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## **The Precautionary Principle in International Environmental Law**

### **Introduction**

By way of introduction, I would like to tell you that this is one of the so-called Instrumental Principles of International Environmental Law, and that it is different from what is known as the precautionary principle.

It is a criterion that should guide the action of States or other entities in order to avoid damage (even if there is no incontestable scientific evidence) when the danger of the activity evaluated could cause serious and/or irreparable damage.

The principle has been given different expressions both at international and European level, among which we can mention, Principle 15 of the 1992 Rio Declaration, Art. 3.3 of the United Nations Framework Convention on Climate Change or its mention in paragraph 9 of the Preamble of the Convention on Biological Diversity.



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## **Reflection of the principle in international instruments**

But how is it reflected in these international instruments? Let us take two as examples, according to Principle 15 of the Rio Declaration 1992. In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

On the other hand, Article 3.3. of the United Nations Framework Convention on Climate Change-1992 states that Parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to address climate change should be cost-effective in order to ensure global benefits at the least possible cost. To this end, such policies and measures should take into account different socio-economic contexts, be comprehensive, include all relevant sources, sinks and reservoirs of greenhouse gases and cover all economic sectors. Efforts to address climate

change can be carried out in cooperation between the Parties concerned.

### **The EU's work to strengthen the EU**

It is in the European Union that a real effort has been made to strengthen this principle.

Thus, Article 191.2 of the Treaty on the Functioning of the European Union includes it among the basic principles of its environmental policy, stating that "The Union's 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.

Although the precautionary principle is only explicitly mentioned in the Treaty in the environmental field, its scope of application is now considered to be much broader.

It covers specific cases where the scientific evidence is insufficient, inconclusive or uncertain, but where a preliminary objective scientific assessment gives rise to a suspicion that there are reasonable grounds to fear that potentially dangerous effects on the environment and on human, animal or plant health might be incompatible with the high level of protection chosen.

It can be invoked when a phenomenon, product or process may have potentially dangerous effects identified by a scientific and objective assessment, if such an assessment does not make it possible to determine the risk with sufficient certainty.

### **The Commission Communication on the use of the precautionary principle**

In 2000, the Commission presented its Communication on the precautionary principle, which explains the precautionary principle and contains common guidelines for its application within the EU.

According to the Communication, recourse to the precautionary principle is justified only if the following three conditions are met:

- The identification of the potentially adverse effects;
- The assessment of the available scientific data
- the evaluation of the available scientific data
- The extension of scientific uncertainty.

Once considered as applicable, it should be guided by three specific principles:

- A scientific assessment as complete as possible by determining, as far as possible, the degree of scientific uncertainty that may exist;
- an assessment of the risk and potential consequences of inaction;

- the involvement of all interested parties in the consideration of precautionary measures, as soon as the results of the scientific assessment or risk assessment are available.



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