



Recommendation of the Council on
Equal Right of Access in Relation
to Transfrontier Pollution

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Date(s)

Adopted on 11/05/1976
Abrogated on 12/07/2017

THE COUNCIL,

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

HAVING REGARD to the Recommendation of the Council of 14 November 1974 on Principles concerning Transfrontier Pollution and, in particular, the principles of non-discrimination and equal right of hearing appearing in its Annex [C(74)224];

HAVING REGARD to the Declaration on Environmental Policy according to which the Governments of Member countries "will co-operate towards solving transfrontier pollution problems in a spirit of solidarity and with the intention of further developing international law in this field" [C/M(74)26(Final), Annex];

CONSIDERING the desire of Member countries to strengthen their environmental policies relating to transfrontier pollution;

HAVING REGARD to the Report by the Environment Committee of 22 April 1976 on Equal Right of Access in Relation to Transfrontier Pollution [C(76)55];

CONSIDERING that equal right of access should facilitate the prevention and the solution of many transfrontier pollution problems, without prejudice to other means available, and that it constitutes one of the suitable channels for giving effect to the principle of non-discrimination;

On the proposal of the Environment Committee;

I. RECOMMENDS that Member countries should endeavour to remove, possibly under conditions of reciprocity, the obstacles which may exist in their legal systems to the implementation of a system of equal right of access, the constituent elements of which are set out in the attached Annex which constitutes an integral part of this Recommendation.

II. RECOMMENDS that Member countries, even when their legislation already implicitly provides for equal right of access, should introduce into their legislation and regulations relating to the environment any explicit provisions that may appear to them to be necessary to ensure a system of equal right of access.

III. RECOMMENDS that Member countries should consider in relation to discussions carried out further to paragraph IV of this Recommendation, the advisability of concluding, within suitable geographical areas and on the basis of the particular characteristics of their legal systems, agreements on environmental protection designed to ensure the application of the principle of equal right of access and as far as it is conducive to the implementation of this principle, of the principle of non-discrimination.

IV. INSTRUCTS the Environment Committee, to go deeper in its work on equal right of access, through a study of the principle of non-discrimination, as far as it is necessary for the implementation of the principle of equal right of access with a view to preparing common guidelines designed to assist the practical implementation of these principles, to report to the Council on its work by 31 December 1976, and to draw up as soon as possible draft Recommendations or Decisions.

ANNEX

EQUAL RIGHT OF ACCESS IN RELATION TO TRANSFRONTIER POLLUTION

Constituent Elements of a System of Equal Right of Access

1. A system of equal right of access is made up of a set of rights recognised by a country in favour of persons who are affected or likely to be affected in their personal and/or proprietary interests by transfrontier pollution originating in such country and whose personal and/or proprietary interests are situated outside such country (hereafter referred to as "persons affected by transfrontier pollution").

2. Without prejudice to corresponding interstate procedures, the rights accorded to "persons affected by transfrontier pollution" should be equivalent to those accorded to persons whose personal and/or proprietary interests within the territory of the country where the transfrontier pollution originates are or may be affected under similar conditions by a same pollution, as regards:

- a) Information concerning projects, new activities and courses of conduct which may give rise to a significant risk of pollution;
- b) Access to information which the competent authorities make available to persons concerned;
- c) The participation in hearings and preliminary enquiries and the making of objections in respect of proposed decisions by the public authorities which could directly or indirectly lead to pollution;
- d) Recourse to and standing in administrative and judicial procedures (including emergency procedures); in order to prevent pollution, or to have it abated and/or obtain compensation for the damage caused.

3. Concomitantly with the rights of "persons affected by transfrontier pollution", the countries concerned by such pollution should take certain measures to make possible the exercise of the rights so recognised, in particular as regards the information and participation of "persons affected by transfrontier pollution", in hearings and enquiries prior to the taking of decisions. Such measures, which might be taken by countries where the pollution originates, would however gain in effectiveness if they were put into effect in co-operation with countries which are or may be affected by transfrontier pollution.

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