THE POLLUTER-PAYS PRINCIPLE IN OECD RECOMMENDATIONS AND ITS APPLICATION IN INTERNATIONAL AND EC/EU LAW

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Abstract: This article is intended to provide a brief overview of the current definitions for the Polluter-Pays Principle (hereinafter "PPP" or the "Principle") within the member states of the Organisation for Economic Co-Operation and Development (OECD) and its application in international and EC/EU law. The paper describes how formulations of this principle have evolved from a "no subsidy" approach towards an approach advocating full internalisation of environmental costs. In the OECD countries or, as appropriate, at the European level, the Polluter-Pays Principle represents a long recognized, practically applied economic and legal principle leading to the internalisation of cost for environmental protection; the cost is transferred from Governments to actual polluters who contaminate the environment by their production or other activities.[1]

Resumé: Příspěvek pojednává o principu „znečišťovatel platí", který představuje na evropské úrovni, resp. v rámci států OECD již poměrně dlouho uznávaný a prakticky uplatňovaný ekonomicko-právní princip vedoucí k internalizaci nákladů na ochranu životního prostředí. V příspěvku jsou popsána jednotlivá doporučení přijatá v rámci OECD týkající se aplikace principu „znečišťovatel platí". Příspěvek rovněž poskytuje přehled o mezinárodněprávních nástrojích provádějících princip „znečišťovatel platí" a o nástrojích evropského (ES/EU) práva.

Key words: polluter-pays principle, pollution, environmental protection, extended polluter responsibility, environmental liability, state aid, subsidy, international trade, investment.

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Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, which came into force on 30th September 1961, **the Organisation for Economic Co-Operation and Development (OECD)**[2] shall promote policies designed:

[1] Šturma, P. (2003): *Principles of International Environmental Law*. In: Šturma, P., Ondřej., J., Zástěrová, J.: Issues of International Protection of the Environment. AUC-Iuridica 2-3/2002, Charles University, Prague, at p. 24.

[2] http://www.oecd.org.

- to achieve the highest sustainable economic growth and employment and a rating standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy,
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of the world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The Polluter-Pays Principle was adopted by the OECD Council in 1972 as an economic principle for allocating the costs of pollution control. The principle was further developed by OECD Recommendations issued in 1974 and 1989. The principal OECD Recommendations which govern the application of the PPP are:

- Recommendation on Guiding Principles concerning International Economic Aspects of Environmental Policies [adopted by the OECD Council on 26th May 1972, C(72)128 final],
- Recommendation on the Implementation of the Polluter-Pays Principle [adopted by the OECD Council on 14th November 1974, C(74)223 final],
- Recommendation on the Application of the Polluter Pays Principle to Accidental Pollution [adopted by the OECD Council on 7 July 1989, C(89)88 final].

In 1972, the OECD Council adopted the **Recommendation on Guiding Principles Concerning International Economic Aspects of Environmental Policies** (hereinafter the "1972 OECD Recommendation")[3] which incorporates, at the international level, the first formulation of the Polluter-Pays Principle. The Recommendation sought to encourage sound environmental management and to harmonise methods for allocating the cost of pollution to avoid distortions in prices for products entering international trade. It provides that: *"The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called 'Polluter-Pays Principle'. This principle means that the polluter should bear the expenses of carrying out the above-mentioned measures decided by public authorities to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment."*

The 1972 Recommendation provides that the PPP *"should be an objective of Member countries; however, there may be exceptions or special arrangements, particularly for the transitional periods, provided that they do not lead to significant distortions in international trade and investment".* The Recommendation also addresses environmental standards, national treatment and non-discrimination, control procedures and compensating for import levies and export rebates.

[3] Recommendation adopted by the OECD Council on 26th May 1972, C(72) 128.

In 1974, the PPP was further developed by the OECD **Recommendation on Implementation of the Polluter-Pays Principle** (hereinafter the "1974 Recommendation").[4] This recommendation confirmed the validity of the PPP whose concept had already been introduced in the 1972 Recommendation, and also strictly based on the PPP concept. The 1974 Recommendation provides that the PPP represents for the OECD member countries the basic principle for the allocation of costs for pollution prevention and control measures implemented by public authorities in the Member States.

The 1974 Recommendation further elaborated the circumstances in which government assistance would be considered compatible with the PPP. *"In exceptional circumstances, such as the rapid implementation of a compelling and especially stringent pollution control regime, socio-economic problems may develop of such significance as to justify consideration of the granting of governmental assistance, if the environmental policy objectives of a Member country are to be realised within a prescribed and specific time. Aid given for the purpose of stimulating experimentation with new pollution-control technologies and development of new pollution-abatement equipment is not necessarily incompatible with the Polluter-Pays Principle. Where measures taken to promote a country's specific socio-economic objectives, such as the reduction of serious inter-regional imbalances, would have the incidental effect of constituting aid for pollution control purposes, the granting of such aid would not be inconsistent with the Polluter-Pays Principle."*

The 1974 Recommendation further suggested that the granting of any government assistance in bearing the costs of pollution, whether by means of subsidies, tax advantages or other measures, be subject to meeting certain conditions. It provides that *"the granting of any such assistance for pollution control be strictly limited, and in particular comply with every one of the following conditions:*

a) it should be selective and restricted to those parts of the economy, such as industries areas or plants, where severe difficulties would otherwise occur;
b) it should be limited to well-defined transitional periods, laid down in advance and adapted to the specific socio-economic problems associated with the implementation of a country's environmental programme;
c) it should not create significant distortions in international trade and investment."

Under the OECD 1974 Recommendations, the Polluter-Pays Principle means that the polluter should bear the *"costs of pollution prevention and control measures"*, the latter being *"measures considered by the public authorities as sufficient to ensure that the environment is in an acceptable condition"*. The PPP is therefore closely linked with the regulatory regime and assumes that the polluter meets his pollution control obligations. The PPP is not a principle whereby a paying polluter is authorised to pollute; it means that the polluter must limit his pollution and bear the cost of any measures taken to that end. In other words, the polluter is required to bear the cost of any steps that he is legally bound to take to protect the environment, such as measures to reduce pollutant

[4] Recommendation adopted by the OECD Council on 14th November 1974, C(74)223.

emissions at source and/or measures to avoid pollution by common treatment of effluent from a polluting facility and other sources of pollution. Generally speaking, a polluter is required to bear all cost of preventing and controlling any pollution that he originates. Apart from exceptions listed by the OECD, a polluter should not receive assistance of any kind to control pollution (grants, subsidies or tax allowances for pollution control equipment, below-cost charges for public services, etc.).

Initially, the PPP – as defined in the 1972 and 1974 OECD Recommendations – essentially implied that polluters had to bear the cost of pollution prevention and control measures up to an amount set by the government. The objective was to prevent new environmental protection measures from being required to be financed by the Government through subsidies, and to prevent differences in subsidies between countries from causing significant distortions in international trade and investment. This definition of the PPP does not imply that the polluter actually has to "pay" anything to anyone. Implementing the PPP results in reducing or eliminating certain subsidies in order to encourage pollution abatement. Accordingly, the PPP has contributed to the general policy of gradually reducing subsidies as advocated by the OECD and other international organisations in order to assist in removing obstacles to international trade. However, the PPP should not be interpreted as a rigid principle that absolutely rules out any and all subsidies. As pointed out by some authors,[5] the most efficient solution to a pollution issue may under certain conditions involve payments from a pollution victim to the polluter. Moreover, subsidies are sometimes needed to correct market failures (e.g., to boost the supply of under-supplied positive externalities), though – as advised by various authors[6] – subsides justified on such grounds may, unless carefully designed, create other, unintended externalities.

The above approach based on the 1972 a 1974 Recommendations may be described as the *"PPP in a strict sense"*, also referred to in the relevant literature as the *"Standard PPP"*.[7] Subsequently, compensation payments, taxes and charges were included in the PPP, and it is now evolving in certain instruments towards encompassing all pollution-related expenditure. Under these definitions, the PPP comprises all costs related to pollution, i.e. the cost of prevention and control and, where applicable, other costs that the polluter must pay as a result of pollution (cost of administrative measures, clean-up costs or liability payments[8]). Governments implement the PPP through the application of either the command-and-control or market-based regulations, including the imposition of taxes and charges. For example,

[5] Baumol, W.J., Oates, W.E., *The Theory of Environmental Policy*, 2nd edition, Cambridge University Press, Cambridge, 1990.

[6] Gerritse, R., *Producer Subsidies*. Pinter Publishers, London and New York, 1990.

[7] Pearson, C.S., Testing the System: GATT+PPP=?, in *Cornell International Law Journal*, 1994, at p. 553-575, quoting Pezzey, J., *Market Mechanisms of Pollution Control: Polluter Pays, Economic and Practical Aspects*, in Sustainable Development Management: Principles and Practice, 1988.

[8] Rising payments for civil, administrative or criminal liability constitute an incentive to adhere to standards (compensation, fines, non-compliance charges, excess emissions charges, liability insurance, security deposits, contributions to environmental funds, etc.).

pollution charges and taxes imposed on polluters are those payable in connection with the use of the environment, or a damage caused to the environment and the community, as a result of pollution. Polluters are encouraged to protect the environment, although income from these taxes is not necessarily earmarked for environmental protection (as it is the case, for example, with most fuel taxes). The above economic instruments constitute a means of implementing the PPP and serve to exert pressure on polluters to use scarce environmental resources prudently. This could be seen as a shift towards a *"PPP in a broad sense"*, or *"Extended PPP"*. As defined in 1972, the Polluter-Pays Principle has progressively been generalised and extended. From a partial internalisation principle, the PPP has increasingly developed into a principle of full internalisation.[9]

At the outset, the Polluter-Pays Principle had been devised largely in the context of continuing or chronic pollution that needed to be reduced progressively to an acceptable level. In 1989, the OECD recognised in the **Recommendation on the Application of the Polluter Pays Principle to Accidental Pollution**[10] (hereinafter the "1989 Recommendation") that the Principle was also applicable to accidental pollution. According to the 1989 Recommendation, the cost of measures to prevent and control accidental pollution should be borne by the potential polluters whether taken by them or by the competent authorities. Similarly, originators of actual accidental pollution should bear the cost of control measures, including the cost of environmental rehabilitation. Whether or not the Principle should be applied to zoning decisions for localities surrounding hazardous installations has been the subject of some discussion. It has now been accepted that the Principle applies to such decisions around new installations, and the outstanding matter is the possibility of compensation for landowners near existing installations who might be barred from building on account of risk of accident.

The general principle embodied in the 1989 Recommendation is that neither the risk nor the consequences of accidental pollution should be paid from public funds but rather be borne by the polluter. Accident prevention will be more effective when the polluter has to bear the cost of all measures required to be taken due to an accident (clean-up, rehabilitation). As with chronic pollution, there are exceptions to the Principle as it applies to accidental pollution. The rationale behind them is that a polluter should only have to bear the cost of "reasonable" measures, so as to adopt a responsible approach and make the most cost-efficient decisions. Rather

[9] In the economic theory, internalisation means that costs which would otherwise be borne by an economic entity other than the polluter (i.e. the cost of an "externality" caused by the polluter, any cost which such person would avoid if there was no pollution) is charged to the polluter who, as a result, "internalises" such cost with all the other costs he already bears. Partial internalisation is an internalisation limited to certain categories of costs. Full internalisation is an internalisation of all categories of costs. In practice, full internalisation is rarely achieved because, at best, the polluter bears the cost of compensating the damage borne by all compensated victims. Therefore, the polluter does not bear the cost of damage affecting uncompensated victims and pays only compensation cost which is often well below the social cost of damage.

[10] Recommendation adopted by the OECD Council on 7 July 1989, C(89)88 final.

than to transfer all expenditure of all kind and nature from the public to the polluter, or to penalise an economic entity that lacks the means that are necessary to avoid accidental pollution, the objective of the Principle is to allocate the relevant financial burden to the party best able to take the most effective decisions.

The trend outlined above indicates that the Polluter-Pays Principle has gradually – but not yet completely – become identified with the principle of full internalisation of the external costs of pollution. Ultimately, it seems likely that the polluter will have to bear, if not all, at least most of the cost that pollution may cause, and increasing use will be made of economic instruments, compensatory mechanisms and fines with a view to fully implement the PPP. The revenue will help to strengthen the environmental and other policies of governments . Although the polluter pays, as a rule he is simply the first to pay and he may often pass the cost of pollution on in his prices or share his cost with other potential polluters under insurance schemes or even pass such cost to the person actually liable for the pollution. In the end, the party who actually pays will usually be the consumer or user. In some cases, however, it may be the owner of the polluting activity, prevented by competition from passing the cost of pollution control measures on others.

The 1991 OECD **Recommendation on the Use of Economic Instruments in Environmental Policy**[11] provides, with regard to financial assistance, that "*various forms of financial assistance can be granted to polluters as help and/or as an inducement to abate their polluting emissions. As a general rule, financial assistance is incompatible with the Polluter-Pays Principle, except in a few specific cases, for example, when in compliance with the exceptions to the Polluter-Pays Principle as defined in the two Council Recommendations [C(72)128 and [C(74)223] or when applied in the framework of appropriately designed redistributive charging systems. There may also be circumstances where payments can be made to reinforce other measures designed to achieve appropriate natural resource use.*"

Since 1972, the circumstances in which subsidies, tax advantages and other government measures have been used under the OECD Recommendations have remained very limited. Assistance has taken a variety of forms such as direct subsidies, soft loans, guarantees and tax incentives (such as tax reductions, deferrals, accelerated depreciation and tax exemption). Subsidies have been granted by Governments (budgetary assistance) via, for example, national environment funds and water management agencies, by the European Commission (e.g., through the Cohesion Fund,[12] LIFE,[13] multilateral aid, etc.), and by other international institutions (such

[11] Recommendation of the OECD Council on the Use of Economic Instruments in Environmental Policy, of 31 January 1991 [C90)177/Final].

[12] Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, at p. 25). Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94 (OJ L 210, 31.7.2006, at p. 79).

[13] Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+) (OJ L 149, 9.6.2007, at p. 1).

as the Global Environment Facility). For the most part, financial assistance has involved the development of new pollution control technologies, pollution control infrastructure constructed in conjunction with regional development projects, and control infrastructure targeting existing industries, areas or installations that would face severe difficulties because of current environmental policies.[14]

In 1992, the OECD Council meeting at Ministerial Level concluded that "*Ministers remain firmly of the view that every effort should be made to eliminate or bring under enhanced discipline subsidies that have trade distorting effects.*"[15] In 1995, the OECD Council meeting at Ministerial Level endorsed the Report on Trade and Environment established jointly by the Trade Committee and the Environment Policy Committee, which Report included the following observations: "*Limited use of environmental subsidies can have benefits in implementing environmental policies, but they need to be subject to certain disciplines or rules since they can distort trade in giving advantages to domestic producers and can conflict with the Polluter-Pays Principle*."[16]

In 2001, **the OECD Environmental Strategy for the First Decade of the 21st Century**, adopted by Environment Ministers on 16 May 2001, recommends that "*policies and measures for environmental sustainability should [also] be implemented in a cost-effective manner, and contribute to the full and consistent application of the Polluter Pays and User Pays Principles*".[17] In accordance with Objective 1 of the Strategy ("Maintaining the integrity of ecosystems through the efficient management of natural resources") "*to effectively manage natural resources and ensure the continued provision of essential environmental services, OECD countries will need to remove or reform subsidies and other policies that encourage unsustainable use of natural resources – beginning with the agriculture, transport and energy sectors – and ensure the internalisation of the full external costs of natural resource use through market and other policy instruments, and reflecting the User Pays Principle and the Polluter Pays Principle.*"

Between 1994 and 2006, the Polluter-Pays Principle was incorporated by the OECD into the concept of **Extended Polluter Responsibility** (**EPR**) which seeks to transfer waste management responsibility from governments (and thus, taxpayers and the society at large) to waste-producing entities. In effect, the EPR concept internalises waste disposal cost into the cost of the product concerned, which theoretically means that the producers will improve the waste profile of their products, thus reducing waste and increasing possibilities for re-use and recycling. The OECD defines the EPR as "*a concept where manufacturers and importers of products should bear a significant degree of responsibility for the environmental impacts of their products*

[14] See Smets H., Les exceptions admises au principe pollueur pleur, in *Droit et Pratique du Commerce International*, 1994, Vol. 20, No. 2; Smets, H., Examen critique du principe pollueur- pleur, in *Les hommes et l'environment*, (Mélanges Kiss), Paris, 1998. See also Kim, H. J., Subsidy, Polluter Pays Principle and Financials Assistance among Countries. in *Journal of World Trade,* 2000, No. 34(6).

[15] Meeting of the Council at Ministerial Level, 1992 [SG/Press(92)43].

[16] Report on Trade and Environment to the OECD Council at Ministerial Level, OECD/GD(95)63, 1995, paragraph 77.

[17] OECD (2001), *Environmental Strategy for the First Decade of the 21st Century*, at p.6.

throughout the product life-cycle, including upstream impacts inherent in the selection of materials for the products, impacts from manufacturers' production process itself, and downstream impacts from the use and disposal of the products. Producers accept their responsibility when designing their products to minimise life-cycle environmental impacts, and when accepting legal, physical or socio-economic responsibility for environmental impacts that cannot be eliminated by design."[18] Since the OECD began its work on the EPR in 1994, almost every member country has implemented one or more EPR programmes. These largely vary due to a number of factors, such as the difference in the products or waste streams covered, instruments (instrument mixes) used and the manner in which responsibility is shared among the players in the product chain. However, it seems evident that the EPR will continue to form part of product and waste policies in the OECD (and the EU) member countries.

There are many references to the PPP in **international law**. An important step towards the global recognition of the PPP in a broad sense was made in 1992 with the adoption of the Rio Declaration on Environment and Development. Principle 16 of the Rio Declaration provides that *"national authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."* The Rio Declaration refers to "the cost of pollution", which is a wide-ranging concept, and incorporates the use of economic instruments. It probably constitutes the main reference for the definition of the term "PPP in a broad sense", although no effort has yet been made to clarify this principle globally.

The PPP has also been incorporated explicitly in a number of international environmental instruments and texts.[19] International agreements that make reference to the PPP, without defining it, include the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 1992), the Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 1992), the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, London, 1990), the Convention on the Protection of the Alps (Salzburg, 1991), the Agreement on the European Economic Area (Oporto, 1992), and the Protocol on Water and Health (London, 1999). The PPP is also mentioned in Agenda 21, Chapter 18 (1992) and in the Plan of Implementation agreed at the 2002 World Summit on Sustainable Development.[20] Other applications include international agreements dealing with *environmental*

[18] Extended Producer Responsibility: A Guidance Manual for Governments, OECD, Paris, 2001.

[19] See Nash, J.R., "Too much market? Conflict between Tradable Pollution Allowances and the Polluter Pays Principle". *Harvard Law Review*, 2000, vol. 24, 465-535, at p. 468.

[20] WSSD Plan of Implementation, paragraphs 15 b), 19 b). See Moldan, B. (ed.), *World Summit on Sustainable Development (Johannesburg, 2002)*. Ministry of the Environment of the Czech Republic, Prague.

liability[21] in relation to specific fields (e.g. the Lugano Convetion,[22] Convention on Civil Liability for Oil Pollution Damage, Convention on Civil Liability for Bunker Oil Pollution Damage, Antarctica Liability Annex,[23] Basel Liability Protocol, Kyiv Liability Protocol or Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety[24]). Certain international agreements refer to the PPP as *"a general principle of international environmental law"*.[25] Nevertheless, opinions vary on whether the precise status of the principle is that of a common international law or one of an emerging rule of law common to civilised nations. Accordingly, the term "principle", as used in the PPP, does not pre-judge its status in international law. The PPP is a principle of a more programmatic nature. Only future will show whether the principle *de lege ferenda* will develop in a generally applicable rule, or if it remains as the only part of the *lex lata* of particular instruments of European law and the OECD.[26]

As regards European (EC/EU) Law, the PPP was incorporated into the Treaty Establishing the European Community through the adoption of the Single European Act (Art. 130R to 130T), an idea existing at Community level since 1975.[27] The PPP is now enshrined in Art. 191 par. 2 of the Treaty of the Functioning of the European Union[28], which states that *"European Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."* Since its introduction into the Treaty, the PPP has not been defined as such in any EC/EU legal act. **The Sixth**

[21] See Damohorský, M., *Legal Responsibility for Environmental Loss.* Prague : Karolinum, Charles University, 1999, or Descamps, H., Slabbinck, R., Bocken, H., *International Documents on Environmental Liability*. Springer Science, 2008.

[22] Sobotka, M., Convention on Civil Liability for damage resulting from Activities Dangerous to the Environment and its implementation into the Czech law. In: Košičiarová, S.(ed.): *Council of Europe and the Environmental Protection. Conference Proceeding*. Faculty of Law TU, Trnava, 2008.

[23] Annex VI to the Protocol on the Environmental Protection to the Antarctic Treaty – Liability Arising from Environmental Emergencies. For more details, *cf* Vícha, O., New Annex to the Madrid Protocol on Liability Arising from Environmental Emergencies in Antarctica. *Czech Environmental Law*, 2005, No. 2 (16), pp. 57-62.

[24] See Zicha, J.: Legal Issues of Biodiversity Protection. In: Czech Environmental Law No. 1/2011 (29), p. 115-117.

[25] International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, London, 1990). The Preamble states: *"Taking account of the 'polluter pays' principle as a general principle of international environmental law"*. This agreement formally introduced for the first time the PPP in a global instrument, albeit in the Preamble. The same expression appears in the Preamble to the Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 1992).

[26] Viz Šturma, P., ibid 1, at p. 24.

[27] Council Recommendation 75/436/Euroatom, ECSC, EEC of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters – 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 (OJ, L 194, 25.7.1975, at p.1).

[28] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 83, 30.3.2010, at p.1).

Community Environment Action Programme[29] **shall be based** particularly on the PPP. EC/EU Directives apply to the PPP in certain areas of environmental protection (e.g. water policy,[30] waste treatment,[31] taxation of energy products and electricity[32] or environmental liability[33]).

In 2006, the PPP was interpreted by the European Council in its Strategy for Sustainable Development as follows: "*Prices shall reflex the true societal cost of consumption and production and polluters should pay for the damage which they caused to human health and the environment*."[34] In 2008, the European Commission further adopted new state aid guidelines on environmental protection,[35] which provide rules for assessing compatibility of state aid for environmental protection with the common market and the PPP. According to the guidelines, the PPP means that *"the cost of measures taken to deal with pollution should be borne by the polluter who causes the pollution, unless the person responsible for the pollution can be identified or be held liable under Community or national legislation or be made to bear the costs of remediation. Pollution in this context is the damage caused by the polluter by damaging, directly or*

[29] Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ L 242, 10.9.2002, at p.1); See *EU Environmental Policy. Seven Thematic Strategies*. Planeta No. 10/2006.

[30] Directive of the European Parliament and of the Council 2004/35/EC of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22. 12. 2000, at p. 275).

[31] Directive of the European Parliament and of the Council 2008/98/EC of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22. 11. 2008, at p.3).

[32] Directive of the Council of the European Union 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31. 10. 2003, at p. 405).

[33] Directive of the European Parliament and of the Council 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30. 4. 2004, at p.357). The purpose of this Directive is to establish a framework of environmental liability based on the 'polluter-pays' principle, for preventing and remedying environmental damage. The fundamental principle of this Directive provides that an operator whose operations have caused environmental damage or resulted in an imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced. According to the 'polluter-pays' principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that authority should ensure that the cost incurred by it is recovered from the operator. Operators should also bear the cost of assessing environmental damage and, as appropriate, assessing the imminent threat of any such damage occurring. See Stejskal, V., Vícha, O., *Law on prevention and remediation of environmental damage with a commentary, related regulations and the introduction to the environmental liability*. Leges Prague, 2009, 336 p.

[34] This definition of the PPP is far away from a legally binding principle. See Krämer, L., *EC Environmental Law*. Sixth Edition. Sweet&Maxwell, London 2007, p. 29.

[35] OJ C 82, 1.4.2008, pp. 1-33; see Máca, V., New Guidelines of the EU Commission on Environmental State Aid: Who Will Gain and Who Will Lose? In: *Common Law Review*, 2009, Issue 11, Autumn 2009, pp. 19-23.

indirectly, or by creating conditions leading to such damage, to the environment, physical surroundings or natural resources."

Originally, the Polluter-Pays Principle was devised as an economic principle (in the OECD and EU countries) and has recently developed in a legal principle. It has not yet been codified because its contents have been changing and will continue to change. The predominant trend is to place increased liability on the polluter while alleviating the economic burden which pollution imposes on the relevant authorities.

The Polluter-Pays Principle is not a principle of equity; rather than to punish polluters, it is designed to introduce appropriate signals in the economic system so as to incorporate environmental costs in the decision-making process and, consequently, to arrive at sustainable, environment-friendly development. The aim is to avoid wasting natural resources and to put an end to the cost-free use of the environment as a receptacle for pollution. To some degree, environmental pollution will certainly persist and the consumer will bear the cost initially charged to the polluter. However, the application of the Polluter-Pays Principle will ensure economic efficiency and minimize distortions in international trade and investment.