



Recommendation of the Council for
the Implementation of a Regime of
Equal Right of Access and
Non-Discrimination in
Relation to Transfrontier
Pollution

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Please cite this document as:

OECD, *Recommendation of the Council for the Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution*, OECD/LEGAL/0152

Series: OECD Legal Instruments

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Date(s)

Adopted on 17/05/1977

Background Information

The Recommendation for the Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution was adopted on 17 May 1977 on the proposal of the Environment Committee (now called Environment Policy Committee). The Recommendation advises Adherents to take into consideration transboundary effects of policies, grant equal treatment to any person affected by transfrontier pollution, and exchange information on transboundary 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;

HAVING REGARD to the Declaration on the Human Environment adopted in Stockholm in June 1972 and in particular Principles 21, 22, 23 and 24 of that Declaration;

HAVING REGARD to the Recommendations of the Council of 14 November 1974 on Principles concerning Transfrontier Pollution and of 11 May 1976 on Equal Right of Access in relation to Transfrontier Pollution [C(74)224 and C(76)55(Final)] and without prejudice to such Recommendations;

HAVING REGARD to the Report by the Secretary-General of 18 March 1977 on the Implementation of a Regime of Equal Right of Access and Non-Discrimination in relation to Transfrontier Pollution [Appendix I to C(77)28];

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

CONSCIOUS that pollution originating in the area within the national jurisdiction of a State may have effects on the environment outside this jurisdiction;

CONSIDERING that the implementation of a regime of equal right of access and non-discrimination among Member countries should lead to improved protection of the environment without prejudice to other channels available for the solution of transfrontier pollution problems;

On the proposal of the Environment Committee;

RECOMMENDS that Member countries, in regard to each other, take into account the principles concerning transfrontier pollution set forth in the Annex to this Recommendation, which is an integral part of it, in their domestic legislation, possibly on the basis of reciprocity, notably regarding individual rights, and in bilateral or multilateral international agreements.

ANNEX

Introduction

This Annex sets out a number of principles intended to promote the implementation between Member countries of a regime of equal right of access and non-discrimination in matters of transfrontier pollution, while maintaining a fair balance of rights and obligations between countries concerned by such pollution.

These principles do not prejudice any more favourable measures for the protection of the environment and of persons whose property, rights or interests are or could be affected by pollution, the origin of which is situated within the area under the jurisdiction of a Member country.

For the purposes of this Recommendation:

- a) "Pollution" means any introduction by man, directly or indirectly, of substance or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems, impair amenities or interfere with other legitimate uses of the environment.
- b) "Domestic pollution" means any intentional or unintentional pollution, the physical origin of which is situated wholly within the area under the national jurisdiction of one country and which has effects within that area only.
- c) "Transfrontier pollution" means any intentional or unintentional pollution whose physical origin is subject to, and situated wholly or in part within the area under the national jurisdiction of one country, and which has effects in the area under the national jurisdiction of another country.
- d) "Country" means any Member country which participates in this Recommendation.
- e) "Country of origin" means any country within which, and subject to the jurisdiction of which, transfrontier pollution originates or could originate in connection with activities carried on or contemplated in that country.
- f) "Exposed Country" means any country affected by transfrontier pollution or exposed to a significant risk of transfrontier pollution.
- g) "Countries concerned" means any country of origin of transfrontier pollution and any country exposed to such pollution.
- h) "Regions concerned by transfrontier pollution" means any region of origin of transfrontier pollution in the country of origin and any regions of the country of origin and of any exposed country where such pollution produces or might produce its effects.
- i) "Persons" means any natural or legal person, either private or public.
- j) "Regime of environmental protection" means any set of statutory and administrative measures related to the protection of the environment, including those concerning the property, rights or interests of persons.

Title A. Principles to Facilitate the Solution at Inter-State Level of Transfrontier Pollution Problems

1. When preparing and giving effect to their policies affecting the environment, countries should, consistent with their obligations and rights as regards the protection of the environment, take fully into consideration the effects of such policies on the environment of exposed countries so as to protect such environment against transfrontier pollution.

2. With a view to improved protection of the environment, countries should attempt by common agreement to:

- a) Make their environmental policies mutually compatible, particularly those bearing on regions concerned by transfrontier pollution;
- b) Bring closer together quality objectives and environmental standards adopted by countries, apply them systematically to cases of transfrontier pollution and, where necessary, improve those already in force;
- c) Work out additional rules of conduct of States to be applied in matters of transfrontier pollution.

3. a) Pending the implementation of the objectives laid down in paragraph 2, and without prejudice to more favourable measures taken in accordance with paragraphs 1 and 2 above, each country should ensure that its regime of environmental protection does not discriminate between pollution originating from it which affects or is likely to affect the area under its national jurisdiction and pollution originating from it which affects or is likely to affect an exposed country.

b) Thus, transfrontier pollution problems should be treated by the country of origin in an equivalent way to similar domestic pollution problems occurring under comparable conditions in the country of origin.

c) In case of doubt, the film should be counted against the quota of the signatory country to which the director belongs.

d) In the event of difficulties arising between countries concerned because the situations resulting from transfrontier pollution and domestic pollution are manifestly not comparable, for example as a result of unco-ordinated land use policies in regions concerned by transfrontier pollution, those countries should strive to arrive at a mutually agreed arrangement which ensures -- to the largest extent possible -- the application of the principle referred to in sub-paragraph a) of this paragraph.

Title B. Legal Protection of Persons

4. a) Countries of origin should ensure that any person who has suffered transfrontier pollution damage or is exposed to a significant risk of transfrontier pollution, shall at least receive equivalent treatment to that afforded in the country of origin in cases of domestic pollution and in comparable circumstances, to persons of equivalent condition or status.

b) From a procedural standpoint, this treatment includes the right to take part in, or have resort to, all administrative and judicial procedures existing within the country of origin, in order to prevent domestic pollution, to have it abated and/or to obtain compensation for the damage caused.

5. Where in spite of the existence of a liability ceiling instituted by an international agreement, there exists in a country a system of additional compensation financed or administered by the public authorities, then such country should not be required in the absence of reciprocal arrangements to grant entitlement to such additional compensation to victims of transfrontier pollution, but it should in advance inform the exposed countries of the particular situation.

6. a) Where the domestic law of countries permits private non-profit legal persons that are resident within their own territories, such as environmental defence associations, to commence proceedings to safeguard environmental interests which it is their aim to protect, those countries should grant the same right for comparable matters to similar legal persons resident in exposed countries, provided that the latter satisfy the conditions laid down for the former in the country of origin.

b) When some of the conditions concerning matters of form laid down in the country of origin cannot reasonably be imposed on legal persons resident in an exposed country, these latter should be entitled to commence proceedings in the country of origin if they satisfy comparable conditions.

7. When the law of a country of origin permits a public authority to participate in administrative or judicial proceedings in order to safeguard general environmental interests, the country of origin should consider, if its legal system allows it, providing, by means of international agreement if it deems it necessary, competent public authorities of exposed countries with access to such proceedings.

Title C. Exchange of Information and Consultation

8. a) The country of origin, on its own initiative or at the request of an exposed country, should communicate to the latter appropriate information concerning it in matters of transfrontier pollution or significant risk of such pollution and enter into consultations with it.

b) In order to enable a country of origin to implement adequately the principles set out in Title A of this Recommendation, each exposed country should, on its own initiative or at the request of the country of origin, supply appropriate information of mutual concern.

c) Each country should designate one or more authorities entitled to receive directly information communicated under sub-paragraphs a) and b) of this paragraph.

9. a) Countries of origin should take any appropriate measures to provide persons exposed to a significant risk of transfrontier pollution with sufficient information to enable them to exercise in a timely manner the rights referred to in this Recommendation. As far as possible, such information should be equivalent to that provided in the country of origin in cases of comparable domestic pollution.

b) Exposed countries should designate one or more authorities which will have the duty to receive and the responsibility to disseminate such information within limits of time compatible with the exercise of existing procedures in the country of origin.

10. Countries should encourage and facilitate regular contacts between representatives designated by them at regional and/or local levels in order to examine such transfrontier pollution matters as may arise.

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