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**The “Polluter Pays” Principle in International
Environmental Law**

Introduction

By way of introduction, this principle aims to ensure that the polluter bears the cost of pollution prevention and control measures, without receiving any compensatory financial assistance.

It is a principle of "internalisation" of the costs of cleaning up the negative effects of pollution on the environment, to be borne by the polluter.

Origin of the principle in international instruments

It first appeared formally in 1971. Specifically, in the report issued by the Meeting of Experts convened by the United Nations (UN) to assess the environmental situation at the time.

The so-called Founex Report clearly identified the environmental problems of the industrialised countries, taking a timid stance against conventional models and in favour of more equitable proposals, calling for a better distribution of the benefits of development, and correlating the



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environmental problems of industrialised and developing countries.

The main international instruments that echoed the principle are several OECD Recommendations and the Rio Declaration of 1992. However, its field of greatest development has been in EU law.

Scope of the "polluter pays" principle

First of all, it should be noted that it is a different criterion from the criterion for the allocation of pecuniary liability for the remediation of damage resulting from the violation of environmental rules.

The "polluter pays" principle aims above all to ensure that the polluter bears the cost of prevention and control measures, without in principle receiving any compensatory financial assistance.

It is therefore a principle of "internalisation" of the costs of remedying the negative effects of pollution on the environment, which must be borne by the person at the source of the pollution.

The principle thus aims to reverse the tendency to "externalise" the costs in question, avoiding their transfer to society, or to the community, which, without being the cause of the pollution, would nevertheless have to pay for it.

Reflection of the principle in international instruments

As mentioned above, this principle was first given concrete expression in two recommendations of the Organisation for Economic Co-operation and Development (OECD):

- Recommendation May 1972 on guiding principles on international economic aspects of environmental policies.
- Recommendation November 1974, on the implementation of the "polluter-pays" principle.

It was subsequently taken up in Principle 16 of the 1992 Rio Declaration on Environment and Development, according to which: "National authorities should endeavour to encourage the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in PRINCIPLE, bear the costs of pollution, with due regard to the public interest and without distorting international trade and investment".

The work of the European Union

Do such examples imply that the principle can be considered as part of customary international law? To this question we must answer NO beyond the European region, a region that has contributed greatly to its development.

Thus, Theo principle appears not only in Directive 2004/35/EC on environmental liability in relation to the prevention and remedying of environmental

damage, but even Article 191.2 of the Treaty on the Functioning of the European Union places it among the basic principles of its action in the field of the environment, stating that: 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. Finally, Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of environmental legislation and amending a number of previous Directives takes up the current

developments.



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