



Recommendation of the Council on Principles concerning Transfrontier Pollution

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Background Information

The Recommendation on Principles concerning Transfrontier Pollution was adopted by the OECD Council on 14 November 1974 on the proposal of the Environment Committee (now called Environment Policy Committee). The Recommendation advises Adherents to include into environmental policies principles of international solidarity, non-discrimination, equal right of hearing, exchange of information and consultation, and early warning on transfrontier pollution.

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

CONSIDERING that the protection and improvement of the environment are common objectives of Member countries;

CONSIDERING that the common interests of countries concerned by transfrontier pollution should induce them to co-operate more closely in a spirit of international solidarity and to initiate concerted action for preventing and controlling transfrontier pollution;

HAVING REGARD to the Recommendations of the United Nations Conference on the Human Environment held in Stockholm in June 1972 and in particular those Principles of the Declaration on the Human Environment which are relevant to transfrontier pollution;

On the proposal of the Environment Committee;

I. RECOMMENDS that, without prejudice to future developments in international law and international co-operation in relation to transfrontier pollution, Member countries should be guided in their environmental policy by the principles concerning transfrontier pollution contained in this Recommendation and its Annex, which is an integral part of this Recommendation.

II. INSTRUCTS the Environment Committee to prepare without delay, taking account of the work undertaken by other international organisations, a programme of work designed to elaborate further these principles and to facilitate their practical implementation.

III. RECOMMENDS Member countries to co-operate in developing international law applicable to transfrontier pollution.

IV. INSTRUCTS the Environment Committee, within the framework of its mandate, to examine or investigate further, as the case may be, the issues related to the Principles of the Stockholm Declaration regarding responsibility and liability, taking into account the work undertaken by other international organisations, to submit a first report to the Council on its work by 1 March 1976 and to seek to formulate as soon as possible Draft Recommendations.

V. INSTRUCTS the Environment Committee to investigate further the issues concerning equal right of hearing, to formulate as soon as possible Draft Recommendations and to report to the Council on its work by 1 July 1975.

ANNEX

SOME PRINCIPLES CONCERNING TRANSFRONTIER POLLUTION

Title A. Introduction

This Annex sets forth some principles designed to facilitate the development of harmonized environmental policies with a view to solving transfrontier pollution problems. Their implementation should be based on a fair balance of rights and obligations among countries concerned by transfrontier pollution.

These principles should subsequently be supplemented and developed in the light of work undertaken by the OECD or other appropriate international organisations.

For the purpose of these principles, pollution means the introduction by man, directly or indirectly, of substances or energy into the environment resulting in deleterious effects of such a nature as to endanger human health harm living resources and ecosystems, and impair or interfere with amenities and other legitimate uses of the environment.

Unless otherwise specified, these principles deal with pollution originating in one country and having effects within other countries.

Title B. International Solidarity

1. Countries should define a concerted long-term policy for the protection and improvement of the environment in zones liable to be affected by transfrontier pollution.

Without prejudice to their rights and obligations under international law and in accordance with their responsibility under Principle 21 of the Stockholm Declaration, countries should seek, as far as possible, an equitable balance of their rights and obligations as regards the zones concerned by transfrontier pollution.

In implementing this concerted policy, countries should among other things:

a) Take account of:

- Levels of existing pollution and the present quality of the environment concerned;
- The nature and quantities of pollutants;
- The assimilative capacity of the environment, as established by mutual agreement by the countries concerned, taking into account the particular characteristics and use of the affected zone;
- Activities at the source of pollution and activities and uses sensitive to such pollution;
- The situation, prospective use and development of the zones concerned from a socio-economic standpoint;

b) Define:

- Environmental quality objectives and corresponding protective measures;

c) Promote:

- Guidelines for a land-use planning policy consistent with the requirements both of environmental protection and socio-economic development;

d) Draw up and maintain up to date:

- i) Lists of particularly dangerous substances regarding which efforts should be made to eliminate polluting discharges, if necessary by stages, and
- ii) Lists of substances regarding which polluting discharges should be subject to very strict control.

2. Pending the definition of such concerted long-term policies countries should, individually and jointly, take all appropriate measures to prevent and control transfrontier pollution, and harmonize as far as possible their relevant policies.

3. Countries should endeavour to prevent any increase in transfrontier pollution, including that stemming from new or additional substances and activities, and to reduce, and as far as possible eliminate any transfrontier pollution existing between them within time limits to be specified.

Title C. Principle of Non-Discrimination

4. Countries should initially base their action on the principle of non-discrimination, whereby:

- a) Polluters causing transfrontier pollution should be subject to legal or statutory provisions no less severe than those which would apply for any equivalent pollution occurring within their country, under comparable conditions and in comparable zones, taking into account, when appropriate, the special nature and environmental needs of the zone affected;
- b) In particular, without prejudice to quality objectives or standards applying to transfrontier pollution mutually agreed upon by the countries concerned, the levels of transfrontier pollution entering into the zones, liable to be affected by such pollution should not exceed those considered acceptable under comparable conditions and in comparable zones inside the country in which it originates, taking into account, when appropriate, the special state of the environment in the affected country;
- c) Any country whenever it applies the Polluter-Pays Principle should apply it to all polluters within this country without making any difference according to whether pollution affects this country or another country;
- d) Persons affected by transfrontier pollution should be granted no less favourable treatment than persons affected by a similar pollution in the country from which such transfrontier pollution originates.

Title D. Principle of Equal Right of Hearing

5. Countries should make every effort to introduce, where not already in existence, a system affording equal right of hearing, according to which:

- a) Whenever a project, a new activity or a course of conduct may create a significant risk of transfrontier pollution and is investigated by public authorities, those who may be affected by such pollution should have the same rights of standing in judicial or administrative proceedings in the country where it originates as those of that country;
- b) Whenever transfrontier pollution gives rise to damage in a country, those who are affected by such pollution should have the same rights of standing in judicial or administrative proceedings in the country where such pollution originates as those of that country, and they should be extended procedural rights equivalent to the rights extended to those of that country.

Title E. Principle of Information and Consultation

6. Prior to the initiation in a country of works or undertakings which might create a significant risk of transfrontier pollution, this country should provide early information to other countries which are or may be affected. It should provide these countries with relevant information and data, the transmission

of which is not prohibited by legislative provisions or prescriptions or applicable international conventions, and should invite their comments.

7. Countries should enter into consultation on an existing or foreseeable transfrontier pollution problem at the request of a country which is or may be directly affected and should diligently pursue such consultations on this particular problem over a reasonable period of time.

8. Countries should refrain from carrying out projects or activities which might create a significant risk of transfrontier pollution without first informing the countries which are or may be affected and, except in cases of extreme urgency, providing a reasonable amount of time in the light of circumstances for diligent consultation. Such consultations held in the best spirit of co-operation and good neighbourliness should not enable a country to unreasonably delay or to impede the activities or projects on which consultations are taking place.

Title F. Warning Systems and Incidents

9. Countries should promptly warn other potentially affected countries of any situation which may cause any sudden increase in the level of pollution in areas outside the country of origin of pollution, and take all appropriate steps to reduce the effects of any such sudden increase.

10. Countries should assist each other, wherever necessary, in order to prevent incidents which may result in transfrontier pollution, and to minimise, and if possible eliminate, the effects of such incidents, and should develop contingency plans to this end.

Title G. Exchange of Scientific Information, Monitoring Measures and Research

11. Countries concerned should exchange all relevant scientific information and data on transfrontier pollution, when not prohibited by legislative provisions or prescriptions or by applicable international conventions. They should develop and adopt pollution measurement methods providing results which are compatible.

12. They should, when appropriate, co-operate in scientific and technical research programmes *inter alia* for identifying the origin and pathways of transfrontier pollution, any damage caused and the best methods of pollution prevention and control, and should share all information and data thus obtained.

They should, where necessary, consider setting up jointly, in zones affected by transfrontier pollution, a permanent monitoring system or network for assessing the levels of pollution and the effectiveness of measures taken by them to reduce pollution.

Title H. Institutions

13. Countries concerned by a particular problem of transfrontier pollution should consider the advantages of co-operation, by setting up international commissions or other bodies, or by strengthening existing institutions, in order to deal more effectively with particular aspects of such problems.

Such institutions could be authorised to collect any data needed for a proper evaluation of the problem and its causes, and make to the countries concerned practical proposals for concerted efforts to combat transfrontier pollution. With the consent of the States concerned, they could also carry out any necessary additional investigations into the origin and degree of pollution, review the effectiveness of any pollution prevention and control measures which have been taken, and publish reports of their findings.

Title I. Disputes

14. Should negotiations and other means of diplomatically settling disputes concerning transfrontier pollution fail, countries should have the opportunity to submit such a dispute to a procedure of legal settlement which is prompt, effective and binding.

Title J. International Agreements

15. Countries should endeavour to conclude, where necessary, bilateral or multilateral agreements for the abatement of transfrontier pollution in accordance with the above principles, to bring promptly into force any agreements which may already have been signed.

16. When negotiating new bilateral or multilateral agreements countries should, while taking into account the principles set out above, strive for the application of efficient pollution prevention and control measures in accordance with the Polluter Pays Principle.

Such agreements could, inter alia, include provisions for practical procedures promoting the prompt and equitable compensation of persons affected by transfrontier pollution, and could also contain procedures facilitating the provision of information and consultation.

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