

POLLUTER PAYS PRINCIPLE – A TOOL INVOLVED IN ENVIRONMENTAL POLICY AND LEGISLATION TO PROMOTE ENVIRONMENTAL PROTECTION

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ABSTRACT. Conservation and protection of natural heritage is a responsibility and a priority of a civilized society. The importance of protecting the natural, nature conservation and sustainable development of the society led to the creation of a comprehensive legislative framework, consistent and adequate and principles of general application environment. Creating and implementing an effective legal framework and appropriate for the protection and preservation of natural heritage involves mainly the identification of binding principles with general application and to induce the formation of responsible environmental behavior. One of these principles is the Polluter Pays Principle (PPP). This principle exists in environmental law and policy is now applied and recognized at international, European and national levels. The purpose of this paper is to contribute to the understanding of how PPP in involved in environmental legislation and policy and PPP promote to create environmentally policies and eco – responsibility for environment protection.

Key words: principle of environmental, ecological responsibility, legislation, institution, ecological damage.

REZUMAT. Principiul Poluatorul Plătește - un instrument implicat în politica și legislația de mediu pentru a promova protecția mediului. Conservarea și protecția patrimoniului natural constituie o responsabilitate și o prioritate a societății civilizate. Importanța acordată protecției factorilor naturali, conservării patrimoniului natural și dezvoltării sustenabile a societății a condus la crearea unui cadru legislativ complex, coerent și adecvat și a unor principii cu aplicabilitate generală în domeniul mediului. Crearea și implementarea unui cadru legislativ eficient și adecvat pentru protecția și conservarea patrimoniul natural presupune, în principal, identificarea unor principii obligatorii cu aplicabilitate generală și care să inducă formarea unei conduite responsabile pentru mediu. Unul dintre aceste principii este Principiul Poluatorul Plătește (PPP). Acest principiu existent în legislația și politica de mediu este aplicat și recunoscut la nivel internațional, european și național. Scopul acestui studiu contribuie la înțelegerea faptului cum PPP este implicat în politica și legislația de mediu și cum PPP promovează crearea unor politici prietenoase cu mediul și eco-atitudinea pentru protecția mediului.

Cuvinte cheie: principiu de mediu, responsabilitate ecologică, legislație, instituție, dauna ecologică.

INTRODUCTION

Principles serve to emphasis and orientation of development and application of rules of law (Hughes, 2002; Duțu, 2010). Far from being similar to the classical principles of law, they contribute to make the regulation, the assessment and management of environmental risk; they were gradually incorporated into legal acts (Nicolas, 2005).

Depending on the extent and their influence on the content of legislation and environmental policy principles are grouped into two categories: fundamental principles and general principles. The fundamental principles are found at all levels established environmental law: national, regional and international. The polluter pays principle is one such principle (Duțu, 2010).

In the environmental law, the legal responsibility became, under the impact of the technical-scientific revolution a „hot zone” because of the ecological crisis seriously affected by the consequences of industrialization and automation, the irrational exploitation of natural resources and other factors (Neagu, 2007; Dascălu, 2012). Polluter pays principle is integrated in a classic civil liability: is an author who acts more or less inadvertently, causes damage by action, between action and injury author is a causal relationship, he must pay (Teleagă, 2004).

Voicing a particular idea of environmental responsibility, PPP was formed as an economic principle and turned into a principle of public policy with important legal consequences (Duțu, 2012). The rationale underlying the principle of internalization of external environmental costs is whether the real value of the environment, and its components, are reflected in the costs of using it, the environment will be sustainable used and managed and not exploited wastefully (Preston, 2005). The payment typically goes to the government in the form of a tax. In such cases, the principle polluter pays is used to promote an environmental agenda rather than to insure that real polluters pay compensation to real victims of their activities (Cordato, 2001).

The effort of all the factors that are involved in the environmental protection led to the development principles that are internationally recognized, that are found in environmental law and policy of different countries (Ciobotaru et al., 2011). This principle not only establishes the polluter's obligation to repair the damage, but the latest is charged with the social cost of pollution that it generates, that is all the effects of pollution, not only on the assets of individuals, but also on nature itself, and all these independent of the fault. Therefore it expresses responsibility in a large sense, including any obligation to make the observance of law to pay civil penalties or criminal offenses (Drăgan, 2011; Dascălu, 2012).

RESULTS AND DISCUSSIONS

Polluter pays principle is a fundamental principle that is applied and recognized at all levels and for industries or activities involved in the environment

legislation and public policy to promote eco-responsibility. The principle now plays an important role in national and international environmental policy.

PPP is recognized worldwide and is referred to in national legislation, as well as in many regional and international declarations and agreements. The Principle was introduced in 1987 in the Single European Act (Mužáková & Kubová, 2013).

The first mention of the PPP at the international level occurred in the 1972 Recommendation by the Organization for Economic Co-operation and Development („OECD”) Council on Guiding Principles concerning International Economic Aspects of Environmental Policies (Bailey et al., 2012). There the OECD announced: The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international trade and investment is the so-called Polluter-Pays Principle (PPP). The 1972 Recommendation continued, stating that the polluter should be responsible for costs associated with pollution prevention and control. It also emphasized „the necessity for removal” of subsidies that would prevent polluters from bearing the full cost of pollution which they caused.

Since the 1972 Recommendation, the PPP has been reaffirmed by other international declarations. Its adoption by the 1992 Rio Declaration is one such example. Principle 16 of the Declaration states: „National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment”. The Principle no. 13 of the Rio Declaration also states that states should develop national law regarding liability and compensation for victims of pollution and other environmental damage. States will also cooperate to develop further international law regarding liability and compensation for pollution effects caused by activities under their jurisdiction or control to areas under the jurisdiction of other states.

The incorporation of the PPP in multiple international declarations and treaties demonstrates its widespread acceptance as a legitimate legal principle (Bailey et al., 2012).

The main function of the polluter-pays principle is to internalize the social costs borne by the public authorities for pollution prevention and control (de Sadeleer, 2002).

The Polluter Pays Principle (PPP) is an environmental policy principle reflecting the idea that the costs of pollution should be borne by those who cause it (Bugge, 1996). The PPP has been said to provide several benefits including promotion of economic efficiency, legal justice, harmonization of international policies, and definition of cost allocation within an economy.

As economic activity increases and the global population grows with a speed never seen before, the proliferation of pollution is ever more damaging to the environment and to human health. In order to try to deal with those problems, the

European Community bases its environmental policy on a number of action principles. One of these principles is aimed specifically at the problem of pollution and reads that the „polluter should pay” (Bleeker, 2009).

An alternative and more useful approach is to think of the PPP in terms of efficiency. This is a more economic rationale which sees the principle as a means towards achieving a more efficient allocation of resources in economic production. Pollution is a negative environmental externality (or side-effect) of economic activity. The PPP calls for the internalization of such negative externalities in the cost of the product. In other words, an application of the PPP in this sense means that the costs of pollution of a product are reflected in its price and therefore borne by the producers and consumers (the polluters) of that particular product rather than the entire society (de Sadeleer, 1999). Consequently, the prices of products go up according to the amount of pollution they cause (*ceteris paribus*). Consumer preferences for lower prices will therefore be an incentive for producers to produce less polluting, more eco-friendly products (Jans & Vedder, 2008). An economic orientation towards the PPP seems more useful in practice than approaching the principle from the point of view of the equity. The PPP is essentially an economic principle translated into law. Nevertheless, these two interpretations of the origin of the PPP are complementary rather than conflicting (Bleeker, 2009).

Forcing polluters to pay the costs of their activities is also said to enhance economic efficiency. Appropriately applied, policies based on a polluter pays principle (PPP) should enable us to protect the environment without sacrificing the efficiency of a free market economic system. A correct interpretation of the polluter pays principle would define pollution as any by-product of a production or consumption process that harms or otherwise violates the property rights of others (Cordato, 2006). The polluter would be the person, company, or other organization whose activities are generating that by-product. And finally, payment should equal the damage and be made to the person or persons being harmed. „Damage to the environment” and „costs to the environment” are nebulous and subjective concepts where the use of any resource, including the air, water and one’s own property, can be defined as harming or „potentially harming” that resource and therefore the environment (Cordato, 2006).

The PPP is the core of environmental responsibility and ensuring the right to a healthy and ecologically balanced. This principle establishes and warrants polluter responsibility for producing environmental damage. Polluter is obliged to bear all the negative effects of its products to persons, property or the environment. Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 22 March 1989, requires the parties to achieve a protocol setting out appropriate procedures regarding liability and compensation for damages that may result from transboundary of hazardous wastes and other wastes. In the national legislation of the Government Emergency Ordinance no. 195/2005, regarding the environmental protection, provides that the polluter should bear the cost to repair the damage and remove the consequences thereof, restoring previous conditions damage occurred, according to the „polluter pays principle” (PPP).

Polluters are required to cover the costs of measures to prevent and/or reduce the negative environmental consequences of economic activities and pay for the damage caused by pollution. Preserving, protecting and improving the aquatic environment in terms of sustainable use of water resources, based on the PPP.

Supporting environmental costs have an impact on production costs, but help to ensure the right to a healthy and ecologically balanced environment and improving the quality of life on Earth. One economic instrument on the PPP and support environmental policies is given by the pollution tax. From the economic point of view, lack of timely expenditure environment entails performing much higher costs. Preserving, protecting and improving the aquatic environment in terms of sustainable use of water resources, based on the principles of precaution, prevention, avoiding damage at source and polluter pays [art. 1 (6) of Law water no. 107/1996]. The PPP is enshrined in a series of acts of national legislation, including: Law Water no. 107/1996, Government Emergency Ordinance no. 195/2005, and Law on ambient air quality no. 104/2011.

CONCLUSIONS

The first mention of the PPP at the international level occurred in the 1972 Recommendation by the Organization for Economic Co-operation and Development („OECD”) Council on Guiding Principles concerning International Economic Aspects of Environmental Policies.

Currently polluter pays principle is found in numerous legal acts and it is an essential criterion for developing and defining environmental policies. Given the global, permanent and cross - border impact of the pollution PPP is recognized national, European and international level as a beneficial tool for limiting the negative effects of pollution on the environment.

PPP promotes sustainable development and eco responsibility.

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