no-debit’ rule so that the EU at least maintains or actively increases its sinks in line with the implications of the pathway towards limiting global warming to 1.5°C;
- Support robust accounting rules that are transparent, simple, comparable and are based on historic rather than projected future baselines;
- Include safeguards to ensure that all LULUCF activities, especially afforestation, have a positive impact on nature and biodiversity;
- Make wetlands a mandatory accounting category for all Member States and incentivise their restoration and conservation. Peatlands and wetlands have high conservation value and are large carbon stores. Their restoration and conservation should be incentivized.

Fix the Emissions Trading System by:

- Supporting a higher Linear Reduction Factor (LRF) of 2.8% and a lower starting point for Phase IV that is set at the average 2017-2019 emissions.
- The Modernization Fund shall be used to support investments in the use of electricity from renewable sources and the improvement of energy efficiency and ensure that all projects are fully in line with the long-term decarbonisation objective under the guidance of the European Investment Bank (EIB)
- Ensure the permanent cancellation of all allowances in the Market Stability Reserve at the end of each period, starting at the end of phase 3.
- Establish a correction system that adjusts the EU-wide auctioning of allowances by discounting national permanent actions (i.e. cancellation).
- Permanently cancel all unallocated allowances from Phase 3 and use Phase 4 allowances for the NER.
- Improve the Market Stability Reserve (MSR) by increasing the feeding rate.
- Establish a price corridor. A minimum price of 30 euros from 2021 which increases over time should be established.

6.5 PROTECT THE PUBLIC FROM HAZARDOUS CHEMICALS

The third priority objective of the EU’s TEAP aims “to safeguard the Union’s citizens from environment-related pressures and risks to health and well-being” by developing by 2018 a strategy for a non-toxic environment that is conducive to innovation and the development of sustainable substitutes, including non-chemical solutions, building on horizontal measures that were to be undertaken by 2015 to ensure:

- the safety of nanomaterials and materials with similar properties;
- the minimisation of exposure to endocrine disruptors;
- appropriate regulatory approaches to address the combination effects of chemicals and;
- the minimisation of exposure to chemicals in products, including, inter alia, imported products, with a view to promoting non-toxic material cycles and reducing indoor exposure to harmful substances.

However, the European Commission has invested very little resources in this important goal and already missed the 2015 deadline.

The EU chemicals legislations, including REACH, have a great potential to provide high levels of protection and achieve the Sustainable Developments Goals (SDGs) and a non-toxic environment goal, however its success depends completely on how well they are implemented.

Despite the entry into force of REACH, there are still important information gaps on the chemicals in use in the EU. In particular on their properties, uses, exposure and monitoring and a large number of registration dossiers still have substantial deficiencies. Another key information gap is the lack of information on the presence of hazardous chemicals in products, waste and in recycled materials. Communication along the supply chain is very poor, and notification on substances of very high concern (SVHC) to the European Chemicals Agency (ECHA) is almost inexistent.

The European Commission, in line with its ambition to make the substitution of SVHC a reality, committed in 2010 to place, by 2020, all relevant substances of very high concern (SVHC) on the REACH candidate list. However, the pace of inclusion is slowing down every year from 67 SVHC added in 2012 to only one in 2016. On the other hand, the main tools of REACH to phase out the substances of most concern, namely the restriction and authorisation processes are not effective enough and restrictions are still too burdensome for authorities while authorisations are too easily granted to companies placing on the market substances of very high concern.

Action without delay is critical with regard to the information gap on (hazardous) chemicals in the market, the proper application of EU environmental policy principles such as the
précautionary principle, the effective phase out of the most concerning chemicals and promotion of substitution.

The European Commission is also delaying its work on the endocrine disrupting chemicals’ (EDCs) package (strategy, criteria and REACH review). After three years delay, the European Commission’s revised proposal on EDC criteria presented by the end of 2016 fails to protect health and environment. The burden of proof to identify EDCs is still too high, it includes an exemption that allows widespread use of endocrine disrupting pesticides, lacks of multiple categories to rank chemicals according to scientific evidence and discriminates against independent studies. It is key that work on this package is accelerated, instead of being further delayed, and that its outcome will support the 7EAP’s goals of minimising exposure to EDCs by 2018 and protecting not only the environment but also the health and quality of life of Europe’s citizens, especially the most vulnerable ones, such as women and children.

Since commercial applications began in the early 2000s, nanotechnology has expanded exponentially in different industrial sectors such as pharmaceuticals, electronics, food, cosmetics and chemicals - between 500 and 3,000 different nanomaterials (NMs) are now estimated to be on the European market. The number of citizens exposed to nanomaterials has therefore risen sharply in recent years, raising health and environmental concerns. However, very little is still known about the NMs used and produced in the EU. In fact, nanomaterials are virtually unregulated in Europe. In spite calls for almost 10 years from the European Parliament and a substantial number of Member States, together with environmental, worker and consumer organisations for the public availability of information about the nature, quantity and uses of nanomaterials, and the products containing them, the European Commission has persistently delayed any action with regard to NMs, including the amendments of the REACH Regulation annexes. Moreover, the Commission’s proposal to replace the highly demanded EU wide nano register by a mere observatory that will only compile and repack package existing information, will only waste time and resources from the European public. No transparency on the use of nanomaterials in the EU is foreseen in the medium term.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Encourage the Commission to step up its work towards achieving the 7EAP’s goals in relation to chemicals by developing new EU tools to achieve a non-toxic environment and non-toxic material cycles goals. This means, for example, closing the knowledge gap on chemicals in products, waste and recycled materials, rejecting toxic recycling in the circular economy package and ensuring delivering concrete measures to promote the substitution of hazardous chemicals by safer solutions such as inter-authorities’ cooperation, capacity building and support to the key actors and creating economic incentives.

— Ensure that the Commission’s criteria to identify EDCs will be protective enough so that it catches all EDCs to which the public and the environment are exposed. To this end, the Commission should develop scientific, consistent with the EU identification system of CMRs and horizontal criteria for the identification of EDCs.

— Call on the Commission, the European Chemicals Agency (ECHA) and Member States to address the obstacles in the implementation of the REACH regulation. In particular to develop effective measures to ensure the compliance, quality and reliability of the registration information; a proper application, implementation and enforcement of REACH article 33 (the right to know on SVHC); effective restriction and phase out of substances of most concern through restriction and authorisation processes and creating a comprehensive Candidate List.

— Encourage the development of a nanomaterials framework regulation to govern human health and environmental protection for all potential uses of nanomaterials in a harmonised way and to call on the European Commission to develop proposals to ensure that all nano-containing products placed on the market (after having undergone assessment procedures) are registered for identification and traceability purposes and included in an EU-wide public inventory.

— Urge the European Commission to stop delaying action on hazardous chemicals. As for example on its obligations referred in REACH article 138 and cosmetics Regulation, the assessment of chemical mixtures, the horizontal measures for non toxic environment or the REACH annexes on nanomaterials among others.

6.6 GLOBAL MERCURY TREATY AND EU STRATEGY

Mercury and its compounds are highly toxic, can damage the central nervous system and are particularly harmful to foetal development. Mercury bioaccumulates up through the food chain, especially in certain predatory fish, and presents a human exposure risk. This neurotoxin 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.

At the EU level, a Regulation for an EU mercury export ban and the storage of surplus mercury (mainly from decommissioned chlor-alkali plants) was adopted in October 2008. In April 2011, a sales ban on mercury fever thermometers and on other mercury-containing measuring devices for consumers entered into force. Further restrictions on these devices for industrial and professional uses have been applied since April 2014. In November 2013, the Council approved the revised Batteries Directive, which included a ban on cadmium from cordless power tools by the end of 2016 and on mercury from button cell batteries by 1 October 2015, although this review was initially intended only for cadmium in cordless power tools.
At the global level, the Minamata Treaty on Mercury has already been signed by 128 countries and ratified by 35 by December 2016. The treaty is a mixture of mandatory and voluntary elements. While an important step in the right direction, in the EEB’s view the treaty is not far-reaching enough, nor will it move fast enough to address the spiralling human health risks from mercury exposure. For instance, new facilities will not be required to have mercury pollution controls for five years after the treaty enters into force, with existing facilities given 10 years before they need to introduce control measures. Yet there are bright spots in the treaty. These include provisions to reduce trade in mercury, prohibit the primary mining of mercury, and phase out mercury in most products such as thermometers, measuring devices and batteries. Some of these steps were unthinkably just a few years ago. Now, alternatives exist for most products containing mercury. The treaty sends the right market signal and will eventually lead to less exposure worldwide.

Work related to mercury use in dental amalgam has advanced given that this is one area where no measures had been taken at EU level until now. An EC-commissioned study (2012) proposed that a ban on the use of mercury in dentistry, together with improved enforcement of the EU waste legislation regarding dental amalgam, would be the most effective way to tackle the problem. The final opinion of the Scientific Committee on Health and Environmental Risks (SCHER - March 2014) among other confirms that under certain conditions dental mercury can methylate — forming the most toxic form of mercury, methylmercury — and that “the acceptable level in fish is exceeded… concluding that a risk for secondary poisoning due to methylation cannot be excluded.” In May 2015, the Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) recommended, for the first time, mercury-free alternatives in place of dental amalgam for children’s primary teeth and in pregnant patients.

Only in February 2016, and after over a year of delay, the European Commission published its proposal for a revised regulation on mercury and a Council decision towards the EU ratification of the Minamata Convention on Mercury. Despite the EU having played a leading role in the development and negotiation of the Convention, the proposed regulation reflected a minimalist approach, likely victim to the EU’s Better Regulation debate. On the other hand, however, delays in ratification and Convention initiation are already having an adverse effect on the global mercury supply and trade situation. Primary mercury mining has increased in Mexico, total mercury production increased in China, and mercury export hot spots have shifted to Asia, closer to countries carrying out artisanal and small-scale gold mining.

With the Mercury Strategy as its flagship, the EU has so far played an important role, pressing for global legally binding solutions to achieve adequate control and reduce the use, supply and demand of mercury. It is therefore imperative that the EU continues to implement the EU Strategy and the Minamata Convention towards reducing mercury supply, use, emissions and exposure.

With ongoing international action being a top priority for the EU in the coming years, the most effective way that the EU can participate in the global discussions is by continuing its leadership concerning mercury policies and proceeding rapidly with the ratification and effective and meaningful implementation of the treaty requirements. Furthermore, in this crucial interim period (until the treaty enters into force), it is important that the momentum is not lost. Therefore the EU should be looking into possibilities for providing assistance in all forms to help developing countries and regions rapidly ratify the treaty and focusing on work that leads to direct reductions in mercury use and emissions in those countries.
WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Ensure swift ratification of the Minamata Convention by the EU and its Member States;

— At EU level, promote further actions to address mercury including banning the use of mercury in Compact Fluorescent Lamps under the RoHS annex review and adopting ambitious BAT conclusions with Associated Emission Levels (AELs) in the new Large Combustion Plant Best Available Techniques Reference Document that require a significant reduction in emissions in the sector, since this is the largest source of mercury emissions in the air in Europe and globally;

— Keep the EU leadership in relation to the work ongoing at UN level, towards establishing an effective operational framework under the Convention for achieving significant mercury reductions.

6.7 CIRCULAR ECONOMY AND WASTE POLICY

The circular economy package that was published on 2 December 2015 contains a series of policy proposals and other initiatives that are meant to deliver on the political objectives set out in the Resource Efficiency Flagship Initiative and Roadmap as well as in the EU’s 7th Environmental Action Plan until 2020. It also aims at creating a sound regulatory and economic framework able to boost investments and job creation linked to material efficient business models and activities.

The EEB believes it is crucial to set at least a European resource productivity target for 2030 as a headline figure able to orient investments and the development of eventual policies at national and sector levels. With material costs representing almost 60% of total EU manufacturing costs and only 18.5% related to labour costs, a resource productivity target for 2030 will no doubt result in significant economic benefits. Whether or not it will also deliver environmental benefits through an absolute decoupling between material consumption and growth is however less certain. The EEB believes that such an economy-wide target needs to be integrated in a revised Europe 2020 strategy as well as in the EU framework for the implementation of the UN Sustainable Development Goals until 2030. In addition, a set of quantitative indicators such as total material consumption, CO₂, water and land use footprints should be included in the monitoring framework of the circular economy that the Commission has now announced for 2017.

The EEB also calls for the potential of the EU’s product policy to be unleashed to help reduce Europe’s overconsumption of natural resources, thereby supporting waste prevention and recycling practices. In particular, the Ecodesign Directive has been highly effective in putting new products on the market that deliver the same services while consuming less energy and causing fewer carbon emissions. It is essential that this success is now replicated so that products will become more durable, easy to repair and to recycle including through the elimination of hazardous chemicals. It should also be considered to extend such an approach beyond energy-related products. The EU needs to evaluate before the end of 2018 for which product groups, other than energy related, it would be possible to take better into account resource efficiency in future product design regulations. This could be implemented through an extension of the scope of the current Ecodesign Directive or by fostering a comparable product policy framework. A set of similar criteria to those being used for Ecodesign, producer responsibility fees modulation, GPP, Ecolabel with incremental performances requirements should be defined. Labelling schemes for consumers, building on the product environmental foot-printing (PEF) pilot methodology and turning it into a fully verifiable and enforceable policy, should be discussed, notably for non-energy-related products. As identified in a 2012 assessment of Ecodesign, furniture, mattresses, garments and cleaning products could be the first candidates for such an approach.

In order to avoid the multiplication of registration systems for products covered by European policy and third party verified standards, a broad EU product database should be established, building on the product database now suggested in the context of the energy label reform. Such a register will help implement the idea of product passports and offer a central point for all information required for products in different policies (e.g: information required under the Waste Electrical and Electronic Equipment Directive).

As regards waste policy, discussions within the Council should lead to support for waste prevention and recycling targets, going beyond municipal solid waste. In that perspective, it is particularly important to address the risk of overcapacity in incineration. If not, that could freeze progress towards prevention and recycling, while creating a detrimental competition among existing waste to energy installations at European level. The use of existing facilities should be prioritised over building new ones that would compete with existing non-saturated ones, lead to a race towards the lowest possible prices and eventually make it harder to meet the highest standards for emissions reduction and monitoring.

Avoiding re-injecting hazardous substances into the economy through recycling is another issue which should be addressed during the negotiations. The recycling of materials containing hazardous substances seems rather marginal compared to the huge potential for recycling of non-hazardous products. The difficulty of anticipating multiple uses of materials in a circular economy also creates more risks of further untraceable spreading of hazardous substances. As a minimum an information scheme would need to be developed to make sure that all materials (whether they are recycled or not) containing hazardous can be easily identified and sorted, and not endlessly re-injected into the market economy.
WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

- Make sure that provisions to deliver through ecodesign, product policy, information and labelling schemes to extend lifetime, facilitate repair and disassembly of products, limit the hazardousness of materials and promote cost effective recyclability are encompassed in the waste policy reform;

- Make sure that revision of essential requirements for packaging materials takes place before the end of 2018, enhances effective minimization of excessive packaging and increases their reusability and recyclability;

- Help adopt prevention measures, notably targets on total waste generation, food waste, marine litter, reusable packaging and specific preparation-for-reuse for textiles, furniture and construction materials;

- Maintain high recycling targets for all without time derogations, but balancing recycling with a cap on residual waste;

- Agree on a practical, unique and harmonized EU method to calculate recycling achievements, without derogations or the possibility for inclusion of residues/impurities when calculating recycling rates, to come into effect by 2025 with eventual refinements for 2030 achievements;

- Specify in more detail what backfilling operations may encompass, excluding hazardous waste, and set a specific recycling rate for construction and demolition waste distinct from backfilling;

- Consider setting prevention and recycling targets for commercial and industrial waste, beyond municipal solid waste;

- Limit the landfill rate and prohibit incineration of untreated waste, as is the case already for landfilling;

- Reinforce the proper monitoring and treatment of hazardous waste, which should be prevented from being re-injected in the economy and dealt with by specific installations which are not conventional municipal solid waste incineration plants or conventional landfills;

- Define enforceable provisions to improve the implementation of product and waste policy, to guarantee a correct monitoring of and seek to narrow the gap between less advanced and more advanced countries;

- Push for more mandatory targets on Green Public Procurement at national level and create economic incentives for uptake of Ecolabelled products, build on the PEF experience to define clear policy options limiting the proliferation of green claims and ensure a sound integration in existing instruments;

- Ensure that the revision of Directive 2000/59/EC on Port Reception Facilities includes an EU-wide harmonised fee system to de-incentivize waste dumping by ships;

- Set a European-wide analytical framework and headline objectives to monitor progress towards a resource-efficient circular economy, and encourage the use of European-wide indicators such as total material consumption, water and CO2 footprinting, and land use.

6.8 EU BIODIVERSITY POLICY

The EU Biodiversity Strategy is a landmark in European conservation, and commits the European Commission, the European Parliament and the EU Member States to take action on all key drivers of biodiversity loss. In 2015 the Commission issued its assessment of the EU’s progress in implementing the Strategy. In its mid-term review of its Biodiversity Strategy to 2020, the European Commission finds that with the exception of one target we are not on track to achieve the headline target of the Strategy. A significant stepping up of progress is needed with regard to all targets. These conclusions are underpinned by the EU State of the Environment report which indicates clearly that the EU is not on track to reach its 2020 headline target, and faces serious challenges in achieving the six individual targets underpinning the headline target.

From 2014-2016 European Commission realised an extensive evaluation of the Birds and Habitats Directives as part of the Fitness check process. The study supporting the Fitness Check of the Nature Directives came to the conclusion that the legislation is still fit for purpose and delivers results when fully implemented and enforced. This was confirmed by the College of Commissioners on 7th December. The Commission also committed to developing an Action Plan that would contain a series of concrete measures aiming at better implementation of the Birds and Habitats Directives.

In addition to fully implementing the Nature Directives, the Commission’s Mid-Term Review of the Biodiversity Strategy and findings of the Fitness Check underline that some sectoral policies need to change to meet the Strategy’s headline target to halt the loss of biodiversity and the degradation of ecosystem services. The longer that the detrimental impacts of such policies on biodiversity and ecosystems remain unaddressed, the more resources will be needed to halt the loss of biodiversity and ecosystem services. In this regard it is of particular importance that the Commission and Member States step up the work towards reforming environmentally harmful subsidies and other perverse incentives resulting from national and EU policies that lead to detrimental impacts on biodiversity.

At EU level, looking into how to address adverse impacts from the new Common Agricultural Policy, Common Fisheries Policy and energy policy is critical since the frameworks currently in place for these sectors continue to be major sources of pressures.
on EU’s terrestrial, freshwater and marine biodiversity. More specifically:

— It is becoming increasingly clear that the CAP greening has failed and that under the new CAP, farming intensification will continue at the expense of biodiversity. A thorough assessment of the impacts of the new CAP on biodiversity is needed as a first necessary step towards a truly sustainable common agricultural policy and Commission, Member States and the Parliament must look at the 2017 revision of Ecological Focus Areas from a quality perspective – the use of pesticides should not be allowed on these areas.

— Since the reform of the Common Fisheries Policy in 2013, the Commission and Member States have continuously failed in setting all catch limits in line with scientific advice in order to achieve the Maximum Sustainable Yield (MSY) target. It is of crucial importance to break with such bad habits and more generally to take an ecosystem-based approach to fisheries management in order to minimise impacts on the natural environment and in particular ecosystems in marine protected areas.

— The Renewable Energy Directive includes sustainability criteria for biofuels used in the transport sector, but these criteria are incomplete, and for biomass used elsewhere in the energy sector, no criteria currently exist. EU policies on bioenergy should be overhauled to bring demand into line with what can be produced sustainably and to ensure effective safeguards for biodiversity.

Similarly, when it comes to the EU’s regional policy, while there are positive examples of helpful projects in the area of green infrastructure and nature-based solutions, overall synergies remain largely under-exploited and trade-offs at the expense of biodiversity are still ubiquitous.

A true greening of the EU budget therefore still needs to take place in order to ensure that EU spending overall does not result in a net loss of biodiversity and ecosystem services. The present approach to integration for biodiversity and Natura 2000 financing has largely failed and can be credited for the severe underfunding of nature conservation from the EU budget. The current chronic lack of funding needs to be recognised and the potential for the present approach to yield satisfactory results needs to be seriously called into question and more effective solutions to channel sufficient levels of financing found.

Furthermore, a full and ambitious implementation of the EU environmental acquis could make an important contribution to reducing existing pressures on biodiversity. Especially the appropriate use of environmental impact assessment at project, programme and strategic levels as well as an ambitious approach to implementing policies such as EU’s Water Framework Directive, the Marine Strategy Framework Directive and the National Emission Ceilings Directive could yield important positive results.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Use the outcome of the Nature Directives Fitness Check as an opportunity for scaling up efforts towards full and effective implementation of the Directives, and ensuring that implementation challenges are addressed and necessary funds mobilized;

— Facilitate the emergence of a set of additional fast-track measures to address key gaps and failures in order to meet the Biodiversity Strategy’s headline target and adopt Council Conclusions in support of any such measures proposed by the Commission;

— Ensure commitments made by the EU at CBD-COP13 in Mexico, notably in the Cancun Declaration on mainstreaming biodiversity, translate into a renewed effort and concrete action to meet the Aichi biodiversity targets domestically, in particular through further action to mainstream biodiversity in other sectors, and in particular agriculture, and on removing subsidies and incentives harmful to biodiversity by 2020 as committed under the CBD since 2010;

6.9 SOIL POLICY

Soil provides an array of services, such as water purification, waste decomposition and climate mitigation and as such it should be regarded as a natural resource of strategic importance for the EU. Yet quantitative and qualitative degradation of soil in Europe is accelerating and threatens greatly our food security and our ability to tackle climate change and prevent the loss of biodiversity. It is critical therefore that progress on adopting a binding legal framework at the EU level affording soil the deserved level of protection is achieved swiftly. Although the Commission recently withdrew the 2006 Soil Framework Directive proposal, the EU still has a commitment through the 7EAP to ‘reflect as soon as possible on how soil quality issues should be regarded as a natural resource of strategic importance and on bioenergy should be overhauled to bring demand into line with what can be produced sustainably and to ensure effective safeguards for biodiversity.

Similarly, when it comes to the EU’s regional policy, while there are positive examples of helpful projects in the area of green infrastructure and nature-based solutions, overall synergies remain largely under-exploited and trade-offs at the expense of biodiversity are still ubiquitous.

A true greening of the EU budget therefore still needs to take place in order to ensure that EU spending overall does not result in a net loss of biodiversity and ecosystem services. The present approach to integration for biodiversity and Natura 2000 financing has largely failed and can be credited for the severe underfunding of nature conservation from the EU budget. The current chronic lack of funding needs to be recognised and the potential for the present approach to yield satisfactory results needs to be seriously called into question and more effective solutions to channel sufficient levels of financing found.

Furthermore, a full and ambitious implementation of the EU environmental acquis could make an important contribution to reducing existing pressures on biodiversity. Especially the appropriate use of environmental impact assessment at project, programme and strategic levels as well as an ambitious approach to implementing policies such as EU’s Water Framework Directive, the Marine Strategy Framework Directive and the National Emission Ceilings Directive could yield important positive results.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Follow up on the 7EAP commitment in line with the UN Sustainable Development Agenda and initiate an extensive discussion on a political level on how to address soil degradation issues in a binding legal framework at the EU level and ensure that a clear message on the need to propose such a framework as soon as possible is sent to the Commission.

6.10 FITNESS CHECK ON ENVIRONMENTAL REPORTING AND MONITORING

Monitoring and reporting is essential to check that environmental policy is being implemented and to make sure that the EU institutions and European citizens are informed about the quality of the environment and the action taken to maintain and improve it. It is also essential to ensure active engagement of citizens in decision making.

The European Commission has launched a Fitness Check on environmental reporting and monitoring\(^7\) that aims at ensuring that environmental monitoring and reporting is scaled back, simplified or made more efficient (less burdensome). It aims to identify where requirements could be simplified in terms of scope, detail, frequency and timing of the reporting thus lowering administrative burdens for Member States. Other ongoing fitness checks contain similar elements like the one on the European Pollutant Release and Transfer Register (E-PRTR) Regulation\(^8\) and the one on the INSPIRE Directive.\(^9\)

The VW scandal has made it painfully clear that there is an inadequate level of enforcement of EU legislation at Member State level. Instruments like the E-PRTR are not able to fully deliver the necessary compliance assessment, benchmarking of operators against Environmental Quality Objective or improved uptake of pollution prevention measures taken by large scale industrial sectors. Availability of good quality data and information along with transparency of that information is a key element in ensuring the necessary control and enforcement of EU acquis as well as stimulating innovation in the sector.

The data collecting and monitoring systems built over many years based on EU environmental legislation should be maintained and improved. Dismantling of such systems would result in even lower levels of enforcement compared to the current inadequate situation.

As a rule, environmental data should be available for the public with active dissemination in order to encourage public involvement in policy decisions. The Fitness Check exercise should therefore focus on how to improve the quality and dissemination of information to make it most effective and user friendly in a way that it does not compromise but rather improves the enforcement levels and promotes progress in pollution prevention measures. This would mean in some areas the collection of some additional information and newly designed public dissemination tools. Considerations of reducing administrative burdens should be based on keeping strong levels of enforcement and in light of promotion of pollution prevention measures by industry.

6.11 APPLICATION OF THE AARHUS CONVENTION TO THE EU INSTITUTIONS

When the European Union became a Party to the Aarhus Convention, it adopted Regulation 1367/2006 on the application of the provisions of the Aarhus Convention to the EU institutions (known as the Aarhus Regulation). From an early stage, NGOs had concerns about whether the Regulation was fully in line with the Convention, and some of these concerns were vindicated in June 2012 by two rulings of the EU General Court which found, in two similar cases, that the limitation of the type of measures which could be challenged under the access to justice provisions to ‘measure[s] of individual scope’ was not compatible with the Convention. The Advocate General reached a similar conclusion on this point. However, in early January 2015, the General Court rulings were overturned by the European Court of Justice (ECJ) following appeals by the Commission, Council and Parliament. The ECJ considered that the relevant provision of the Aarhus Convention (Article 9(3)) was not sufficiently precise or unconditional to preclude the limitation to ‘measures of individual scope’.

The consistency of the ECJ ruling with the EU’s obligations under international law is now being examined (see below). However, aside from the legal aspect, the political impact of the ECJ judgment is highly damaging to the democratic image and credentials of the EU. The ruling suggests that only a very limited range of decisions may be challenged under the Regulation, e.g. decisions on permits for placing on the market of genetically

---


\(^{8}\) [http://ec.europa.eu/environment/industry/stationary/eper/imple-mentation.htm](http://ec.europa.eu/environment/industry/stationary/eper/imple-mentation.htm)

\(^{9}\) [http://ec.europa.eu/environment/consultations/inspire_en.htm](http://ec.europa.eu/environment/consultations/inspire_en.htm)
modified organisms and chemical products under the REACH regulation on chemicals. By severely restricting access by NGOs and the public to the EU courts, the ruling reinforces the already widespread impression of EU institutions which are insufficiently accountable to the public. This is particularly damaging at a time when many Europeans are lacking in confidence in the EU institutions, as reflected in the outcome of the UK referendum on EU membership. It prolongs the manifestly unfair situation whereby private companies whose activities have a destructive impact on the environment have easy access to the EU courts to defend their commercial interests whereas public interest organisations have very limited access to argue on behalf of the environment and the wider public interest.

The surprising and controversial ECJ ruling of January 2015 has been looked at closely within the framework of the compliance mechanism of the Aarhus Convention in the context of an ongoing complaint against the EU. The Convention’s Compliance Committee issued its draft findings in June 2016, which concluded that the EU is not in compliance with the Convention. The Committee is expected to finalise its findings, taking into account the comments of the parties concerned on the draft, in early 2017. Given the significance of the findings, it would be appropriate for the Presidency to pay close attention to the outcome and react accordingly.

It is important to emphasise that the decision by the EU institutions (through the wording of the Aarhus Regulation) to limit the types of acts that may be challenged to ‘measures of individual scope’ was a political decision, not based on any legal imperative. There is nothing in the Aarhus Convention that requires this limitation, or, according to the Committee’s draft findings, that permits it.

Strengthening the democratic accountability of the EU institutions, including its judicial component, is a crucial element in maintaining public confidence in the EU. Notwithstanding the final outcome of the deliberations of the Aarhus Convention Compliance Committee, there is already a strong case for the EU to adopt a set of strengthening amendments to the Aarhus Regulation to remove the limitation of the administrative acts that may be challenged to ‘measures of individual scope under environmental law’ and to address problems in relation to the information provisions of the Aarhus Regulation. These could have been corrected in the recast of the Access to Documents Regulation (Regulation 1049/2001, which is cross-referred to in Regulation 1367/2006) but are now unlikely to be.

However, in the event of the Aarhus Convention Compliance Committee confirming a finding of non-compliance, it would be important for the EU to move swiftly to correct the situation by starting the process of revising the Aarhus Regulation forthwith. In theory, the EU could wait for the Committee’s findings to be confirmed by the Convention’s governing body (Meeting of the Parties or MOP) in September 2017 before taking any action, but given that every single finding of the Committee has been confirmed by the MOP since its inception, this would rightly be seen as further foot-dragging by the EU and a further sign of the resistance of the EU institutions to great public accountability.

6.12 RE-LAUNCH DISCUSSIONS ON AN ACCESS TO JUSTICE DIRECTIVE

There is an urgent need to re-launch negotiations on an EU Directive on Access to Justice, taking into account the proposal originally tabled by the Commission in 2003. The preparation of a new legislative proposal on access to justice by Commission services was at an advanced stage under the previous Commission, following the withdrawal of the 2003 proposal under REFIT, but regrettably the new proposal was not released before the expiry of the Barroso II mandate, nor has the Juncker Commission visibly moved forward on the file to date.

The necessity for a Directive on access to justice has been repeatedly stressed not only by civil society organisations in the EU Member States but also by judges and other experts in the legal professions. On different occasions, EU Member State judges have supported the idea of a Directive to help implement the third pillar of the Aarhus Convention on access to justice in environmental decision-making. A number of cases have been brought by civil society organisations before the Compliance Committee of the Aarhus Convention concerning failures of EU Member States to properly apply the access to justice pillar of the Convention.

The draft Directive on Access to Justice that was published by the European Commission in 2003 aimed to set certain minimum standards for access to justice in environmental matters. It was intended to implement the ‘third pillar’ of the Aarhus Convention in EU Member States, which would help to improve opportunities for the public and environmental citizens’ organisations to insist on respect for environmental law. For many years, the Council declined to discuss the proposal, due to the resistance of a number of Member States that do not view this issue as an EU responsibility.

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 showed a clear deficit in at least 15 of the 25 Member States, with only Denmark fulfilling all the expectations laid down in the Aarhus Convention. This confirms the view that adoption of a Directive on this topic is important to set minimum standards for the implementation of the right to access to justice in environmental matters as the Aarhus Convention requires.
The jurisprudence of the Court of Justice of the European Union, notably a ruling in a case concerning Slovakia (C-240/09) issued in March 2011, provides a further reason why it is important to revive discussions on a directive. The Court found on the one hand that access to justice in environmental matters in the sense of Article 9(3) of the Aarhus Convention falls within the scope of EU law, and on the other that Article 9(3) needed a uniform interpretation within the EU in order to “forestall different interpretations” by Member States (paras. 40 and 42).

In March 2012, the Commission published a Communication on improving the implementation and enforcement of environmental law. Clearly one of the more effective means of achieving better implementation is by empowering citizens to challenge perceived violations of the law. The Communication identified the need to provide greater certainty for national courts and economic and environmental interests in respect of access to justice, mentioning the option of defining at EU level the conditions for efficient and effective access to national courts in respect of all areas of EU environmental law.

The idea was then taken up in the 7EAP, which refers to the need for access to justice in environmental matters in line with the Aarhus Convention and developments brought about by the entry into force of the Lisbon Treaty and recent case law of the European Court of Justice. It commits to ‘ensuring that national provisions on access to justice reflect the case law of the Court of Justice of the European Union’, implying a legally binding approach.

The role of access to justice in promoting better implementation of existing legislation and thus promoting the rule of law is an important consideration which is not only recognized in the 7EAP but is also in line with the Juncker Commission’s support for ‘full respect for fundamental rights and the rule of law’ (Political Guidelines, Priority 7), as is the positive impact on the functioning of the internal market of an instrument that promotes a more level playing field for business.

An EU directive strengthening access to justice at the national level would also be in line with the principle of subsidiarity, enabling matters to be more often resolved through national procedures without the Commission being unnecessarily burdened with complaints.

In 2013, the Irish Presidency hosted a discussion on access to justice at the Working Party level at which the Commission was able to present the findings of its latest studies on the issue and its plans to come forward with a new proposal and obtain feedback from Member States. DG Environment is understood to have used this feedback in taking the first steps in the preparation of a new legislative proposal.

Progress towards reviving the negotiations on an access to justice directive suffered a setback in early October 2013 when the 2003 proposal was formally withdrawn by the Commission under REFIT, the Regulatory Fitness and Performance Communication, without any firm commitment to replace it with a new legislative proposal. The EEB would have been happy to see negotiations proceed on the basis of the Commission’s 2003 proposal. However, taking into account the number of Member States that have joined the EU since then and the increased experience with the implementation of the third pillar of the Convention, we would also find it acceptable to proceed on the basis of a new proposal provided this does not lack any of the positive elements of the 2003 proposal. The latter approach would also provide the opportunity to prepare a more ambitious proposal that takes account of the positive amendments to the 2003 proposal made by the Parliament as well as the many problems encountered by members of the public seeking access to justice in recent years.

Following the REFIT Communication, the then Environment Commissioner and DG ENV remained adamantly that the decision-making process leading towards a new legislative proposal was at an advanced stage. However, no proposal was issued under the Barroso II mandate, leaving it in the hands of the new Commission.

While the Juncker Commission has in general shown reluctance to come forward with any new environmental initiatives not foreseen by the previous Commission, its Work Programme for 2016 included a commitment to “take forward work to clarify access to justice in environmental matters”. In its 2017 Work Programme, the Commission has indicated its intention to “step up its efforts on the application, implementation and enforcement of EU law”, including through “measures to facilitate access to justice and support environmental compliance assurance in Member States”. The indications are that the Commission intends to only execute these commitments, at least for the time being, through the issuing of non-binding guidance in an interpretative Communication. Such guidance clearly would not deliver the required legal certainty of a directive but could be useful in the short-term as an interim measure, in particular if it takes into account the findings of the Compliance Committee once endorsed by the Meeting of the Parties and is sufficiently ambitious and broad in scope, covering the issues of legal standing, scope of review, available remedies and costs of access to justice.

One new element that provides an additional reason for taking a robust approach on this issue is the ‘dieselgate’ fallout. This has badly damaged the confidence of citizens in the ability of governments to effectively regulate the corporate sector. While strengthening inspection and enforcement capacities at EU and Member State levels and ensuring that the regulated community does not exercise undue influence on the regulatory authorities should be part of a response to ‘dieselgate’, strengthening the oversight role of the public through enhancing access to justice should be another part.

WE THEREFORE CALL ON THE MALTESE PRESIDENCY TO:

— Call on the Commission to publish as soon as possible a new proposal for a directive on access to justice, building on and strengthening the Commission’s 2003 proposal, with a view to delivering on the 7EAP commitment to ensure that national provisions on access to justice reflect the case law of
the Court of Justice of the European Union; and once issued, swiftly convene Council working group meetings to make good progress on this directive;

— Call on the Commission to proceed without delay in the preparation and issuing of non-binding interpretative guidance on access to justice and request that this be ambitious, broad in scope and based not only on the jurisprudence of the ECJ but also on the findings of the Aarhus Convention Compliance Committee once endorsed by the Meeting of the Parties.

**6.13 IMPROVE IMPLEMENTATION AND ENFORCEMENT**

EU politicians repeatedly claim that better implementation and enforcement is a top priority but at the same time oppose (or fail to support) the very measures which can deliver better implementation and enforcement. By not pursuing the non-respect of EU law in a more efficient way, the EU loses credibility for its inability to uphold the rule of law and fails to prevent often irreversible damage to the environment and harm to citizens’ health. It also misses an opportunity to reduce costs and create jobs. Finally, it fails to regain the trust of European citizens and get them again more interested in and supportive of the EU.

In its 2007 Communication on the application of EU law, the European Commission stated that “Laws do not serve their full purpose unless they are properly applied and enforced.” Striving for better enforcement should embrace both improving enforcement of the EU acquis by the competent authorities and creating the right conditions for citizens to play an active part in supporting enforcement efforts. The EEB gave the Commission’s Communication on implementing European Community Environmental Law COM(2008) 773/4 a cautious welcome, outlining several aspects it considered as shortcomings.

These earlier Communications were followed up by the publication in March 2012 of a new Communication on the better implementation of EU environmental measures. The Commission referred in the related press release to an estimated €50 billion per year in health and environmental costs at a time of economic crisis due to the failure to implement environmental legislation and mentioned that in the waste sector alone, full implementation would generate an additional 400,000 jobs. These were just two examples of the costs of failure to take action and of the fact that environmental protection can create jobs.

Several elements from the 2012 Communication were then taken up in the 7EAP, adopted in November 2013, which noted the high number of infringements, complaints and petitions in the area of the environment and committed to giving ‘top priority’ to ‘improving the implementation of the Union environment acquis at Member State level’. Specifically, the 7EAP states that efforts in the period up to 2020 will focus on delivering improvements in four key areas, which may be summarised as follows:

— Improving the way that knowledge about implementation is collected and disseminated;

— Extending requirements relating to inspections and surveillance to the wider body of Union environmental law, and further developing inspection support capacity at Union level;

— Improving where necessary the way in which complaints about the implementation of Union environmental law are handled and remedied at national level;

— Ensuring effective access to justice in environmental matters and effective legal protection for EU citizens.

As the 7EAP is a binding document that has been agreed between the three institutions, these are important commitments and it is essential that they are honoured by all the institutions, featuring where relevant in documents such as the Commission’s annual work programmes. The second and fourth elements clearly lend support to the tabling of legislative proposals on environmental inspections and access to justice. The Presidency in particular should play a key role in ensuring that the 7EAP is respected and in encouraging the Commission to come forward with appropriate proposals. The fact that First Vice-President Timmermans has responsibility both for sustainability and for the rule of law should in theory mean that his ‘filtering’ role is not an obstacle to new proposals which will improve the implementation of environmental law, despite the overall deregulatory approach of the current Commission.

The fact that Member States face difficulties in implementing EU laws has sometimes too hastily been used to argue that there are too many EU laws, without first considering whether the absence of those laws, even if poorly complied with, would lead to a better society and environment. The EEB regrets the general slowdown in presenting new laws and the tendency to replace binding law by communications or recommendations and guidelines. This slow-down in presenting new laws is yet another reason to increase efforts for improving enforcement. Laxity in the handling of breaches of EU law sends the wrong signals. The EEB considers that in the long run only a solid harmonised environmental acquis and its full application can provide the conditions for a healthy sustainable economy.

---

12 Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (COM(2012)95).
The Commission has recently launched the Environmental Implementation Review (EIR) and will publish European and country-specific reports every two years focusing on essential topics in the area of environmental legislation. The EIR provides a good opportunity to initiate high level discussions in the Council on significant implementation gaps common to several Member States as well as specific actions at Member State level to improve the implementation of the EU environmental acquis.

In conclusion, the EU cannot afford to continue not taking seriously the enforcement of environmental law. It has an impressive environmental acquis jointly adopted with the Member States and Parliament and it is time to fully implement it to derive all of the benefits.

WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Remind the Council, Commission and Parliament of their joint commitment under the 7EAP to give top priority to improving implementation of the EU environment acquis at Member State level and call on the Commission to come forward with legislative proposals to deliver on that commitment, drawing on elements of the 2012 Communication as appropriate;

— Encourage and support Commission initiatives to deal with its enforcement obligations in a transparent and timely manner, and to increase transparency in relation to the implementation performance of Member States;

— Increase public involvement through improved access to documents, including in relation to the infringements process, and access to justice as required by the Aarhus Convention and confirmed by ECJ rulings;

— Encourage Member States to use modern information technology to make information easily and quickly available, with limited costs, recognising that doing it in a harmonised way will in the end also result in administrative burden reductions;

— Support the Commission’s proposals to improve national complaint handling;

— Emphasise in its discussions with Member States the need for appropriate bodies and structures at EU level to improve the transposition and application of EU law, such as an EU agency coordinating environmental inspections, and seek Member States’ support for such an agency;

— Call on the Commission to ensure that any legislative proposal is in line with Aarhus requirements and takes account of recent case law, in order to facilitate correct implementation, contribute to reducing the number of complaints and thus save work (resources) in other sectors;

6.14 ENVIRONMENTAL INSPECTIONS

The divergence in the quality of national inspection and enforcement regimes across Member States is evident and has been acknowledged in many official EU documents. The Barroso II Commission was at an advanced stage in the preparation of a legislative proposal on environmental inspections which would have addressed this problem, but unfortunately it failed to issue the proposal before the expiry of its mandate. Regrettably, though perhaps not surprisingly in light of its overall priorities and determination to give a message of discontinuity, the Juncker Commission has also thus far failed to issue any legislative proposal on the issue, though hopefully the ‘dieselgate’ scandal will give a new impetus to work in this area, as well as to the strengthening of inspection and enforcement powers and capacities at EU level.

In the past, Member States opposed the European Parliament’s efforts to have an EU directive on environmental inspections with the result that the only progress that was made horizontally was the adoption of the non-binding 2001 recommendation on minimum criteria for environmental inspections. Thereafter, inspection requirements of a binding nature have been included in some sectoral laws. The EEB believes, however, that an EU law establishing minimum standards for environmental inspections horizontally, without in any way hampering or weakening existing environmental inspection provisions in sectoral law, would be more efficient and lead to a more harmonised application of EU environmental law and requirements. Such a law should also be fully in line with the Aarhus Convention, as participation of a well-informed public will improve the efficient application of a new inspections law. This would help to uphold the rule of law, be positive for the environment and would also contribute to more harmonised business conditions. The EEB welcomes Commission intentions to improve compliance assurance, but underlines that mere recommendations and best practice information exchanges will never deliver the results of an environmental inspections law.

http://ec.europa.eu/environment/eir/index_en.htm
WE THEREFORE CALL UPON THE MALTESE PRESIDENCY TO:

— Having regard to the 7EAP commitment to extend requirements relating to inspections and surveillance to the wider body of Union environment law, give its full support to an EU legal instrument establishing minimum standards for environmental inspections;

— Encourage the Commission to make quick progress with the preparation of the legislative proposal and table the draft as early as possible;

— Until the new legislation is in place, ensure that provisions for environmental inspections are included in specific sectoral laws.

6.15 2030 SUSTAINABLE DEVELOPMENT AGENDA

While the European Council should take the lead role in relation to the implementation and follow up of the 2030 sustainable development agenda (see section 1.2 above), the Environment Council as well as individual environment ministers and other relevant ministers (e.g. those for international cooperation, agriculture, internal and social affairs) also have a crucial role to play. The active engagement of environment ministers is particularly important at the international level where the environmental dimension tends to be eclipsed by the development agenda.

After the adoption of the 2030 Sustainable Development Agenda it is crucial to put in place the right indicators, reporting and review mechanisms and to ensure that the environmental dimension is still at the core of the debates in the HLPF. The same importance needs to be given to guaranteeing access to information and participation of Major Groups and other Stakeholders in the HLPF process, according the HLPF resolution A/RES/67/290.

THEREFORE THE EEB CALLS ON THE MALTESE PRESIDENCY TO:

— Ensure that the EU promotes strong and active multi-stakeholder participation in international processes in line with Agenda 21, and, in particular, plays a constructive role towards an agreement on an improved stakeholder engagement policy at UNEA-3 following the disappointing outcome on this topic at UNEA-2;

— Invest in the work of defining the right indicators, follow up and review mechanisms and reporting as next step in the 2030 Sustainable Development Agenda;

— In Europe, ensure an active process and institutionalisation of a structure for civil society participation at EU level with all relevant stakeholders to prepare in consultation with the EC those concrete implementation and review mechanisms, with capacity building actions and funding possibilities;

— Continue the tradition of organising “jumbo” meetings at Council level, both for coordinating the EU position at UN meetings, but also to coordinate and promote coherence of the internal implementation of the 2030 Sustainable Development Agenda.