

**EEB ASSESSMENT OF THE ENVIRONMENTAL RESULTS OF
THE LUXEMBOURG PRESIDENCY**

**Leadership on Lisbon and Climate;
Open to civil society organisations;**

SUMMARY OF THE EEB VERDICT ON THE TEN GREEN TESTS

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CONCLUSIONS

The Luxembourg Presidency started in a promising way but ended with a major double crisis - a crisis which obviously cannot be blamed on the Luxembourg Presidency. Two out of the three referendums held so far on the Constitutional Treaty have shown that there is a critical credibility gap between citizens and the European Union project. The Presidency rightly concluded that a constructive decision on the Financial Perspectives could contribute to lessening that gap. This failed because of unbridgeable differences between the Member States over the future orientation of the EU. The adoption of a “*Declaration on the guiding principles for sustainable development*” was a more positive message to the people of Europe, but did not get any attention.

The EEB was encouraged by the early messages from Prime-Minister Juncker and other members of the Luxembourg government, that the Presidency would promote

synergies between economic, social and environmental interests. This was an important position to take, given the pressure to narrow down the Lisbon process to a restricted economic growth and employment agenda, and to put competitiveness-proofing as a precondition for the further development of EU policies, including environmental policy. The EEB is not disappointed with the outcome in this regard, as we set out below.

The Presidency also showed clear leadership in three crucial dossiers – climate, chemicals policy and mercury. As regards climate, the implementation of the EU's Kyoto obligations is facing problems, but the Presidency did lay the foundation for a leadership role for the EU globally for the post-Kyoto period.

We have seen a Presidency that has been working for the common European good, with no specific national constraints. However, in this assessment, results are what count in the end, and here there is disappointment because of the resistance from Member States to come to ambitious conclusions. This is particularly true for the Financial Perspectives, of course, but also for the Directive on Access to Justice (Aarhus Convention) and Air Pollution from Ships. In the case of the Directive on Groundwater Protection, Luxembourg did not show sufficient understanding of the technical and legal issues and failed to move towards a result which will be of any help. Worse than this, the Directive does no more than backtrack on the 25 year old protection scheme already in place.

The EEB also appreciates the exceptional degree to which Luxembourg Ministers and officials showed willingness to enter into dialogue with the EEB and its membership. Highlights from this exchange were the meeting the EEB had with Prime Minister Juncker in preparation for the Spring Summit; the patronage and active involvement of the Environment Minister, Lucien Lux, and European Affairs Minister, Nicolas Schmit, in a conference organised by the EEB in Luxembourg on environment and the Lisbon summit; and the open and cooperative attitude of officials.

A worrying development is the apparent agreement between the European Parliament and the Council to slow down second readings. The second reading of the Waste Shipment Directive has still not started because the Common Position of the Environment Council, achieved during the Dutch Presidency, has yet to arrive in Parliament. The same goes for the Regulation on the implementation of the Aarhus Convention for EU Institutions. These delays are not acceptable where legislation is needed to tackle the ongoing decline in our environment and in citizens' rights.

EEB VERDICT ON THE TEN GREEN TESTS

INTRODUCTION

This is an assessment of the Luxembourg Presidency by the European Environmental Bureau, the largest federation of environmental citizens' organisations in Europe. The EEB has a mandate from its members to work on environmentally related issues, which is in itself a broad agenda: "traditional" environmental issues, sector and

horizontal policies with a direct or potential environmental impact, sustainable development, participatory democracy.

The EEB views the Presidency as a period of time over which progress on EU environmentally related policy and legislation can be measured. We appreciate that a Presidency cannot make decisions on its own. It needs the co-operation of the Commission, the European Parliament and the other Member States. Still, a Presidency has a special impact - from the way it leads the discussions, the way it prioritises the practical work and the profile it gives to specific issues.

Nevertheless, the EEB Assessment is not an overall political assessment of the Luxembourg Presidency's performance. We do not assess its role here on general foreign affairs issues, internal security matters, migration policies etc. Our assessment is based primarily on the TEN GREEN TESTS that we presented at the start of the Presidency.

The EEB presented its TEN GREEN TESTS and its Memorandum to the Luxembourg Presidency at the beginning of January. Prior to this, the EEB had sent a first letter with its priorities for the Presidency, which covered most of the issues in the Green Tests. It also had two meetings with the Environment Minister before the Presidency started.

Regarding the test on climate, the EEB received input from Climate Action Network Europe.

On the TEN GREEN TESTS, one by one, the EEB has come to the following conclusions:

1. GREENING THE LISBON PROCESS

The EEB asked the Presidency in particular to:

- *Ensure this Process is explicitly coherent with the commitments and objectives laid down in the EU Sustainable Development Strategy and the 6th Environmental Action Programme.*
- *Make eco-innovation and absolute de-coupling of economic growth from material flow (knowledge based growth) the guiding principle for strengthening the EU economy.*
- *Launch concrete initiatives for green public procurement and for environmental fiscal reform.*
- *Implement the 2003 Spring Summit demand for "the reform of subsidies that have considerable negative effects on the environment and that are incompatible with sustainable development".*

CONCLUSION: Positive

The new Commission produced its proposals for a re-focused Lisbon Process on the 26th of January. While it paid lip-service to the overarching aim of sustainable development, it followed the traditional approach of first wanting to restore economic growth before going back to worrying about environment and social values. The Luxembourg Presidency however showed sensitivity to the EEB's comments and proposals, and the general message of the Spring Summit was clearly different from the Commission's proposals. According to the Conclusions presented by Mr. Juncker, environmental policy is "*an important contribution to growth and employment, as well as to the quality of life.*" The European Council sees a clean environment and sustainable consumption and production patterns as part of the necessary preconditions for a good investment climate. It recognises that the protection of biodiversity in the EU (having agreed to halt the decline of biodiversity in the EU by the year 2010) must be respected and integrated into the Lisbon strategy.

The first opportunity to operationalise the greening of the Lisbon process was the production of Integrated Guidelines for the development of National Reform Programmes. Such Programmes are to be produced in the second half of the year, by all Member States, as a contribution to the EU wide Lisbon process. The Commission had already worked on these guidelines before the Spring Summit, and in its final stages refused to adapt them to incorporate the clearly different message from that Summit. So the EEB had to rely on the Luxembourg Presidency to bring in a strong environmental dimension. And indeed, the final version of the Guidelines, as adopted by the June Summit, does call specifically for the use of public procurement to boost eco-innovation, concrete initiatives to promote energy efficiency, and the linkage of economic policies with the Kyoto agreement. It also calls for the reform of environmentally hazardous subsidies, for the internalisation of external costs, and for the biodiversity objectives of the EU to be respected.

With regards to the future of the Sustainable Development Strategy itself, the Presidency launched the idea of a Charter on Sustainable Development. While there were concerns about this Charter replacing the Strategy that was adopted in Göteborg in 2001, the EEB decided to support the initiative. It is very important that the European Council should continue to feel direct responsibility for the promotion of sustainable development. Given the opposition against the concept of a Charter, the European Council in March decided to obtain a Declaration, to be adopted in June, that would guide the drafting of a reviewed Sustainable Development Strategy. The Summit also clarified that that new Strategy should be more ambitious and concrete than the existing one.

The Commission was given the task of drafting such a Declaration. The EEB had the chance to give an input, and the Luxembourg government was supportive. The European Council did not water down the Commission draft, and even made some improvements. The result is a good declaration, a general starting point for a stronger emphasis on sustainable development in the EU.

2. CLIMATE CHANGE:

The EEB and Climate Action Network Europe asked the Presidency in particular to:

- *Ensure agreement on an EU post-Kyoto GHG reduction target of 30% by 2020 as compared with 1990 and 80% by 2050.*
- *Adopt ambitious Directives for Eco-Design and for Energy Services for Demand-Side Management.*

CONCLUSION: Mixed

The Luxembourg Presidency coincided with two key developments for the prospect of an international climate regime. The Kyoto Protocol finally entered into force on the 16th February and the EU Emission Trading System, the mantle piece of EU climate change also started its operation. On the first test point we initially saw the Environment Council adopt strong language that acknowledged the harsh reality of climate science, despite opposition from the Commission. The Environment Council recommended that cuts of greenhouse gases in the order of 15-30% by 2020 and 60-80% by 2050 should be considered. While this falls short of our demands it was the first time European Ministers had agreed on a text which falls in line with what science recommends we should be doing in order to honour the commitment to limit global warming to two degrees at worst. It is clear that the Luxembourg Presidency was instrumental in bringing about this positive development and for this should be praised accordingly.

Unfortunately the strong wording of the Environment Council did not survive in the European Spring Council of 22-23 March. The Council did endorse the two degree warming limit and tentatively explored reduction targets of 15-30% by 2020 but dropped the reference to long term targets for 2050. The outcome is still a significant sign of the commitment EU leaders have to tackling climate change.

The problem comes when this commitment has to be translated into policy action. Despite being a key directive that could have a real impact on Europe's GHG emissions, the Council, led by the Presidency, reached a compromise agreement with Parliament on the Directive on the eco-design of Energy-using Products (EuP) that was far from ambitious. Self-regulatory measures by industry were given priority. The final outcome depends on the comitology process that will develop the standards.

As the end use energy efficiency and energy services draft directive was delayed in Parliament we cannot tell if the Presidency would have been able to encourage Member States to show greater appetite for the mandatory energy savings targets that should be the core of this directive.

3. ENVIRONMENTAL QUALITY OF FINANCIAL PERSPECTIVES 2007-2013:

The EEB asked the Presidency in particular to :

- *Ensure all relevant expenditure to promote sustainable development and implement article 6 of the EC-Treaty.*

- *Strengthen, not weaken, environmental sustainability requirement for cohesion policy.*
- *Guarantee implementation of Natura 2000 with sufficient dedicated funding.*
- *Make sure that no decrease be made in the role of the European Parliament in budgetary decisions. The Regulations for the specific budget lines need to be adapted for this purpose.*

CONCLUSION: some worrying elements

The debate on the financial perspectives during the Luxembourg presidency continued to be dominated by pressure from those Member States known as the 1% club to dramatically reduce the expenditure as foreseen by the Commission in the period 2007-2013. All this has seriously jeopardized in particular the securing of sufficient funds for Natura 2000 at EU level. The Commission failed to secure such allocations, proposing that parts of the Structural and Rural Development Funds could be used for this, on a voluntary basis. The European Parliament has chosen a more secure approach, allocating specific funds for this purpose (about 21 billion Euro for 7 years).

The Presidency has, understandably, focused on the question of the total sum available and how to distribute the necessary reductions compared with the Commission proposal. However, the pressure to pay attention to Natura 2000 led to a proposal to the June European Council asking Member States to ensure that Natura 2000 be co-financed from the two sources. For the EEB this is not strong enough language. It should have been formulated as being an obligatory part of the use of these funds and there should have been reference to the cost-estimations the Commission had made. Furthermore, the Presidency, in other areas (but much less for the first pillar of the Common Agriculture Programme), proposed reductions for Structural Funding and Rural Development Funding compared to the Commission's proposal. This will most certainly increase competition between environmental and other priorities, making it even more difficult for these funds to be spent in an environmentally sustainable way.

In the different Presidency proposals, or negotiating boxes, prepared in advance of the June Summit, no figure was proposed for LIFE+, leaving it very uncertain as to what money will be allocated to some of the core environmental policy activities of the EU. This was partly because the debate on LIFE+ in the Environment Council has so far focused on content and scope and not on funding.

Furthermore, it is remarkable that sustainable development and environmental protection do not appear as motives for EU policies in relation to the future budget.

As regards the environmental quality of the different legislative proposals for EU funding, the consolidated text of the Council for the new Cohesion Fund Regulation contains some very worrying elements. One reason for concern is that the new third pillar - sustainable transport and energy - will be merged with environment and will actually include air transport as a form of "sustainable development which clearly presents environmental benefits". Also, the 50/50 split between the different pillars is coming under increased pressure from Council.

Perhaps the greatest cause for concern is the deletion of the partnership principle in the consolidated text for the General Regulation. This article specifies that civil society groups, including environmental organisations, will be involved in the development of national strategic reference documents and sectoral operational programmes.

As regrettably no agreement was reached under the Luxembourg presidency on the financial perspectives, it is now up to the UK presidency to try and tackle this.

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The failure of the June Summit to come to conclusions is to be converted into an opportunity to discuss thoroughly what practical role the EU has towards sustainable development, bearing in mind that the same Summit endorsed a Declaration on Sustainable Development.

4. A STRONG EU CHEMICALS POLICY WITHOUT FURTHER DELAYS

The EEB asked the Presidency in particular to:

- *Maintain momentum in order to allow political agreement by the end of 2005.*
- *Avoid any delays through further impact assessments.*
- *Seek a breakthrough on key problems of REACH, including:*
- *Put in place an effective authorisation procedure leading to the identification and phase out of all very high concern chemicals by 2020, by implementing a clear obligation to substitute those substances;*
- *Achieve quality assurance of industry information, with at least 5% of registration dossiers to be evaluated by national authorities;*
- *Facilitate access to information in line with the Aarhus Convention and to the information flow for dangerous substances in articles down the supply chain.*

CONCLUSION: positive

The Presidency has maintained the pace, which should enable the UK to achieve a political agreement under its forthcoming Presidency. The June Competitiveness

Council underlined its intention to finalise its common position after the first reading in the European Parliament.

The Presidency deserves credit for organising a REACH workshop, with full stakeholder participation, in May and for highlighting with this event the end of further impact assessment work (more than 50 studies in total). The workshop helped to increase consensus and allowed room for exchange with the Parliaments' rapporteurs and for discussion of, among other topics, the OSOR (one substance-one registration) proposal.

The discussion of the role of the Agency has not yet resulted in a satisfactory result and remains vague. Nevertheless the debate in the Competitiveness Council in May advanced in the right direction by emphasising the need to keep capacities for the evaluation at national level – probably through a network of Competent Authorities.

The Environment Council in June made progress towards strengthening the 'substitution principle' under Authorisation and emphasising the necessity for time-limited and reviewed Authorisation. The Environment Council also supported the proposal of the Parliament's Rapporteur to increase transparency by creating a list with candidate substances for Authorisation.

Finally, the Luxembourg Presidency did an excellent job in achieving transparency in its work, combined with good technical capacity and by setting the right priorities and keeping a fair balance.

5. SUPPORT THE AARHUS CONVENTION:

The EEB asked the Presidency in particular to:

- *Start Council work on the draft Directive on Access to Justice, as a precondition for ratification of the Aarhus Convention by May 2005;*
- *Seek Council agreement on the Regulation on application of the Aarhus Convention by the EU Institutions in coherence with the EP Position (presuming the EP reconfirms its position at the first reading)*
- *Support the inclusion in the Convention. of public participation of GMO-related decisions as a legally binding requirement.*

CONCLUSION: Mixed

The Presidency made an effort to start the work on the Draft Directive on Access to Justice. However, rather than starting concrete discussion of the Commission's text, it gave ample room to those Member States that object to the Directive for subsidiarity reasons to make their objections. At the June Council it reported that a majority of Member States do not consider this Directive as necessary. It is now in the hands of one of those governments, the UK, which will certainly mean more time in the fridge for this draft Directive.

In February, the EU ratified the Aarhus Convention, despite the failure to adopt the Regulation that would introduce the Convention's requirements in EU Institutional operations. During the Dutch Presidency, the Environmental Council even refused to include the Convention's essential third pillar on access to justice. EEB protests against premature ratification were ignored.

The March Environmental Council gave the European Commission a mandate to represent the EU in the final stages of negotiations for a possible adaptation of the Aarhus Convention in order to include rules for public participation in decision-making regarding deliberate release and placing on the market of GMOs. The EEB had protested strongly against the nature of the mandate, as it had seen that the Commission, and some Member States, were rather hostile to a meaningful Aarhus arrangement. The Luxembourg Presidency left this matter to the Netherlands government, which had agreed to continue EU-coordination from its own Presidency last autumn. In the end, at the Meeting of Parties, the EU gave in to external and internal pressure and agreed on an acceptable but not ideal solution.

Finally, the Dutch stand-in Presidency needs to be congratulated for the constructive role it played, at the Meeting of Parties of the Aarhus Convention, on reaching an agreement on the formulation of Guidelines for Public Participation in International Fora.

6. RURAL DEVELOPMENT:

The EEB asked the Presidency in particular to:

- *Ensure that pillar 2 is strengthened substantially via increased modulation and is budgeted for in the new Financial Perspective. Rural development should become the core of the CAP in the long-term.*
- *Insist that agri-environmental measures remain compulsory in all EU member states, are available across the EU territory and promoted by favourable co-financing rates.*
- *Ensure that environmental criteria be integrated across all Rural Development measures.*
- *Ensure flexibility regarding Article 69 of the Mid Term Review in order to allow extensive use of the article in the Member States.*

CONCLUSION: Reasonable

Although no agreement had been reached on the financial perspectives which would have set the overall spending limit, the Agriculture Council did come to a unanimous agreement on Rural Development Policy post 2007 including a preliminary agreement on spending. Although this spending level is the same as that proposed by the Commission and has not been cut, it has not significantly strengthened pillar 2 either. In the three consecutive Presidency compromise texts for the EAFRD, little improvement is to be observed in the field of environmental protection. Environmental criteria have for example not been integrated across all Rural Development measures.

As regards the definitive content of the new Rural Development Regulation this is still dependent on the outcome of the agreement on the financial perspectives but it is encouraging to see that the compulsory payments for agri-environmental measures are still standing and available across the EU despite strong pressures for more flexibility and subsidiarity. Equally encouraging is that the ring fencing under the different axis has been secured at 10% for axis 1 and 3, 25% for axis 2 and 5% for the LEADER approach. More favourable co-financing rates for agri-environmental measures, however, have not been a point of discussion.

It is disappointing that the current definition for Less Favoured Areas will remain in place till 2010. There is a strong case to be made for redefining them so that they are much more clearly linked to the environmental performance of land management which is the objective of axis 2.

7. PROTECTION OF GROUNDWATER FOR FUTURE GENERATIONS:

The EEB asked the Presidency in particular to:

- *Ensure protection of remaining pristine groundwater by introducing special protection zones or a high chemical status classification.*
- *Maintain existing Groundwater Directive requirements for preventing the input of hazardous substances and to improve them with substance identification, emission control and reporting action at national and EU level. Those measures should be aligned with the Water Framework approach to priority substances and have priority over harmonised standard setting.*

CONCLUSION: Very Negative

After some promising progress negotiated between key Member States at the end of last year, the debate under the Luxembourg Presidency ended fundamentally flawed and the result is a weakening of 25 year old protection standards. The discussions focussed on the implementation of the Nitrates Directives, which provides separate and self-standing requirements which are not at all in conflict with the new law. Instead the Presidency should have focussed on the prevention of inputs of hazardous chemicals and how to close the gap between the Water Framework Directive and the 1980 Groundwater Directive to be repealed in 2013.

The Presidency failed to provide the political attention and technical and legal capacities to achieve a useful outcome. Member States were allowed to write in specific exemptions they wished to see accommodated. France was able to exclude diffuse pollution of groundwater from any obligation. The Netherlands' practice of dumping dredging material was sanctioned – a practice which contaminates groundwater – despite the fact that this practice seems to be unlawful under existing rules.

Finally, the current clear EU obligation to prevent hazardous chemicals from entering groundwater is weakened to “Member States shall ensure that the programme of measures established ...includes all measures necessary to aim to prevent inputs into groundwater of any hazardous substances.”

The Council's Common Position has no added value for Europe's objective of providing a high level of environmental protection. On the contrary, it weakens the protection of an increasingly contaminated resource, which provides drinking water for 2/3 of Europe's population and is an important habitat for vulnerable but essential fauna.

8. STRICT CONTROLS OVER WASTE SHIPMENTS

The EEB asked the Presidency in particular to:

- *Tighten the rules against sham recovery and give maximum scope to national authorities' objections. Strengthen the obligations as regards ships as waste.*
- *Ensure that the use of the OECD and EU hazardous waste lists be given equal hierarchical footing to the Basel list and retain the Commission's proposed specific obligations as regards Animal Byproducts, POPs, and add obligations on asbestos.*
- *Require all waste shipment notifications to be made publicly available and allow NGOs access to national correspondents meetings.*
- *Require financial guarantees before shipment to be established and legally binding at the time of notification, with no derogations for operations covered.*

CONCLUSION: The delay in the 2nd Reading in the European Parliament (caused by extremely slow provision of the Common Position by the Council) meant that the Luxembourg Presidency could do nothing further.

9. CONTROL AIR POLLUTION FROM SHIPS

The EEB asked the Presidency in particular to:

- *Ensure Council agreement in line with the European Parliament position, notably by introducing a second reduction step, further decreasing the sulphur content of maritime fuels to 0.5% and extending the geographic coverage to the Mediterranean Sea and the North East Atlantic.*
- *Encourage Member States to ratify MARPOL Annex VI and to co-ordinate their positions in IMO with the aim of promoting further emission reduction.*

CONCLUSION: Mixed

The Presidency did indeed achieve a second-reading agreement between Member States and Parliament. However, we very much regret that the agreement does not adequately reflect the Parliament's strong position on introducing a second reduction step and on extending the geographic coverage of the directive. These issues were only taken up in a revision clause. Member States' opposition to meeting Parliament's demands was strong, as it had been in the first reading. The fact that this directive is not more ambitious is a wasted chance for clean air policy. While giving credit to the Presidency for brokering the agreement, overall this is a very disappointing result for an important directive, which could have significantly reduced European emissions of sulphur dioxide.

As regards ratifying MARPOL Annex VI, Poland and the UK have ratified in the last six months, but we did not notice the Presidency actually promoting ratification.

10. EU STRATEGY ON MERCURY

The EEB asked the Presidency in particular to:

- *Work towards an early phase out of mercury use and elimination of its emissions in the EU, as well as towards preventing the export of mercury to developing countries.*
- *Launch immediate action to temporarily store the mercury from decommissioned chlor-alkali plants, with the ultimate intention of a permanent retirement.*
- *Give EU support for a decision at the coming UNEP Governing Council on development of a global new, binding, instrument to address mercury.*

CONCLUSION: On balance positive

The EEB is pleased that the Presidency managed to draw conclusions on the Community strategy concerning mercury.

An agreement was reached that an EU mercury export ban is necessary as soon as possible and by 2011 at the latest. The EEB welcomes the fact that a date has now been fixed, although it falls 3 years behind the initial Luxembourg proposal and our requested deadline of 2008.

Some new issues, further to the EU Communication, were introduced, such as the need to address residual uses of mercury in vaccines, the necessity to develop viable techniques for further reducing mercury emissions from fuel combustion and replacing mercury in gold mining, as well as to consider the social problems arising from the closure of mercury mines – rehabilitation of contaminated sites and community assistance. It is also mentioned as essential that best available techniques be implemented in line with IPPC for further reduction of mercury emissions from combustion processes, taking the EC proposal slightly further.

The Environment Council failed to give its opinion on the need to better control dental amalgam waste and emissions from crematoria, whereas on all other issues the conclusions simply supported the Commission's original intentions in the proposed strategy, without giving a clear direction, a timeframe and the scope for concrete action.

The need for the EU to continue and strengthen its international efforts was agreed and stressed by all Member States, and much welcomed by the NGOs, together with the need to support countries with economies in transition and developing countries to better control and eventually reduce their emissions.

At the UNEP Governing Council negotiations (February 2005), the EU gave its support and promoted the idea for the development of a global instrument to address mercury as far as possible, given the pressures and time constraints.