

Information session: Environmentally Harmful Subsidies (EHS)

12:00 - 12:15 Guidance for Environmentally Harmful Subsidies (EHS) reporting (Stephen White, DG Environment)

12:15 - 12:25 Q&A

Thematic discussion: Lessons learned and areas for improvement

12:25 - 12:30 Summary of key issues and possible ways forward (RPA Europe)

12:30 - 12:50 Open discussion

12:50 - 13:00 Wrap up

The information and views set out in this paper are those of the authors and do not necessarily reflect the official opinion of the European Commission. The study is still ongoing and the findings are still subject to change.

Introduction

We are excited to announce the upcoming second online workshop scheduled for 20 November 2023 which is organised as part of the 'Study on the Polluter Pays Principle and Environmentally Harmful Subsidies'. This is the supporting study to the fitness check of the application of the Polluter Pays Principle (the 'principle' or "PPP") in environmental policy. The work also supports the development of a guidance document for the reporting on non-energy environmentally harmful subsidies (EHS).

The online workshop invites discussion with all stakeholders of the emerging findings of the study supporting the fitness check. The objective is to validate the results of the analysis, the evidence collected and the emerging conclusions. The workshop allows discussion of the limitations stemming from the available information and how these impact on the validity of the conclusions. Participants are invited to share feedback, insights and suggestions. These will be considered in the finalisation of the study. The workshop also features a presentation by the European Commission to inform of the ongoing development of the methodology for the identification and reporting of non-energy EHS.

A [Call for Evidence](#) was launched in November 2022 and set out the mandate and process for this work. The study was commissioned by the European Commission DG Environment to RPA Europe, in collaboration with Logika, Risk & Policy Analysts (RPA), Metroeconomica and the Centre for European Policy Studies (CEPS).

This document provides background information on the findings relevant to the fitness check component of the study to facilitate discussion at the workshop. It outlines:

- The purpose and scope of the study.
- Emerging findings on how the principle is implemented in EU environmental policy and for selected EU funding programmes.
- The focus of the discussion at the workshop and the core questions for participants to consider.

Purpose of the study

The aim of the study is to support the European Commission for two interrelated work-streams:

- The fitness check of the implementation of the polluter pays principle in EU environmental policy and for selected EU funding programmes; and
- The development of a methodology for monitoring and reporting on non-energy environmentally harmful subsidies.

The focus of this paper and the workshop is on the supporting study for the fitness check. The fitness check is partly a response to the findings of the European Court of Auditors (ECA), who in their [special report on the polluter pays principle](#) concluded that the principle is applied to varying degrees across environmental legislation, and recommended to assess the scope for strengthening the application of the principle, and to protect EU funds from being used to finance projects that should be funded by the polluter. In the [Zero Pollution Action Plan](#), the European Commission announced that it would respond in 2024 with recommendations based on the fitness check.

To facilitate the effective implementation of the principle, it is necessary to not subsidise pollution (termed environmentally harmful subsidies, EHS). Member States confirmed their commitment on phasing out fossil fuel subsidies under the [8th Environment Action Programme](#), and have agreed on a binding monitoring and reporting framework on energy related environmentally harmful subsidies under the [Regulation 2018/1999 on Energy and Climate Governance](#). Member States tasked the Commission to deliver a methodology to identify other EHS. On the basis of that methodology, Member States will report on other EHS to the Commission to inform a report on the level and type of such subsidies in the Union, and on progress made on phasing them out.

Definition of the polluter pays principle and its implementation in policy

The principle was introduced in 1972, via an OECD recommendation which stated **the polluter should bear the costs of pollution prevention and control measures**[1]. The definition was later extended to include accidental pollution[2]. As such the '**application of the principle means that polluters bear the costs of their pollution including the cost of measures taken to prevent, control and remedy pollution and the costs it imposes on society**' (ECA, 2021).

The implementation of the principle in EU policies requires the identification of the polluter, of the pollution caused and its effects to ensure the polluter bears the following types of costs:

- Costs of pollution prevention and control, in the form of investments and expenses which stem from provisions to prevent or control pollution (including accidental pollution).
- Costs of administrative measures needed to implement measures taken to prevent, control or remedy pollution, including labelling, reporting, registration, monitoring, and assessment needed to provide information.
- Costs of environmental damage. These are the costs of pollution borne by wider society that involve costs to remedy environmental damage caused by pollution, or to address externalities resulting from allowable residual pollution or accidental pollution.

Scope

Policies in scope of the fitness check are those covered under the 8th Environment Action Programme (EAP) and the European Green Deal (EGD). All parts of EU *acquis* that influence the environmental outcomes targeted in the 8th EAP are therefore in scope of the fitness check.

[1] As implemented in EU legislation by Article 174 of the Treaty establishing the European Community (TEC), and the subsequent 2007 Treaty on the Functioning of the European Union (TFEU): 'Community 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 Community. 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. In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.' (Article 191.2).

[2] OECD, Recommendation of the Council concerning the Application of the Polluter-Pays Principle to Accidental Pollution, OECD/LEGAL/0251. Available at: <https://legalinstruments.oecd.org/public/doc/38/38.en.pdf>

To make the number of policies that are in scope of the fitness check manageable, policies have been grouped by 8th EAP thematic priority objective as well as by a series of more disaggregated “policy areas” defined by the project team. These are: *climate change, waste and recycling, zero pollution (for water, air, noise and chemicals risk management), nature and biodiversity*. Three horizontal themes are also included, concerning environmental liability, environmental crime and the built environment. In addition, the fitness check reviews the extent EU funds and State Aid are contributing to clean up actions that should otherwise be paid for by the polluter. Research and Development (R&D) is not considered a clean-up action, in accordance with the OECD definition of the principle which states that aid to promote R&D in line with other aspects of government policy is consistent with the polluter pays principle. Table 1 contains the list of policies, strategies and funds in scope of the fitness check, grouped by 8th EAP thematic priority objective and policy area.

The geographical scope of the fitness check is the 27 Member States of the EU. The appraisal period covers 2014 to 2024. The emphasis is on the current state of play for implementing the principle (i.e. to what extent is it implemented now). We include a review of proposed policies and planned changes which are expected to impact the way the principle is implemented.

Table 1: Scope of the Fitness Check mapped to the 8th EAP (planned proposals are in italics)

8th EAP priority objective (PO)	Policy area	Policies, strategies and funds in scope of the fitness check
<p>PO1 achieving the 2030 GHG emission reduction target and climate neutrality by 2050</p> <p>PO2 enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change</p>	Climate change	<ul style="list-style-type: none"> • EU Emissions Trading System (ETS) Directive 2023/959 • Effort Sharing Regulation (EU) 2018/842 • Alternative Fuels Infrastructure (AFI) Regulation COM/2021/559 final • CO2 emission performance standards for new cars and vans (Regulation (EU) 2019/631) • Ecodesign Directive 2009/125/EC • EU Ecolabel Regulation (EC) No 66/2010 • Energy Efficiency Directive (EED) 2012/27/EU • Energy Performance of Buildings Directive (EPBD) 2018/844/EU • Energy Taxation Directive 2003/96/EC • Fluorinated greenhouse gases Regulation (EU) No 517/2014 • Ozone depleting substances (ODS) Regulation (EC) No 1005/2009 • Renewable Energy Directive (RED) 2018/2001/EU • FuelEU Maritime Initiative (new rules will apply from 1 January 2025) • ReFuelEU Aviation (negotiations ongoing)
<p>PO3 accelerating the transition to a circular economy</p>	Waste and recycling	<ul style="list-style-type: none"> • Waste Framework Directive 2008/98/EC (WFD waste) • Batteries Directive 2006/66/EC • End of life Vehicles Directive 2000/53/EC • Landfill Directive 1999/31/EC • Ship Recycling Regulation (EU) No 1257/2013 • Waste Shipments Regulation (EC) No 1013/2006 • Single-use plastics Directive (EU) 2019/904 • Plastic Bags Directive (EU) 2015/720 • Directive 94/62/EC on packaging and packaging waste • Extractive Waste Directive 2006/21/EC • Waste electrical and electronic equipment (WEEE) Directive 2012/19/EU • Restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) Directive 2011/65/EU
<p>PO4 pursuing a zero-pollution ambition</p>	Water	<ul style="list-style-type: none"> • Marine Strategy Framework Directive (MSFD) 2008/56/EC • Water Framework Directive (WFD water) 2000/60/EC • Nitrates Directive (ND) 91/676/EEC • Sewage Sludge Directive (SSD) 86/278/EEC • Urban Waste Water Treatment Directive (UWWTD) 91/271/EEC • Bathing Water Directive 2006/7/EC • Drinking Water Directive (EU) 2020/2184 • Environmental Quality Standards Directive 2013/39/EU • Groundwater Directive 2006/118/EC • Safety of Offshore Oil and Gas Operations (2013/30/EU) • Ship-source pollution Directive 2005/35/EC • Floods Directive (Directive 2007/60/EC) • Water Reuse Regulation (EU) 2020/741

Table 1: Scope of the Fitness Check mapped to the 8th EAP (planned proposals are in italics)

8th EAP priority objective (PO)	Policy area	Policies, strategies and funds in scope of the fitness check
	Air quality	<ul style="list-style-type: none"> • Air Quality Directive (AAQD) 2008/50/EC • Reduction of national emissions (NEC) Directive 2016/2284/EU • Industrial Emission Directive (IED) 2010/75/EU Medium Combustion Plant Directive (MCPD) (EU) 2015/2193 • European Pollutant Release and Transfer Register (E-PRTR) Regulation (EC) 166/2006 • Euro Standards Regulation (EU) 2018/858 • Eurovignette Directive (EU) 2022/362 • Fuel Quality Directive 2009/30/EC • Petrol Vapour recovery Directives (94/63/EC and 2009/126/EU) • Sulphur content of liquid fuels (Directive (EU) 2016/802)
	Noise	<ul style="list-style-type: none"> • Environmental Noise Directive (END) (2002/49/EC)
	Chemicals risk management	<ul style="list-style-type: none"> • Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation (EC) No 1907/2006 • Classification, Labelling and Packaging Regulation (EC) No 1272/2008 • Biocidal Product Regulation (EU) No 528/2012 • Carcinogens and Mutagens Directive 2004/37/EC • Chemical Agents Directive 98/24/EC • Cosmetics Regulation (EC) No 1223/2009 • Fertiliser Regulation (EU) 2019/1009 • Industrial Emissions Directive (IED) 2010/75/EU • Mercury Regulation (EC) 2017/852 • Persistent Organic Pollutants Regulation (EU) 2019/1021 • Pesticides Directive 2009/128/EC • Plant Protection Products Regulation (EC) No 1107/2009 • Regulation 649/2012 concerning the export and import of hazardous chemicals • Seveso Directive 2012/18/EU • Toy Safety Directive 2009/48/EC
PO5 protecting, preserving and restoring biodiversity, and enhancing natural capital	Nature, biodiversity, soil and land	<ul style="list-style-type: none"> • Birds Directive (2009/147/EC) and Habitats (Directive 92/43/EEC) (Nature Directives) • Regulation on Invasive Species (EU) 1143/2014 • EU Biodiversity Strategy for 2030 • EU Forestry Strategy for 2030 • EU soil strategy (COM/2021/699) • Proposal for Directive on Soil Monitoring (COM/2023/416) • Proposal for Regulation on Nature Restoration (COM/2022/304)
PO6 reducing environmental and climate pressures related to production and consumption	Horizontal policies (environmental liability, environmental crime, built environment)	<ul style="list-style-type: none"> • Environmental Crime Directive (ECD) Directive 2008/99/EC • Environmental Liability Directive (ELD) 2004/35/EC • Environmental Impact Assessment (EIA) Directive 2014/52/EU • Strategic Environmental Assessment (SEA) Directive 2001/42/EC
	EU funding	<ul style="list-style-type: none"> • Horizon 2020 Regulation • CAP (European Agricultural Guarantee Fund and European Agricultural Fund for Rural Development; Regulation (EU) 2021/2116 and Regulation (EU) 2021/2115 and Regulation (EU) 2021/2117) • Cohesion policy funds under the Common Provisions Regulation (EU) 2021/1060 • LIFE + Regulation (EU) 2021/783 • InvestEU Regulation (EU) 2021/523 • Recovery and Resilience Facility Regulation (EU) 2021/241
	State aid	<ul style="list-style-type: none"> • State Aid Council Regulation (EU) 2015/1588

Initial findings

The study is being conducted in line with the EU Better Regulation Guidelines and so assesses the effectiveness, efficiency, relevance, coherence and EU added value of the application of the principle. Below we present the key emerging findings for each evaluation criterion, along with an assessment of the robustness of the emerging conclusions, based on the availability of evidence, the assumptions required and the limitations of the analytical method to establish the causal chain between causes and effects. The intervention logic used to frame the analysis and the general approach for how the PPP is implemented is presented in Appendix 1 to this paper.

The State of Play analysis

A key element of the fitness check is the state of play analysis to define how the principle is implemented in individual EU policy. The state of play defines:

- **Impact pathway from pollution to impact:** The main sources of pollution, in terms of the economic activities or sector causing it, the type of pollution, and the impact of the pollution on human health and the environment.
- **The costs of pollution addressed in each policy and - crucially - who pays for these costs:** We are only evaluating who pays, but to do so need to understand the underlying legislation requirements. For example, legislation may require prevention (abatement of pollution) - we do not evaluate whether that is the right requirement (a question for the evaluation of that specific piece of legislation) - we only evaluate who pays for that prevention.

To categorise the state of play, we applied a **Scarlet-Red-Amber-Green** rating to denote the extent the PPP is implemented in the policy provisions. This rating is an initial expert judgment based on secondary evidence review and assessment of the policies in question and is outlined below:

- **Scarlet:** The policy contains no provisions which result in such costs being incurred by the polluter. So, the PPP is not applied through that piece of legislation.
- **Red:** The policy contains provisions which incur a cost, but that cost is not, or largely not, met by the polluter. So, a negligible degree of application of the PPP.
- **Amber:** The policy in question contains provisions which incur a cost and that cost is partially met by the polluter. The policy in question establishes a duty for the Member State competent authority, hence the extent of application of the PPP depends on national plans and legislation. So, the application of the PPP may be inconsistent across the EU.
- **Green:** The policy in question contains provisions which incur a cost which is met or largely met by the polluter. So, a high degree of application of the PPP.

Alongside the policy perspective for the analysis, a sectoral perspective is used to assess how groups of policies are working together to implement the PPP where the costs of pollution are addressed by multiple policies, e.g. several policies refer to the Environmental Liability Directive to address the costs of environmental damage. This analysis is separate to the individual categorisation of policies.

Also, if EU policy does not lead the polluter to pay, then MSs could do so. EU policy can require measures to prevent, control or remedy pollution, but these might be specified at national level. This issue is greatest for the costs imposed on society, where a price may be placed on these at EU level (such as ETS, CBAM or EPR) but ensuring the polluter pays for these is often the responsibility of Member States. EU competence related to environmental taxes is limited and so, also in line with the principle of subsidiarity, MSs can apply green taxes. Therefore, there is a consideration of whether polluting sectors face the full costs of their pollution to society.

The state of play based on the situation in the year 2023 is categorised for each policy individually, grouped by 8th EAP priority objectives and policy area. The results of this assessment - which is just one part of the fitness check - will form part of the workshop presentation.

The remainder of this report presents emerging findings from the fitness check, under each criterion. For each, we answer several evaluation questions and will seek further reflection and feedback on these at the workshop.

Effectiveness

The effectiveness analysis assesses the extent to which the principle is implemented in EU policy and examines whether it has contributed to the reduction of pollution. To determine how the PPP is implemented in individual policies, we examined the legal text adopted for the year 2023 for the 77 policies listed above. For each we identified:

- References to PPP in the legal text (recitals and/or articles).
- Policy provisions used to ensure the costs are borne by the polluter. The costs categories are those above: Costs of pollution prevention and control; costs of associated administrative measures; and costs of environmental damage.

To assess whether the PPP has contributed to the reduction of pollution, key pollution trends for 8th EAP headline indicators were reviewed. Overall pollution trends and associated damage costs were drawn out and a comparative analysis was undertaken of how pollution trends and associated damage costs of pollution have evolved alongside national expenditure on environmental protection by corporations. In addition to the policy perspective, we consider the application of the PPP from a sector perspective, based on the main sources of pollution, in terms of the economic activities or sector as defined for the state of play. Below we set out key emerging findings for the main evaluation questions.

EQ1. The extent to which the PPP is fully applied in all policies impacting on environmental protection and the improvement of the quality of the environment

- Based on a review of individual EU policies and their provisions the PPP is generally well implemented in policies to address the costs of pollution prevention and control (50 of 67 policies, 75%). For example, via the restriction of a substance under the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation, where the use of an environmentally harmful substance is prohibited.
- There are some gaps in how the PPP is implemented in policies to address the costs of administrative measures. This is where monitoring requirements apply at national level and costs of administrative measures are largely (17 policies) or partially (13 policies) borne by competent authorities (45% of policies). For example, monitoring and reporting by competent authorities to demonstrate compliance with limit and target values under the Ambient Air Quality Directive compared with monitoring of permit conditions by the polluter to demonstrate compliance under the Industrial Emissions Directive. Some of these costs are mitigated by via cost recovery, in the form of regulatory fees etc.
- Environmental damage is not addressed by 42 policies (63% of total). In some cases (8 policies), while the legislation does not address costs of environmental damage, the provisions of the Environmental Liability Directive do apply. Prominent examples of policies that do address environmental damage include the EU Emission Trading System (EU ETS) and several waste management policies where extended producer responsibility applies to address environmental externalities.
- Command and control mechanisms that regulate the polluter's actions are most commonly used to implement the PPP in EU policy, followed by Market Based Instruments (MBIs) that place a cost on externalities. MBIs include tradeable permit schemes, sanctions, liability and compensation schemes and extended producer responsibility. There are also a number of MBIs that do not involve prices, but rather supporting markets e.g. through labelling and transparency measures. Prominent examples of MBI to apply the PPP relate to climate priorities (under the EU ETS and Energy Taxation Directive), to circular economy and waste management policies (e.g. landfill tax and plastic bag fee to implement the Waste Framework Directive or Plastic Bags Directive), or sanctions incurred by the Environmental Liability Directive.

- We assess there is generally a limited degree of Member State choice in implementing the PPP via EU policy leading to a high degree of consistency between Member States for these policies. When looking at national policies, there is likely much more variety in the type and level of MBIs targeting environmental damage leading to inconsistency in how the PPP is implemented between Member States.
- There has been some, but limited, evidence of improved implementation of the principle in the appraisal period. However, planned changes triggered by the EGD are likely to strengthen the way the PPP is implemented for a significant number of EU policies.

EQ2 The extent to which the PPP is effective in delivering efficient environmental improvements

- The evidence shows increasing expenditure on environmental protection by corporations and reducing pollution trends for selected headline indicators. Though causality is not proven, this suggests a positive impact, which is supported by evidence compiled via existing policy evaluation and impact assessments.
- The extent to which environmental expenditure is sufficient in view of the scale of costs associated with pollution (i.e. the rate of internalisation achieved for pollution costs) varies between 8th EAP priority objective.
- From a sector perspective, EU policy is effective in delivering efficient environmental improvements where compliance costs are borne by the main polluting economic activity or sector (e.g. the EU ETS and Effort Sharing Regulation incur a compliance cost to address GHG emission abatement borne by agriculture and fisheries, buildings, electricity, industry, off-road transport and road transport which together account for all CO₂ emissions from energy use).

EQ3. Any factors limiting the effective application of the PPP

- There is a conflict between the effective application of the PPP and EHS where the latter are subsidising environmentally harmful activities (e.g. fossil fuel subsidies, subsidies for environmentally harmful practices, etc). EHS are most commonly used in the energy, agriculture and transport sectors, indicating limitations for these sectors in particular.
- EU funding does subsidise clean up actions that potentially conflict with the effective application of the PPP, e.g. contaminated site remediation and waste infrastructure. However, there is a justification for EU funding of clean up actions where the implementation of the PPP has led to unfair distribution of costs on the polluter or user.
- Diffuse pollution and residual allowable pollution present a challenge for delivering environmental improvements via the PPP.
- The risk of adverse effects on internal competition can be a barrier to Member States when implementing the PPP. However, evidence is limited to support the effects of the PPP on competitiveness because they are difficult to disentangle from other factors. Evidence of a modest impact is apparent where taxes are used by some Member States but not others (e.g. in Sweden and the fertiliser tax or in Spain following the introduction of a tax on fluorinated GHGs). On the other hand there is also argument that implementation of the PPP via pollution charges has potential to increase market competitiveness (e.g. in the case of the air pollution charge in Hungary).

Overall, the assessment of effectiveness is based on a review of legislation and is associated with a high degree of confidence. The assessment on the extent to which the PPP is effective in delivering efficient environmental improvements is based on analysis of broader pollution trends and is associated with a lower degree of confidence.

Efficiency

The purpose of the efficiency analysis is to identify whether applying the principle improves the efficiency of EU policy and the extent to which any costs are borne by the polluter in a fair manner. To do this, we first examine the extent to which compliance costs are borne by the polluter and how these costs are borne between Member States and sectors. The extent to which the application of PPP achieves efficiency gains in policy is then reviewed based selected Member State case studies.

Below we set out key emerging findings for the main evaluation questions.

EQ4. The extent to which the PPP is fair and consistent with a just transition including how it affects different stakeholder groups, including vulnerable groups

- A key challenge is distinguishing the overall costs of implementing EU environmental policy from costs to implement the PPP.
- There are costs to applying the PPP, and this reflects the cases of partial implementation. For example, the costs of identifying diffuse pollution, who has caused it, and the resulting costs are the drivers behind the partial conclusions for administrative costs and costs of environmental damage.
- The PPP is fair and consistent with a just transition in that it shifts the costs of pollution away from society and towards the polluters causing it. However, there is a risk of unfair distribution of costs where the efficiency gain is achieved from an inversion of the PPP (i.e. where the user pays rather than the polluter). For example:
 - There is evidence of differences between the costs borne by different sectors that have been incurred by the EU ETS preventing a level playing field between sectors. For example, relative to the sectors turnover, compliance costs have the greatest impact on the cement sector (compliance costs accounting for 4% of the sectors turnover) compared to refineries or paper sectors (0.1% of the sectors' turnover).
 - Where implementation of the PPP has led to cost pass-through^[1], the extent to which costs are equitably distributed as a result of a region or sector's capacity to pass through costs varies and is not always consistent with a just transition. This may have adverse effects on market competition (between sectors and/ or regions) or at the household level depending on capacity to assume the additional costs. Under the EU ETS there is evidence of pass through, e.g. to end consumers, but also to industry by the suppliers of labour, capital, energy and materials which is as high as 100% for iron and steel and refineries.
 - There is evidence that pollution charges used to implement the PPP do not fully identify the polluter. For example, the majority of costs (70-100%) incurred by water acquis (Water Framework Directive, Environmental Quality Standards Directive, Groundwater Directive, Floods Directive and the Drinking Water Directive) are borne by the drinking water consumer via tariffs, taxes and transfers but the extent to which these costs are borne by the polluter was not assessed by the fitness check.
- Revenue raised from implementing the PPP can be used to redistribute costs to address distributional and affordability impacts (e.g. under the EU ETS via CBAM).

[1] When a business changes the price of the products or services it sells following a change in the cost of producing them.

EQ5. Whether (and if so, why) there are significant differences in the (efficient) application of the PPP across EU policies and between Member States

- There are no significant differences in the (efficient) application of the PPP across EU policies and between Member States based on the relatively consistent implementation of the PPP between EU policies.
- There are however differences in the efficient application of the PPP when implemented at national level. For example, fees and taxes levied are common MBIs used to implement the provisions of relevant EU policy which are implemented at national level (e.g. landfill tax and plastic bag fee in the case of the Waste Framework Directive and the Plastic Bags Directive). The ranges in charges between Member States show a varied approach to implementation impacting on the efficiency of the way the PPP is applied (where lower ambition is considered to be an indication of reduced efficiency because of reduced benefits).
- The institutional structure of a Member State can affect the efficient implementation of the PPP where multiple authorities involved in its application can reduce efficiency.

EQ6. Whether policy could be made more efficient via recourse to the PPP

- There is some evidence that policy is made more efficient via recourse to the PPP. The PPP provides an incentive to polluters to take action and reduce pollution at the lowest cost possible and develop new technologies and ways of working that are cleaner e.g. where carbon pricing has contributed further to innovation and investment in low-carbon technologies, such as carbon capture and utilisation or electrolytic hydrogen. As such, the PPP reduces the cost of meeting a given environmental target.
- The OECD identify a risk that implementation of the PPP focusses on the least cost abatement option without due consideration of the potential benefits. Implementing the PPP consistently via EU policy enables a combined approach to addressing costs of pollution control, prevention and remediation together with policy environmental commitments.
- The OECD also finds that the high efficiency gains are achieved via auction of pollution rights and pollution charges (including taxes). Case studies for how the PPP is implemented in EU policy support this finding and also point towards efficiency gains via command and control measures.
- Implementation of the PPP can have an administrative burden that negatively impacts on efficiency where there are challenges in establishing who the polluter is.
- Lessons learned for an efficient implementation of the PPP include:
 - Early planning to facilitate adequate development of the options available to the polluter (particularly in the case of infrastructure investments that have a 20 year or beyond timeframe such as renewable energy infrastructures).
 - The use of a third party responsible for clean-up where the polluter is required to pay the third party can improve efficiency (e.g. in the case of waste water treatment and waste management).

Where implementation of the PPP is vulnerable to price volatility, there is a risk of hinderance to sustained investment in low and zero-carbon technologies (e.g. volatility in permit prices under the EU ETS before the Market Stability Reserve was introduced).

The identification of costs borne by the polluter is based on a review of existing policy evaluation and is associated with a high degree of confidence. We are seeking stakeholder input on experiences to understand the extent to which the costs of pollution are not borne by the polluter and the implications this has on the efficiency of policy, where the analysis is associated with a medium degree of confidence.

Relevance

The purpose of the relevance analysis is to determine whether the PPP is consistent with the current, new and emerging “needs”. To determine relevance of the PPP, the rationale and objectives behind it (i.e. efficiently reduce pollution by ensuring those causing pollution bear the costs and facilitate a just transition) were compared to the needs which are set out in the policy objectives of the 8th EAP and the EGD. Below we set out key emerging findings for the main evaluation questions.

EQ7. Whether the PPP is able to respond to current, new or emerging environmental issues and changes in technology

- The PPP is implemented through policies and legislation, and will remain relevant for new policies for costs of prevention and control as well as administrative measures for current, new or emerging environmental issues. It is unlikely that any new policy would not require polluters to bear costs of prevention and control. The evidence shows that external costs of pollution remain significant so the further implementation of the PPP will remain particularly relevant for this in the future.
- The PPP delivers an incentive to develop and invest in new technology, and so is highly relevant in this context.

EQ8. The extent to which the PPP is consistent with the needs of the EU as set out in the European Green Deal

- The PPP is fully relevant to delivering the expected outputs to contribute to efficient and fair EU policy, thereby supporting the 8th EAP objectives and needs in the EGD. Relevance of the principle is increasing in view of the more ambitious environmental policy and strategy targets, and increased investment needs to achieve the targets that requires greater investment from the private sector, including the polluter.

The relevance assessment is based on analysis of broader pollution trends to conclude on the relevance of the principle to existing, new and emerging needs and is associated with a high degree of confidence.

Coherence

The purpose of the coherence analysis is to identify synergies and conflicts in the implementation of the PPP. First, we assessed the consistency in PPP implementation between the policy provisions. Next we assessed potential for conflicting mechanisms between policies, grouped by 8th EAP priority objectives and policy areas. This analysis was based on the state of play.

In addition, the coherence analysis also determines whether EU policy plays a role in the application of the principle in third countries. To do this, a literature review was undertaken to establish how the PPP is implemented in EU policies which directly or indirectly address pollution outside its borders (i.e., reducing pollution which occurs as a result of the EU's economic activity).

Below we set out key emerging findings for the main evaluation questions.

EQ9. The extent to which the application of the PPP is consistent and coherent within the EU, across policies impacting on environmental protection and the improvement of the quality of the environment

- The PPP is consistently implemented between policies. This is due to the relevant policies functioning in their respective areas of environmental protection with no observed tensions in terms of the PPP application.
- The risk that EU funding may be used to for environmentally harmful activities is mitigated via proofing, whereby processes are intended to safeguard from environmentally harmful subsidies. The Do No Significant Harm Principle (DNSH) applies to all EU funding programmes since the 2021-2027 programming period. DNSH is evidence of the extent to which proofing mechanisms have evolved to strengthen the application of the PPP.
- Differences in Member State interpretation of 'significant damage' to biodiversity and water under the ELD impacts how environmental liability is established and the potential costs incurred to address environmental damage. This may affect the implementation of the PPP and is relevant to several policy areas.

EQ10. The extent to which the application of the PPP is consistent and coherent outside the EU

- Few EU policies implement the PPP to address costs of pollution outside the EU (examples include those that restrict the export of products and wastes that have harmful, toxic impacts).
- EU trade agreements implement the PPP via implementation of relevant multilateral agreements on pollution as well as through the upcoming initiative on sustainable corporate governance.
- The EU engages in environmental diplomacy to achieve a reduction of pollution at source outside its borders through strengthening of the PPP application in third countries. Such mechanisms include international policy dialogue with organisations and platforms working on environmental taxation, building alliances and coalitions and through EU in-country delegations, encouraging partner countries to improve their policy and regulatory frameworks).

The coherence assessment is based on a review of legislation and is associated with a high degree of confidence.

EU added value

This criterion assesses the extent to which Member States would have been able to apply the PPP in national policies without EU action, and what the benefits from EU level action have been. The extent to which the application of the PPP in EU policy is consistent with the subsidiarity and proportionality principles is also assessed.

Below we set out key emerging findings for the main evaluation questions.

EQ11. Is the current split of responsibilities between the EU and Member States for the PPP the right split?

- In the absence of EU action, we identify a high risk of inconsistent implementation of the PPP between Member States with associated risks of a negative impact on competition in the internal market and a reduction in the efficiency of environmental policy.
- The main benefits of implementing the PPP via policy at EU level include:
 - Greater policy ambition e.g. the increased application of best available techniques by industry to control pollution under the Industrial Emissions Directive.
 - Greater market harmonisation e.g. the Energy Taxation Directive establishes a framework for the taxation of energy products, whilst leaving taxation specificities to Member States
 - Collaboration between Member States to address transboundary pollution e.g. where applicable, the NEC Directive establishes a joint approach to reducing emissions of transboundary pollutants, ensuring polluters are identified and pay for the pollution caused.
 - Greater national consistency has reduced risk of adverse competitiveness effects e.g. under the Pesticides Directive.
 - Stronger incentive for innovation e.g. industrial installations complying with best available techniques can promote innovative techniques and technologies.

EQ12. Do current national and EU competences and Treaty legal bases support the implementation of the PPP in environmental policy?

- The evidence suggests that existing competencies and legal bases do generally support the application of the PPP, with scope for improvement.
- There is scope for EU level action to strengthen the implementation of the PPP by establishing a minimum level of Member State ambition for the costs polluters pay - e.g. where EU level action could strengthen MS ambition for environmental taxes under the Pesticides Directive.
- There is a degree of tension between the subsidiarity principle and the PPP which influences how the PPP is implemented in EU policy, e.g. where local and regional authorities are essential to developing technical prescriptions under the Waste Framework Directive that are used to implement the PPP and which override EU competence.

The assessment is based on a review of legislation and is associated with a high degree of confidence.

We are seeking stakeholder input on experiences to understand the extent to which the tension between the subsidiarity principle and the PPP is impacting on the implementation of the PPP in EU policy.

Next steps

We will take stock of all comments and suggestions provided during the workshop for the finalisation of the supporting study. The report will be finalised in early 2024.

Workshop discussion topics

The study team will provide an overview of the approach and initial evaluation findings. Participants will have the opportunity to provide their feedback on the findings in two moderated discussions:

- The thematic discussion “Ensuring that polluters pay” will follow a panel discussion format that involves invited experts and the whole workshop audience. The experts and participants will be encouraged to explore the factors influencing how the principle is implemented (e.g. failures in fully applying the principle, types of costs not borne by the polluter), what role environmental taxes could have and which are the best candidates.
- The open discussion “Lessons learned and areas for improvement” will be based on the stakeholders’ feedback to the public consultation ‘Polluter Pays Principle – fitness check of its application to the environment’ (for details see the [Summary Report](#)). Stakeholders highlighted issues related to the implementation of the PPP, including specific measures and implementation requirements in certain legal acts, exemptions and derogations, diffuse pollution and legacy pollution, the granularity of the PPP-related definitions and the use of the EU and national funds. Some stakeholders also suggested potential solutions to the identified issues, including operationalisation of the PPP in the relevant legislation, improving/expanding the Extended Producer Responsibility schemes, and working on preventive measures. The workshop participants will be invited to reflect and provide more insights on the issues and solutions related to the implementation of the ‘polluter pays’ principle.

Appendix 1: Intervention logic

