



This online workshop is organised in the context of the fitness check of the application of the Polluter Pays Principle (the 'principle') in environmental policy to be carried out by the European Commission. A [Call for Evidence](#) set out the mandate and process for this work.

The workshop is part of the 'Study on the Polluter Pays Principle and Environmentally Harmful Subsidies', which the European Commission (DG Environment) commissioned to RPA Europe, in collaboration with Logika Europe, Risk & Policy Analysts (RPA), Metroeconomica and the Centre for European Policy Studies (CEPS).

This document provides information on:

- Purpose, scope and objectives of the fitness check, including a list of the policies under review.
- State of play, describing how the 'polluter pays' principle is applied across the policies in scope.
- Focus of the discussion at the workshop, setting out core questions for participants to consider.

### **Study background**

The aim of the study is to support the European Commission in gathering and analysing information for two interrelated work-streams:

- The fitness check of the implementation of the principle in the EU environmental legislation; and
- The development of a methodology for monitoring and reporting on non-energy environmentally harmful subsidies.

The fitness check is partly a response to the findings of the European Court of Auditors. In its [special report on the Polluter Pays Principle](#), the European Court of Auditors concluded that the principle is applied to varying degrees across environmental legislation and issued three recommendations to improve its application:

- Recommendation 1: Assess the scope for strengthening the integration of the principle into environmental legislation.
- Recommendation 2: Consider reinforcing the application of the Environmental Liability Directive.
- Recommendation 3: 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 on the basis of this ongoing fitness check.

A fitness check is a particular type of evaluation. While an evaluation assesses a specific EU law or policy regarding the achievement of its objectives, a fitness check assesses several related actions. It focuses on identifying how different laws, policies and programmes interact, any inconsistencies or synergies, and their collective impact.

Successful implementation of the principle<sup>[1]</sup> involves policy intervention where economic entities or citizens, whose activities may cause environmental harm (and through that impacts such as economic costs or human health damage), incur the costs of pollution. This is the costs of prevention, control, remediation, as well as costs of pollution that occurs. This can include administrative costs and costs of accidental pollution.

[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).

The analysis follows the EU Better Regulation Guidelines and seeks to assess:

### **Effectiveness**

- The extent to which the PPP is applied in all policies that affect environmental protection and the improvement of environmental quality.
- How effective the PPP is in delivering efficient environmental improvements.
- Any factors hampering its effective application.

### **Efficiency**

- The extent to which the PPP is fair and consistent with a just transition, including how it affects different stakeholder groups, including vulnerable groups.
- Whether (and if so, why) there are significant differences in the (efficient) application of the PPP across EU policies and between EU countries.
- Whether EU policymaking could be made more efficient by incorporating the PPP.

### **Relevance**

- The extent to which the PPP meets the EU's needs as set out in the European Green Deal | European Commission (europa.eu).
- Whether the PPP is able to respond to new or emerging environmental issues and changes in technology.

### **Coherence**

- How consistent and coherent the application of the PPP is in the EU, across policies that affect environmental protection and the improvement of environmental quality.
- How consistent and coherent the application of the PPP is outside the EU.

### **EU added value**

- Is the way responsibility for applying the PPP is currently spread between the EU and EU countries the right way?
- Do current national and EU competences and Treaty legal bases support the PPP's application in environmental policy?

A first step to making the polluter pay is not to subsidise pollution. With regard to environmentally harmful subsidies, through the [8th Environment Action Programme](#), Member States confirmed their commitment on phasing out fossil fuel subsidies 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 developed in consultation with Member States, by 2023, to identify other environmentally harmful subsidies; on the basis of that methodology, Member States shall identify other environmentally harmful subsidies and report them regularly to the Commission, allowing for a Commission report on the level and type of such subsidies in the Union, and on progress made on phasing them out”.

This online workshop focuses on the fitness check of the implementation of the Polluter Pays Principle, and on the first and third recommendations of the European Court of Auditors: the purpose is to investigate to which extent the principle has been integrated into EU environmental legislation, and to which extent EU funds may have financed projects that, according to the principle, should be funded by the polluter. The second recommendation of the European Court of Auditors focuses on the Environmental Liability Directive. This is the object of an ongoing evaluation, whose results are expected in the Autumn of 2023. The ongoing work supporting the development of a methodology for the identification and reporting of environmentally harmful subsidies will be discussed in a second workshop, also expected to be held in the Autumn of 2023.

## **Scoping of policies**

The fitness check focuses on how well the principle is applied and so focuses on current legislation, but also proposals currently in negotiation. Where policies are not yet implemented, the fitness check reviews how the principle is expected to be implemented and the planned effects. The fitness check also asks how the implementation has changed over the last decade (since 2014).

The evaluation analysis covers a wide range of types of policies, including:

- Environmental targets
- Environmental quality standards to protect EU environment from pollution
- Source controls to reduce or prevent emissions at their source
- Risk controls to minimise and manage risks of pollution
- Measures to safeguard from adverse impacts on the environment
- Measures relating to environmental crime and liability; and
- EU funds and their role in safeguarding the environment

To this end, a range of policies are in scope, grouped by “policy area” (set out in Table 1). These groupings reflect the priority objectives<sup>[2]</sup> and policy areas listed in the 8th Environment Action Programme (EAP). For each policy area, we have identified primary and secondary policies seeking to address environmental pressures and the most relevant economic sectors (agriculture; construction; industry, including particular reference to chemicals, energy, waste management and wastewater management; and transport).

The policies in scope were prioritised according to:

1. An assessment of the significance of environmental pressure: e.g. within climate change, greenhouse gas emissions from energy intensive sectors represent a significant pressure compared to others reviewed.
2. A judgment on the significance of a policy with respect to pollution prevention and control, liability for accidental pollution, and remediation costs: e.g. within climate change, the EU Emissions Trading System is a key policy mechanism used to mitigate greenhouse gas emissions.

Based on this prioritisation, policies which are fundamental to enable significant EU action in alleviating the identified environmental pressures were identified as ‘primary’ policies. The evaluation will focus on (but it will not be limited to) these policies. A subset of ‘secondary’ policies is also in scope of the fitness check, namely where the primary policies provide a framework for EU action that ultimately relies on complementary ‘secondary’ policies to drive the adoption and implementation of abatement measures resulting in pollution reduction and prevention. Secondary policies are included in the analysis, which will consider how they contribute to the overarching environmental policies.

[2] Communication on the monitoring framework for the 8th Environment Action Programme: Measuring progress towards the attainment of the Programme's 2030 and 2050 priority objectives. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A357%3AFIN>

Table 1: Mapping of policy areas defined for the fitness check to 8 <sup>th</sup> EAP			
Fitness check policy area	8 <sup>th</sup> EAP priority objective (PO)	8 <sup>th</sup> EAP policy area [1]	Primary policies in scope
Air quality and noise	<ul style="list-style-type: none"> <li>PO4 pursuing a zero-pollution ambition</li> </ul>	<ul style="list-style-type: none"> <li>Air (to improve air quality and reduce air pollution)</li> <li>Noise (to reduce environmental noise pollution)</li> </ul>	<ul style="list-style-type: none"> <li>Air Quality Directive (AAQD) 2008/50/EC</li> <li>Reduction of national emissions (NEC) Directive 2016/2284/EU</li> <li>Environmental Noise Directive (END) (2002/49/EC)</li> </ul>
Chemicals risk management	<ul style="list-style-type: none"> <li>PO4 pursuing a zero-pollution ambition</li> <li>PO6 reducing environmental and climate pressures related to production and consumption</li> </ul>	<ul style="list-style-type: none"> <li>Chemicals (to ensure chemicals are safe for health and the environment)</li> </ul>	<ul style="list-style-type: none"> <li>Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation (EC) No 1907/2006</li> </ul>
Climate change	<ul style="list-style-type: none"> <li>PO1 achieving the 2030 GHG emission reduction target and climate neutrality by 2050</li> <li>PO2 enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change</li> </ul>	<ul style="list-style-type: none"> <li>Cross-cutting theme</li> </ul>	<ul style="list-style-type: none"> <li>EU Emissions Trading System (ETS) Directive 2003/87/EC</li> <li>Effort Sharing Decision (ESD) Regulation (EU) 2018/842</li> </ul>
Industry	<ul style="list-style-type: none"> <li>PO1 achieving the 2030 GHG emission reduction target and climate neutrality by 2050</li> <li>PO3 accelerating the transition to a circular economy</li> <li>PO4 pursuing a zero-pollution ambition</li> <li>PO6 reducing environmental and climate pressures related to production and consumption</li> </ul>	<ul style="list-style-type: none"> <li>Industry (to make industry more sustainable and reduce industrial emissions)</li> <li>Circular economy (EU's transition to a circular economy with focus on green growth)</li> </ul>	<ul style="list-style-type: none"> <li>Industrial Emissions Directive (IED) 2010/75/EU</li> <li>Medium Combustion Plant Directive (MCPD) (EU) 2015/2193</li> <li>Seveso Directive 2012/18/EU</li> </ul>
Marine and coastal environment and water	<ul style="list-style-type: none"> <li>PO4 pursuing a zero-pollution ambition</li> </ul>	<ul style="list-style-type: none"> <li>Water (water issues, to protect water resources)</li> </ul>	<ul style="list-style-type: none"> <li>Marine Strategy Framework Directive (MSFD) 2008/56/EC</li> <li>Water Framework Directive (WFD water) 2000/60/EC</li> <li>Nitrates Directive (ND) 91/676/EEC</li> <li>Sewage Sludge Directive (SSD) 86/278/EEC</li> <li>Urban Waste Water Treatment Directive (UWWTD) 91/271/EEC</li> </ul>

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Fitness check policy area	8 <sup>th</sup> EAP priority objective (PO)	8 <sup>th</sup> EAP policy area [1]	Primary policies in scope
Nature, biodiversity, soil and land	<ul style="list-style-type: none"> <li>PO5 protecting, preserving and restoring biodiversity, and enhancing natural capital</li> </ul>	<ul style="list-style-type: none"> <li>Nature and biodiversity (environmental conservation and protection)</li> <li>Soil and land (sustainable use of soil and land)</li> </ul>	<ul style="list-style-type: none"> <li>Birds Directive (2009/147/EC) and Habitats (Directive 92/43/EEC) (Nature Directives)</li> <li>Regulation on Invasive Species (EU) 1143/2014</li> </ul>
Waste and recycling (including plastics)	<ul style="list-style-type: none"> <li>PO3 accelerating the transition to a circular economy</li> <li>PO6 reducing environmental and climate pressures related to production and consumption</li> </ul>	<ul style="list-style-type: none"> <li>Waste and recycling (waste management, treatment and recycling)</li> <li>Plastics (plastic production and pollution to contribute to a circular economy)</li> <li>Circular economy (as above)</li> <li>Industry (as above)</li> </ul>	<ul style="list-style-type: none"> <li>Waste Framework Directive 2008/98/EC (WFD waste)</li> </ul>
Horizontal	<ul style="list-style-type: none"> <li>PO6. reducing environmental and climate pressures related to production and consumption</li> </ul>	<ul style="list-style-type: none"> <li>Sustainable development (EU commitment to sustainable development in Europe and worldwide)</li> <li>Urban environment (EU action to promote the sustainability of European cities)</li> </ul>	<ul style="list-style-type: none"> <li>Environmental Crime Directive (ECD) Directive 2008/99/EC</li> <li>Environmental Liability Directive (ELD) 2004/35/EC</li> <li>Environmental Impact Assessment (EIA) Directive 2014/52/EU</li> <li>Strategic Environmental Assessment (SEA) Directive 2001/42/EC</li> <li>Ecodesign Directive 2009/125/EC</li> <li>EU Ecolabel Regulation (EC) No 66/2010</li> </ul>

**Table 1: Mapping of policy areas defined for the fitness check to 8<sup>th</sup> EAP**

Fitness check policy area	8 <sup>th</sup> EAP priority objective (PO)	8 <sup>th</sup> EAP policy area [1]	Primary policies in scope
EU expenditure	· n/a	· n/a	<ul style="list-style-type: none"> <li>· Horizon 2020 Regulation (EU) 2021/695</li> <li>· Common Agricultural Policy (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)</li> <li>· Cohesion policy funds, in accordance with general rules laid down by the Common Provisions Regulation (EU) 2021/1060</li> <li>· LIFE + Regulation (EU) 2021/783</li> <li>· InvestEU Regulation (EU) 2021/523</li> <li>· Recovery and Resilience Facility Regulation (RRF) (EU) 2021/241</li> </ul>
<b>State Aid rules</b>	· n/a	· n/a	<ul style="list-style-type: none"> <li>· State Aid (MS exemptions) Council Regulation No 994/98 2023 and the revised amendment of the General Block Exemption Regulation (GBER)</li> </ul>

## State of play

To establish the state of play for the application of the principle we are reviewing the legislation and categorising the various approaches to implementation. The typology below focuses on the primary policies in scope of the fitness check and the main ways in which principle is enacted. Policies are grouped first by type of cost where the principle is applied and second, by type of policy mechanism used to implement the principle (as defined in the table). The policy mechanisms used to apply the principle are central to this analysis and whether the principle is implemented directly or indirectly. Direct implementation is where the policy mechanism targets the polluter. E.g. where emission limit values apply to an industrial installation responsible for emitting pollutants). Indirect implementation is where the policy mechanism sets the framework to facilitate Member State competent authorities in managing the polluter.

Table 2: Key characteristics of how the principle is applied and typology for its application

Characteristic	Explanation	Typology for the polluter pays principle
Type of cost where the PPP is applied	Costs include: <ul style="list-style-type: none"> <li>Costs of pollution prevention (abatement measures to prevent pollution)</li> <li>Costs to remedy pollution (abatement measures to address pollution and its consequences)</li> <li>Costs of control measures (administrative costs borne by competent authorities to enforce environmental controls)</li> <li>Liability costs in the case of accidental pollution (action to remedy unintended pollution)</li> </ul>	<ul style="list-style-type: none"> <li>Prevention and remedial costs (AAQD, NECD, END, REACH, EU ETS, EU EDS, IED, MCPD, MSFD, WFD (water), UWWTD, ND, SSD, Habitats and Birds Directives, IAS, WFD (waste), EIA, SEA, State Aid Rules, and Cohesion Policy Funds, CAP, Horizon Europe, LIFE+, InvestEU, RRF)</li> <li>Prevention and remedial costs for accidental pollution (Seveso)</li> <li>Monitoring and enforcement costs (IED, MCPD, Seveso, IAS)</li> <li>Liability costs (ELD, ECD, State Aid Rules)</li> </ul>
Type of policy mechanism	Aligned with Tool #17 of the Better Regulation Toolbox: <ul style="list-style-type: none"> <li>Hard, legally binding rules to specify behaviour and where legal certainty and legal sanctions are needed (referred to as Command and Control)</li> <li>Soft regulation that may include recommendations, technical standards, 'pure' voluntary bottom-up initiatives (self-regulation).</li> <li>Education and information that may include information and publicity campaigns, training, guidelines, etc.</li> <li>Economic instruments (referred to as Market Based Instruments), which include taxes, levies, penalties, liability and compensation schemes, subsidies and incentives, deposit-refund systems, labelling schemes, tradeable permit schemes.</li> </ul>	Command and control: <ul style="list-style-type: none"> <li>EU determined targets (binding) (EU EDS, WFD (waste))</li> <li>Environmental quality standards (WFD (water), IED, MCPD, MSFD, WFD (water), UWWTD, ND, SSD, Habitat and Birds Directives)</li> <li>Register (REACH, Seveso, IAS)</li> <li>Infringement proceedings (ELD, ECD)</li> </ul> Market-based instruments: <ul style="list-style-type: none"> <li>Cap (and auction): EU ETS</li> <li>Penalty: ELD</li> <li>Member State taxes (case study approach with a focus on climate and water policy areas)</li> </ul> Soft regulation: Ecolabelling Education and information: ELD

The fitness check will assess the extent to which the different policy mechanisms lead to the principle being implemented. It will identify and analyse the following aspects:

- Provisions used to apply the principle, including specific elements of monitoring arrangements that relate to the principle and guidance to facilitate implementation.
- Inconsistencies or gaps in the way in the way the polluter pays principle is applied or in scope (e.g. omission in the legislation as regards sources of emission). E.g. where EU funds are used to support clean up actions.

- Approaches between Member States to implement a policy.
- Infringement proceedings.
- Further planned revision and areas for improvement that will influence how the principle is applied.
- Related EU policies that support implementation of the principle.

The fitness check could form the basis for recommendations on how to strengthen the integration of the principle into environmental legislation and how to protect EU funds from being used to finance projects that should be funded by the polluter.

### **Next steps**

The timeframe of the fitness check is presented in Table 4, noting that the public consultation is ongoing and stakeholders can participate at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13546-Polluter-Pays-Principle-fitness-check-of-its-application-to-the-environment\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13546-Polluter-Pays-Principle-fitness-check-of-its-application-to-the-environment_en)

Table 4: Planned delivery for the fitness check	
Project milestone	Planned date for delivery
Public consultation	12 May 2023 - 04 August 2023
First workshop	4 July
Second workshop	TBC (late October)
Closure of the support study	Early 2024
Preparation of the fitness check report by the European Commission	Early 2024
Quality control by the Regulatory Scrutiny Board	Early 2024
Publication of the fitness check and transmission to the other EU institutions	Second quarter 2024

### **Workshop discussion topics**

The study team will provide an overview of the approach and interim findings. Participants will have the opportunity to provide their feedback on the methodology and scope of the evaluation. This introductory session will be followed by three keynote speeches, presenting three different takes on the successes and failures of the implementation of the 'polluter pays' principle and in the use of EU funds for pollution prevention, mitigation and remediation. These will be followed by a moderated discussion, during which participants will be able to exchange their views, share knowledge and provide examples of positive results and best practices or gaps, inconsistencies, and shortcomings in the implementation of the 'polluter pays' principle and in the protection of EU funds from being diverted to pay for the polluters.

Key questions to frame the discussion include:

1. What are the pieces of legislation that best apply the polluter pays principle? Is there a gap between legislative requirements and actual implementation? If yes, what are the issues?
2. What are the economic sectors which legislation would benefit of a stronger application of the principle?
3. The principle is not fully applied in all occasions and, therefore, polluters do not always pay (in full) and the wider society endure the negative impacts of pollution and may have to incur the costs of remediation. What are the key issues that lead to this non-desirable result? How can we ensure that EU funds are not used to finance projects that should be funded by the polluter? What safeguards should be established?