

Berlin, 5 May 2004

## **Ensuring Environmental Protection Capacity**

### **12 Recommendations from the Environmental Report 2004**

European environmental policy is going through a period of radical change and reorientation. Established Instruments and procedures successfully used by European environmental policy are being subjected to reassessment. New ideas about governing in Europe involve dividing competences between the public and private sectors, as well as shifting powers and competences out of the environmental policy sector and into other policy sectors whose focus is on strengthening the competitiveness of European industry. In this report, the German Advisory Council on the Environment (henceforth the Environmental Council) takes up the discussion centring around these trends and cautions against the trend in the Union towards soft regulatory frameworks which are neither implied nor required by the subsidiarity principle.

In Germany, a high-level fundamental discussion about the ability of the German federal system to function is also currently being conducted. Many of the suggestions pursue the vague goal of giving the German states greater autonomy by transferring various federal legislative competences to the states. The Environmental Council calls for the opposite in this report, namely for federal competences to be strengthened, at least as regards water, nature and landscape conservation.

The following policy paper is a selection of the most relevant recommendations from the Environmental Report 2004.

## **1 Climate Protection: Use the historical opportunity of power plant renewal to leave the coal-based energy trajectory**

A large number of power plants will be replaced in Germany in the next 15 years. Almost half of the power plants will be replaced by new power plants, which will provide Germany the historical opportunity to switch to low-carbon fuels and highly efficient power plants, and thus to ambitiously protect the climate at minimal extra cost. If this opportunity is not used, Germany will not be able to meet its climate protection target for 2020 and will have to rely on a power generation system that is not only ecologically but also economically risky. Emission trading is an instrument which is in principle well suited to motivating the energy sector to implement, over the long term, efficient technologies with which to reduce CO<sub>2</sub> emissions. Since power plants have a life expectancy, on average, of 40 years, economic and ecological framework conditions must have a corresponding time horizon. With respect to emission trading, this means that the system needs to have a long term horizon as regards caps.

The Environmental Council thus recommends that the federal government and the European Commission follow the British government's example and establish climate-protection-appropriate long-term greenhouse gas emission reduction targets which require that emissions be reduced by 60-80% by 2050, as compared to 1990. In doing so, the federal government should affirm the intermediate target for emissions to be reduced by 40% by 2020.

In contrast, the national allocation plan for the EU-wide emission trading scheme presented by the federal government on March 31 2004 endows the participating industrial facilities so amply with greenhouse gas allowances that the effectiveness of the emission trading scheme will be dramatically reduced. In doing so, the German government misses the historical opportunity of power plants renewal to leave the coal based energy trajectory.

## **2 Nature Conservation: Finally implement the European NATURA 2000 network**

Germany is one of the slowest countries to designate areas for NATURA 2000, the European network of nature conservation areas. In order to prevent Germany from being sued again by the European Court of Justice for, inter alia, non-compliance with NATURA 2000 stipulations, the relevant German states need to improve considerably and finalize soon the designation of such nature conservation areas. The deficits and inefficiencies in their implementing of European and national nature conservation law are obvious in every respect. Further, the funding base for the NATURA 2000 network should be improved, in particular by reorienting

agricultural support such that it is tied to the performance of environmental services that are relevant for nature conservation.

The framework that the German constitution provides for accomplishing this is provided solely to the federal government and is not suited to motivating the German states to implement NATURA 2000 in a manner that complies with European law. In the opinion of the Environmental Council, the federal government thus urgently needs to be given a competing legislative competence in matters of nature conservation.

### **3 Agriculture: Remunerate environmental protection rather than subsidize environmental burdens**

The highly subsidized agricultural sector contributes to numerous unresolved problems such as the eutrophication of bodies of water, the pollution of groundwater with pesticides and the loss of biodiversity. Given the need to take action in this sector, the Environmental Council deems the European Agriculture Council's 2003 decisions on reforming European agricultural policy half-hearted. Production is to be partially decoupled from subsidies and more funds are to be made available to provide support to rural areas. However, a large proportion of agricultural subsidies are still to be granted without tying them to ecological or social goals. This is not the way to bring about environmentally friendly agriculture.

More fundamental reforms of agricultural policy will be necessary not only for environmental reasons, but also for reasons of the financibility of agricultural policy and because of the requirements of world trade law. The Environmental Council thus advocates using social and environmental policy measures to support the liberalization of agricultural policy which will surely come about such that it will tie further subsidies to clearly defined environmental services to be performed by farmers.

When transposing the reform decisions into national law, new national ways and means of making awards and direct payments more environmentally friendly should be utilized. In doing so, the top priority should be to make preserving grasslands economically attractive.

### **4 Soil Conservation: Reduce land consumption and remediate contaminated sites**

The tremendously large rate of land consumption, of a magnitude of 100 hectares per day (approximately 150 football pitches), is one of today's most serious threats to nature and landscapes. The covering of soil with impervious surfaces and structures permanently de-

stroys important soil functions. In order to effectively protect soils, land consumption has to be reduced along the lines envisaged by the German Sustainability Strategy and land already in use has to be recycled. The Environmental Council recommends using a mix of instruments to accomplish this, a mix consisting of economic instruments (tradable development area designation certificates), planning instruments (regional planning and urban development planning) and the removal of tax incentives that promote a high rate of land consumption. Land recycling can be promoted by providing better funding for the remediation of contaminated sites. In this context, the Environmental Council recommends, inter alia, taxing new impervious land cover and using a part of the tax revenues to fund the remediation of contaminated sites.

## **5 "Green" Genetic Engineering and Ecological Agriculture: Ensure coexistence and consumers' freedom of choice**

Whereas the health risks posed by "green" genetic engineering at present state of knowledge are deemed to be controllable in principle, there are still large gaps in our knowledge about how controllable the ecological risks are. Of special concern is the danger that as a result of out-crossing or other phenomena, conventional and ecological agricultural products could become "contaminated" with transgenic substances. Over the long term, this could diminish those consumers' freedom of choice who do not want to buy and consume genetically modified foodstuffs, and could damage ecological agriculture, which is worthy of being supported, considerably.

The Environmental Council is thus of the opinion that legislative action must be taken to effectively ensure that "green" genetic engineering and genetic-engineering-free agriculture can coexist, and that it must do so by establishing detailed regulations on avoiding contamination, by establishing clear labelling requirements and by establishing effective and strict liability provisions as regards those who use genetic engineering. The federal government's draft bill on amending genetic engineering law does this, in the opinion of the Environmental Council, to a large extent.

## **6 Water Conservation: Implement new European quality objectives**

The objective of the EC Water Framework Directive is to achieve good water quality throughout Europe by 2015. Within Germany, this objective requires that the German states

coordinate with one another as regards conducting water surveys, assessing water quality, managing river basins and dealing with the numerous derogations. The current level of implementation gives reason to doubt that the states are able to coordinate to the extent that is necessary. The Environmental Council sees that there are, to some extent, serious inconsistencies and coordination problems between the states in implementing the Water Framework Directive. Thus, as in the area of nature conservation, the federal distribution of competences in the area of water conservation is neither well suited to Europe nor to the task at hand. The Environmental Council recommends that Germany's constituent organs give the federal government a competing competence also in the area of water conservation.

## **7 Air Quality Control: Further reduce emissions from motor vehicles and agriculture**

In spite of the noteworthy successes achieved by air quality control policy in recent decades, individual pollutants threaten to exceed European limit values and targets aimed at protecting human health and the vegetation. This is especially the case as concerns fine particles, NO<sub>x</sub> near busy inner-city streets and ammonia stemming from animal production. The primary sources of air pollution are now motor vehicles and agriculture. However, further action still needs to be taken as concerns power plants and industry, too.

To reduce fine particle emissions, more stringent limit values are needed, especially as regards diesel vehicles. Further, traffic routing and planning measures are needed particularly at the municipal level to diminish the burdens caused by urban traffic. To reduce ammonia emissions, manuring needs to be better controlled. In this context, the Environmental Council recommends that good agricultural practice be subject to stricter manuring requirements. Further, the Environmental Council recommends that a tax on surplus nitrogen be introduced.

## **8 Noise Abatement: Finally abate aircraft noise**

Most people are considerably annoyed by noise. Noise research has found that lack of sleep due to noise has a negative impact on the health-related quality of life. The primary sources of noise are motor vehicle traffic and aircraft traffic. Nevertheless, policy-makers have done nothing about noise, especially aircraft noise, for some time. The Aircraft Noise Abatement Act has not been amended to take into account new knowledge about the effects of noise since 1971, and the Air Traffic Act, which is of central importance as regards the granting of

approval for new airports, has been lacking administrative regulations specifying adequate noise abatement limit values for 44 years.

The Environmental Council deems it regrettable that the Federal Ministry of the Environment's draft bill on protecting citizens who live near airports, a bill that was a compromise, was not accepted by the Cabinet, and that no other draft bill has been submitted since. The Environmental Council is of the opinion that the limit values proposed by the bill were an acceptable compromise, albeit only as a first step. For the long term, the Environmental Council recommends a precautionary external limit value of 45dB(A) at night to protect people's sleep and 55dB(A) during the day.

## **9 Waste Management Policy: Ensure high disposal standards for Europe**

Waste management policy needs to be reformed. The current mix of instruments used to control waste streams is losing its effectiveness and efficiency. It is legally unclear what is to be considered waste recovery and what is to be considered waste disposal. There is also increasing uncertainty to identify the best performing options for high-quality recovery. Thus, the foundations of the Closed Substance Cycle and Waste Management Act are also starting to crumble, as the main pillars of the act consist in its assigning the responsibility for waste disposal solely to municipalities while leaving waste recovery to the market, and in its requiring that wastes are to be recycled to the best quality level possible.

In both regards, the Environmental Council sees a need to change waste management policy at the national and at the European level. Strict Europe-wide minimum disposal standards should be established expeditiously for the most important disposal and recovery options. In doing so, policy-makers should not continue to attempt, in accordance with the high-quality criterion, to force waste disposal operations to use what the policy-makers consider to be the "best" recovery option. Rather, they should concentrate on establishing a demanding and safe action framework for the waste management sector by establishing requirements for landfilling, incineration and recovery plants and facilities, and by requiring that recovery products must be safe. Part of this framework should, in the opinion of the Environmental Council, consist in correcting European legislation on the shipment of waste such that member countries would be given the right to prevent waste exports that are obviously intended to circumvent Community waste standards. Resource management that aims at reducing environmental burdens (especially as concerns saving energy and protecting the climate) should take a comprehensive approach rather than limiting itself to the waste management sector.

## **10 Chemicals Policy: Reassess 30,000 chemicals**

The European Chemicals Policy needs to be reformed. Currently, tens of thousands of chemicals may be produced and used even though their risks are not known and not controlled adequately. Current chemical law is wholly ineffective, unclear, bureaucratic and not innovation friendly.

The Environmental Council thus welcomes the European Commission's proposal for a new system of controlling chemicals, namely REACH (Registration, Evaluation and Authorisation of Chemicals), as being an important reform step. This new system shifts the responsibility for provisionally classifying most of the chemicals to the producer or user and is suited to improving, in the medium or long run, our knowledge about the properties of, and the risks posed by, some 30,000 so called existing chemicals. The further calls by business federations for an even leaner and less demanding system should be resisted. The Environmental Council considers the cost increases to stay within an acceptable range. The authorization procedure should, however, be linked to stricter, better defined and more precautionary-oriented standards than is the case in the Commission's proposal so that the large number of particularly hazardous chemicals can be coped with administratively and so that they will not be released into the environment.

## **11 Health: Take new health-related environmental risks seriously**

Bioaerosols, plastic softeners, acrylamide, precious metals from catalytic converters and assessing the multiple chemicals sensitivity (MCS) syndrome are important topics in the current discussion about new health-related environmental risks.

The Environmental Council sees a need for policy action as regards bioaerosols, which are released into the air particularly by biological waste treatment plants and facilities. Such plants and facilities need to be placed at greater minimum distances from settlements and need to be subject to stricter emissions controls.

Phthalates are used as softeners in plastics. Some of these substances have hormonal effects, some of which are of a reprotoxic and developmental toxic nature. Recent studies have found concentrations of these substances in human blood that exceed safe levels. In view of these findings, the Environmental Council recommends prioritizing the protection of especially vulnerable groups and groups subject to high exposure, such as children, by prohibiting the use of phthalates in babies' and toddlers' toys and in food packaging. In the long run,

other less harmful substances should be substituted for phthalates, which have been proven to be harmful.

Acrylamide is known to be carcinogenic. The daily intake of acrylamide for most of the population exceeds tolerable levels. Priority should be given to measures aimed at processing and preparing foodstuffs such that they contain less acrylamide.

The Environmental Council sees no need for action as regards precious metals from catalytic converters, nor as concerns MCS. However, further research should be funded in these two areas.

## **12 Governance: Ensure environmental policy capacity in Germany and Europe**

The Environmental Council is of the opinion that in various policy areas there are serious functional problems with the German division of competences between the federal and state governments as regards the implementation of European legal requirements. Efforts to resolve these problems by means of better coordination between the states are costly and often not successful.

In the opinion of the Environmental Council, the German division of competences can only be made "Europe compatible" by providing the federal government with the competence to enact competing legislation in the areas of nature and water conservation. The Environmental Council cautions strongly against placing these areas under the sole jurisdiction of the states, as is being considered in the current discussion on German federalism. This would permanently jeopardize effective and coherent nature and water conservation.

In the opinion of the Environmental Council, the EU is obliged to use environmental policy to "flank" the Single market. It should thus not only be equipped with the corresponding competences, but should also exercise these competences using appropriate ecological minimum protection standards. Efforts in this direction should be continued.

On the other hand, the tendency to shift competences out of the Council of Ministers of the Environment, the Environment Directorate-General and the European Parliament Committee on the Environment and into departments dealing with industry give reason to fear that European environmental policy, which has been quite successful and dynamic so far, will be weakened. The Environmental Council thus cautions against shifting competences in this manner. This shifting of competences will not result in holistic sustainable policies into which

environmental policy is integrated, but rather in making environmental policy subordinate to other policies.

The complete report as well as a summary can be downloaded from the Environmental Council's website at <http://www.umweltrat.de>. For further information, please contact Dr. Christian Hey or Mr. Helge Jörgens (phone: +49-30-26 36 96-0 or +49-30-26 36 96 111; e-mail: [helge.joergens@uba.de](mailto:helge.joergens@uba.de)).