

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 3 March 1975

regarding cost allocation and action by public authorities
on environmental matters

(75/436/Euratom, ECSC, EEC)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the Euro-
pean Coal and Steel Community;

Having regard to the Treaty establishing the Euro-
pean Economic Community;

Having regard to the Treaty establishing the Euro-
pean Atomic Energy Community;

Having regard to the draft recommendation sub-
mitted by the Commission;

Having regard to the Opinion of the European
Parliament ⁽¹⁾;

Having regard to the Opinion of the Economic
and Social Committee ⁽²⁾;

Whereas 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 with the Council of 22
November 1973 ⁽³⁾ on the programme of action of
the European Communities on the environment,
the 'polluter pays' principle was adopted;

Whereas the costs associated with the protection
of the environment against pollution should be
allocated according to the same principles through-

out the Community, in order to avoid distortions
in trade and competition incompatible with the
proper functioning of the common market and
with the aim of balanced economic expansion
pursued by the Community and in order to further
the aims set out in the programme of action of
the European Communities on the environment;

Whereas in order to facilitate application of the
said principle, the European Communities and the
Member States must define it more clearly by laying
down procedures for its application, and by making
provision for certain exceptions to be made to it
such as may be made on grounds of difficulties
encountered in its application and because of the
interplay between other policies and the environ-
mental protection policy;

RECOMMENDS, within the meaning of the EEC
Treaty, that in respect of allocation of costs and
of action by public authorities in the field of envi-
ronmental protection, ~~the Member States conform~~
to the principles and the rules governing their appli-
cation which are contained in the Commission
communication annexed to this recommendation.

Done at Brussels, 3 March 1975.

For the Council

The President

J. KEATING

⁽¹⁾ OJ No C 76, 3. 7. 1974, p. 31.

⁽²⁾ OJ No C 116, 30. 9. 1974, p. 35.

⁽³⁾ OJ No C 112, 20. 12. 1973, p. 1.

ANNEX

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

Principles and detailed rules governing their 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 within the Council of 22 November 1973 on the programme of action of the European Communities on the environment, the 'polluter pays' principle was adopted. The programme of action provides that the Commission submit to the Council a proposal concerning the application of this principle, including possible exceptions thereto.

Charging to polluters the costs of action taken to combat the pollution which they cause encourages them to reduce that pollution and to endeavour to find less polluting products or technologies thereby enabling a more rational use to be made of the resources of the environment. Moreover, it satisfies the criteria of effectiveness and equitable practice.

In order to avoid distortions of competition affecting trade and the location of investments which would be incompatible with the proper functioning of the common market, the costs connected with the protection of the environment against pollution should be allocated according to the same principles throughout the Community.

2. To achieve this, the European Communities at Community level and the Member States in their national legislation on environmental protection must apply the 'polluter pays' principle, under which natural or legal persons governed by public or private law who are responsible for pollution must pay the costs of such measures as are necessary to eliminate that pollution or to reduce it so as to comply with the standards or equivalent measures which enable quality objectives to be met or, where there are no such objectives, so as to comply with the standards or equivalent measures laid down by the public authorities⁽¹⁾.

Consequently, environmental protection should not in principle depend on policies which rely on grants of aid and place the burden of combating pollution on the Community.

3. A polluter is someone who directly or indirectly damages the environment or who creates conditions leading to such damage⁽²⁾.

If identifying the polluter proves impossible or too difficult, and hence arbitrary, particularly where environmental pollution arises from several simultaneous causes

('cumulative pollution')⁽³⁾ or from several consecutive causes ('pollution chain')⁽⁴⁾, the cost of combating pollution should be borne at the point in the pollution chain or in the cumulative pollution process, and by the legal or administrative means which offer the best solution from the administrative and economic points of view and which make the most effective contribution towards improving the environment.

Thus, in the case of pollution chains, costs could be charged at the point at which the number of economic operators is least and control is easiest or else at the point where the most effective contribution is made towards improving the environment, and where distortions to competition are avoided.

4. Under the 'polluter pays' principle, standards and charges, or a possible combination of the two, are the major instruments of action available to public authorities for the avoidance of pollution.

(a) Standards include:

- (i) 'environmental quality standards' which, with legally binding force, prescribe the levels of pollution or nuisance not to be exceeded in a given environment or part thereof;
- (ii) 'product standards' (the term product is used here in its broadest meaning) which:
 - set levels for pollutants or nuisance which are not to be exceeded in the composition or the emissions of a product, or
 - specify properties or characteristics of design of a product, or
 - are concerned with the way in which products are used⁽⁵⁾.

Where appropriate, product standards include specifications for testing, packaging, marking and labelling products;

(iii) standards for fixed installations, sometimes called 'process standards', such as:

- (a) 'emission standards', which set levels for pollutants or nuisances not to be exceeded in emissions from fixed installations;

⁽¹⁾ As long as such a level has not been laid down by the public authorities, measures taken by such authorities to avoid pollution should also be paid for by the polluters, in accordance with the 'polluter pays' principle.

⁽²⁾ The concept of polluter, as defined in this sentence, does not affect provisions concerning third-party liability.

⁽³⁾ Where, in a built-up area, for example, several polluters, such as householders, users of motor vehicles and industrial plants, are simultaneously responsible for polluting the atmosphere with SO₂.

⁽⁴⁾ For example, in cases of environmental pollution by motor vehicle exhaust fumes, not only the user of the vehicle but also the manufacturers of the vehicle and of the fuel are responsible for causing atmospheric pollution.

⁽⁵⁾ Such methods of use and specifications may be issued in the form of 'codes of practice'.

- (b) 'installation design standards', which determine the requirements to be met in the design and construction of fixed installations in order to protect the environment;
- (c) 'operating standards', which determine the requirements ⁽¹⁾ to be met in the operation of fixed installations in order to protect the environment.

- (b) The purpose of charges shall be to encourage the polluter to take the necessary measures to reduce the pollution he is causing as cheaply as possible (incentive function) and/or to make him pay his share of the costs of collective measures, for example purification costs (redistribution function). The charges should be applied, according to the extent of pollution emitted, on the basis of an appropriate administrative procedure.

Charges should be fixed so that primarily they fulfil their incentive function.

In so far as the main function of charges is redistribution, they should at least be fixed within the context of the abovementioned measures so that, for a given region and/or qualitative objective, the aggregate amount of the charges is equal to the total cost to the Community of eliminating nuisances.

Income from charges may be used to finance either measures taken by public authorities or to help finance installations set up by an individual polluter, provided that the latter, at the specific request of the public authorities, is seen to render a particular service to the Community, by reducing his pollution level to below that set by the competent authorities. In the latter instance, the financial aid granted must be limited to compensating for the services thus rendered by the polluter to the Community.

In line with Article 92 *et seq.* of the EEC Treaty, income from charges may also be used to finance the installations of individual polluters for protecting the environment, in order actively to reduce existing pollution. In this case, the measures for financing should be incorporated in an official multi-annual finance programme by the competent authorities.

Where the overall revenue exceeds the total expenditure by the public authorities when applying the two preceding paragraphs, the surplus should preferably be used by each government for its national environmental policies; however, the surplus may be used for granting aid only under the conditions specified in paragraphs 6 and 7 below.

As far as possible, the Community should endeavour to standardize the methods of calculation used by the Member States to set charges.

- (c) In order to avoid distortions of competition affecting trade and the location of investment in the Community, it will undoubtedly be necessary to harmonize more and more closely at Community level the various instruments where they are applied in similar cases.

Until this is achieved, the question of the allocation of anti-pollution costs will never be entirely resolved at Community level. This Commission communica-

tion therefore constitutes merely a first step in the application of the 'polluter pays' principle. The first step must be followed up as quickly as possible by the harmonization within the Community of the instruments for implementing the said principle, when they are applied to similar cases, as stated in the third subparagraph of paragraph 8 of this document.

5. Depending on the instruments used and without prejudice to any compensation due under national law or international law, and/or regulations to be drawn up within the Community, polluters will be obliged to bear:

- (a) expenditure on pollution control measures (investment in anti-pollution installations and equipment, introduction of new processes, cost of running anti-pollution installations, etc.), even when these go beyond the standards laid down by the public authorities;
- (b) the charges.

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, including the administrative costs directly linked to the implementation of anti-pollution measures.

The cost to the public authorities of constructing, buying and operating pollution monitoring and supervision installations may, however, be borne by those authorities.

6. Exceptions to the 'polluter pays' principle may be justified in limited cases:

- (a) Where the immediate application of very stringent standards or the imposition of substantial charges is likely to lead to serious economic disturbances, the rapid incorporation of pollution control costs into production costs may give rise to greater social costs. It may then prove necessary:
 - to allow some polluters time to adapt their products or production processes to the new standards;
 - and/or to grant aid for a limited period and possibly of a degressive nature.

Such measures may, in any case, apply only to existing production plants ⁽²⁾ and existing products.

- (b) Where, in the context of other policies (e.g. regional, industrial, social, and agricultural policies or scientific research and development policy), investment affecting environmental protection benefit from aid intended to solve certain industrial, agricultural or regional structural problems.

Aids referred to under (a) and (b) may, of course, only be granted by Member States in compliance with the provisions on State aid set out in the Treaties establishing the European Communities, and in particular Articles 92 *et seq.* of the EEC Treaty. In applying Articles 92 *et seq.* of the EEC Treaty to these aids, account will be taken of the requirements

⁽¹⁾ Such methods of use and specifications may be issued in the form of 'codes of practice'.

⁽²⁾ The enlargement or the transfer of existing production plants will be considered as the creation of new plants where this represents an increase in productive capacity.

which such aids satisfy as regards environmental protection.

7. The following shall not be considered contrary to the 'polluter pays' principle⁽¹⁾:

- (a) financial contributions which might be granted to local authorities for the construction and operation of public installations for the protection of the environment, the cost of which could not be wholly covered in the short term from the charges paid by polluters using them. In so far as other effluent as well as household waste is treated in these installations, the service thus rendered to undertakings should be charged to them on the basis of the actual cost of the treatment concerned;
- (b) financing designed to compensate for the particularly heavy costs which some polluters would be obliged to meet in order to achieve an exceptional degree of environmental cleanliness;
- (c) contributions granted to foster activities concerning research and development with a view to implement-

⁽¹⁾ This list may be modified by the Council, on a proposal from the Commission.

ing techniques, manufacturing processes and products causing less pollution.

8. In carrying out its tasks within the framework of the Community environment policy, the Commission will comply particularly with the abovementioned definitions and methods of application of the abovementioned 'polluter pays' principle.

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

The Commission will submit all the necessary proposals in this field to the Council in due course, particularly as regards the harmonization of instruments for administering the 'polluter pays' principle, and its specific application to the problems of transfrontier pollution.

Each Member State should apply the 'polluter pays' principle to all forms of pollution within its own country and without making any distinction as to whether the pollution affects that country or another.