

# COMMISSION OF THE EUROPEAN COMMUNITIES

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DRAFT

RECOMMENDATION BY THE COUNCIL

TO THE MEMBER STATES

regarding cost allocations and action by public  
authorities on environmental matters

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(submitted to the Council by the Commission)

includes a communication from the Commission, doc ENV/20/74-E and the draft text as  
published in *Official Journal C* 68, 1974.

Communication from the Commission to the Council  
regarding cost allocations and action by public  
authorities on environmental matters

Cost allocation and action by public authorities on environmental matters - Principles and methods of application -

1. In the framework of the Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment, the principle of the internalisation of external costs known as "polluter pays" was accepted. The programme of action provides that the Commission should submit to the Council a proposal concerning the application of this principle including possible exceptions.

In this regard it is necessary to allocate the costs of environmental protection against pollution according to the same principles in the whole of the Community so that distortions of competition may not affect trade and the location of investments, which would be incompatible with the proper functioning of the Common Market.

2. To achieve this, the European Communities at Community level and the Member States in their national legislation on environmental protection should apply the "polluter pays" principle under which natural or legal persons responsible for pollution must bear the cost of such measures as are necessary to eliminate or reduce this pollution to the desired level as laid down by the authorities.

Consequently environmental protection must not be the responsibility of national policies, which rely mainly on grants of aid and hence put the burden of pollution control on the community.

3. Application of the "polluter pays" principle generally requires that, in each case, it is necessary to determine who the real polluter is and to ascertain the precise extent of pollution for which a firm or individual is responsible.

Where the pollution results from a production process or the provision of a service, the cost of the anti-pollution measures should in principle be borne by the producer or by the person providing the service.

Where the pollution results from the use of certain products, the cost of the anti-pollution measures should in principle be borne by the user.

If finding the real polluter proves impossible or too difficult and hence arbitrary - especially when there is a "pollution chain" or "cumulative pollution" - the cost of pollution control should be charged at certain points along the pollution chain or during the cumulative pollution; this cost allocation would be carried out by whatever legal or administrative means offered the best solution from an economic and administrative point of view.

4. The optimum purity level for the environment should be determined by the public authorities at a given moment in time now or in the future in keeping with the natural or agreed purposes for which an area or part of an area is designated, account being taken of economic and social considerations together with the marginal cost of purification or prevention.

This optimum level should be fixed at least at a level where human health and the survival of animal and plant life are not threatened.

Even if this level varies from one region to another, it is desirable that account be taken not only of the inhabitants' interests in the region for which the quality objective has been fixed, but also of the drawbacks for all interested parties.

5. The main means of action available to public authorities to reduce the pollution to the desired level of environmental quality are standards and levies, with the possibility of combining the two.

a) Standards set the maximum permitted values for:

- i) the concentration of pollutants in a given environmental medium or part of an environmental medium (immission standards)
  - ii) the emission of pollutants or nuisances from fixed installations (emission standards)
  - iii) the level of pollutants or nuisances which is not to be exceeded in the composition or emissions of a product (product standards)
- ad i) Harmonization of existing immission standards in the Member States or the fixing of Community immission standards can be justified either in order to fix a basic protection level or in cases of pollution extending across national frontiers.
- ad ii) Emission standards may be uniform for an entire economic area or may vary depending on the region; however, for the emission of persistent and harmful substances, harmonization of minimum standards may be necessary so as to minimize the accumulation of these substances in the environmental milieu.
- ad iii) Product standards should generally be uniform throughout the Community. Exceptions to this rule can only be made following the same procedure by which the standards themselves were drawn up.

As a rule, product standards apply to finished products. It is only when all or a large proportion of products made from the same semi-product cause the same level of pollution that the standard is applied at the semi-product or raw material stage. A decision on this should be taken for each individual case.

- b) Levies may have an incentive or redistributive function, the rate being fixed accordingly. The rates may be uniform or may vary for each emission depending on the quality objective to be attained. The levies must be fixed by emission units and applied according to the quantity of the pollution emitted.

Where the main aim of the levy is to bring about a redistribution, it should be calculated in such a way that, for a given region and quality objective, the sum of the levies equals the collective purification charges.

Where it is not possible or desirable to install collective purification plants or where these plants will have a limited capacity, the levy should be calculated so that it largely matches its incentive function.

Once collected, the levies may be used either to finance collective purification infrastructures or to provide grants for major polluters to set up such equipment; in the latter case the grants should be calculated in such a way as to cover the services these polluters render the community but without passing to the community the cost of the investment which the polluters themselves must bear to ensure that their own pollution is eliminated.

Where the total revenue from levies exceeds the sum of the collective and individual purification charges, the difference should preferably be used by each government within the framework of its environmental policy.

As far as possible, Member States should endeavour to standardize methods of calculating the levies. Harmonization of the incentive levies would seem desirable to avoid distortion of competition in the Community.

c) In order to avoid serious distortions of competition affecting trade and the distribution of investments in the Community, it will undoubtedly be necessary to harmonize more and more closely the various instruments - and especially standards - at Community level.

6. Those responsible for pollution will be obliged to meet:

- a) the expenses incurred as a result of compliance with the standards laid down by the public authorities (investment in anti-pollution plant and equipment, introduction of new processes, cost of running anti-pollution plants, etc.),
- b) expenses in respect of payment of levies,
- c) compensation paid to victims of a particular pollution or nuisance.

The costs to be borne by the polluter (under the "polluter pays" principle) should include all the expenditure necessary to achieve an environmental quality objective as well as the compensation paid to victims in cases where it has not been possible to achieve this objective; this would also include the administration costs directly linked to the implementation of anti-pollution measures.

The cost of buying, constructing and operating pollution measuring and control equipment should, however, be borne by the public authorities.

7. Exceptions to the "polluter-pays" principle could be justified by

- a) real difficulties in adapting to environmental quality standards, particularly for economic, technical and social reasons.

Where the immediate application of very severe standards or heavy

levies to meet the cost of pollution control is likely to cause serious upsets in some sectors or regions, the unduly hasty incorporation of pollution control costs into production costs may give rise to higher social costs. In that case it might prove necessary

- to allow some producers a certain period of time to adapt their products or output to the new standards,
- or to give transitional aid to the industrial sectors or regions concerned; such aid could, of course, only be granted by Member States with due regard to the provisions on state aid set out in the Treaties establishing the European Communities, in particular articles 92 et seq. of the EEC Treaty.

Such measures can, in any case, apply only to existing undertakings;

- b) the interplay of other policies (regional, social, research) together with the environmental protection policy.

The indirect effect of some types of aid granted to achieve objectives other than environmental protection may be to cover part of the costs which the companies benefiting from it would normally have had to bear themselves to reduce pollution of their own making; this type of aid is also subject to the provisions of the Treaties establishing the European Communities, in particular articles 92 et seq. of the EEC Treaty.

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The Commission, in the execution of its tasks within the framework of the environmental policy of the Community, will comply with the definitions and methods of application of the above-mentioned "polluter pays" principle.

The Commission asks the Council to take note of these definitions and methods of application and to recommend to the Member States to conform to them in their legislation and administrative acts involving the allocation of costs in the environmental field.

The Commission reserves the right to submit to the Council at a later date more specific proposals in this field.

## II

*(Preparatory Acts)*

## COMMISSION

**Draft Recommendation by the Council to the Member States regarding cost allocations  
and action by public authorities on environmental matters**

*(Submitted to the Council by the Commission on 7 March 1974)*

In the Declaration of the Council of the European Communities and of the representatives of the Member States at a meeting of the Council on 22 November 1973 <sup>(1)</sup>, concerning an action programme of the European Communities on the environment, the 'polluter pays' principle was accepted.

The costs associated with the protection of the environment against pollution should properly be imputed according to the same principles in the whole of the Community to avoid the creation of distortions in trade and competition incompatible with the harmonious functioning of the common market, and taking account of the aims of balanced economic expansion pursued by the Community.

To facilitate the application of this principle, the European Communities and the Member States must give it greater precision by defining the conditions of application as well as some exceptions to it which could be allowed, with due regard to the difficulties of applying this principle and to the interplay of other policies with the environmental protection policy.

For these reasons, and in accordance with Article 145 of the Treaty instituting the European Economic Community, the Council recommends to the Member States to conform, in respect of the allocation of costs and the action of public authorities on the subject of protection of the environment, to the principles and to the conditions of application laid down in the Communication of the Commission annexed to the present Recommendation.

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<sup>(1)</sup> OJ No C 112, 20. 12. 1973.

## ANNEX

**Communication from the Commission to the Council regarding cost allocations and action by public authorities on environmental matters**

(Principles and methods of application).

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In this regard it is necessary to allocate the costs of environmental protection against pollution according to the same principles in the whole of the Community so that distortions of competition may not affect trade and the location of investments, which would be incompatible with the proper functioning of the common market.

2. To achieve this, the European Communities at Community level and the Member States in their national legislation on environmental protection should apply the 'polluter pays' principle under which natural or legal persons responsible for pollution must bear the cost of such measures as are necessary to eliminate or reduce this pollution to the desired level as laid down by the authorities.

Consequently environmental protection must not be the responsibility of national policies, which rely mainly on grants of aid and hence put the burden of pollution control on the Community.

3. Application of the 'polluter pays' principle generally requires that, in each case, it is necessary to determine who the real polluter is and to ascertain the precise extent of pollution for which a firm or individual is responsible.

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4. The optimum purity level for the environment should be determined by the public authorities at a given moment in time now or in the future in keeping with the natural or agreed purposes for which an area or part of an area is designated, account being taken of economic and social considerations together with the marginal cost of purification or prevention.

This optimum level should be fixed at least at a level where human health and the survival of animal and plant life are not threatened.

Even if this level varies from one region to another, it is desirable that account be taken not only of the inhabitants' interests in the region for which the quality objective has been fixed, but also of the drawbacks for all interested parties.

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- ad (i) Harmonization of existing immission standards in the Member States or the fixing of Community immission standards can be justified either in order to fix a basic protection level or in cases of pollution extending across national frontiers.
- ad (ii) Emission standards may be uniform for an entire economic area or may vary depending on the region; however, for the emission of persistent and harmful substances, harmonization of minimum standards may be necessary so as to minimize the accumulation of these substances in the environmental milieu.
- ad (iii) Product standards should generally be uniform throughout the Community. Exceptions to this rule can only be made following the same procedure by which the standards themselves were drawn up.

As a rule, product standards apply to finished products. It is only when all or a large proportion of products made from the same semi-product cause the same level of pollution that the standard is applied at the semi-product or raw material stage. A decision on this should be taken for each individual case.

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- (c) In order to avoid serious distortions of competition affecting trade and the distribution of investments in the Community, it will undoubtedly be necessary to harmonize more and more closely the various instruments — and especially standards — at Community level.

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The Commission, in the execution of its tasks within the framework of the environmental policy of the Community, will comply with the definitions and methods of application of the abovementioned 'polluter pays' principle.

The Commission asks the Council to take note of these definitions and methods of application and to recommend to the Member States to conform to them in their legislation and administrative acts involving the allocation of costs in the environmental field.

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