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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2026) 404 final
Subject:	REGULATORY SCRUTINY BOARD OPINION Fitness check of the Polluter Pays Principle

Delegations will find attached document SEC(2026) 404 final.

ANNEX

EUROPEAN COMMISSION

Brussels, 16.07.2026
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REGULATORY SCRUTINY BOARD OPINION

Fitness check of the Polluter Pays Principle

{SWD(2026) 402 final}
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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2024)

Opinion

Title: Fitness check of the Polluter Pays Principle

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Article 191 (2) TFEU states that: 'Union policy on the environment (…) shall be based on … the principles that … the polluter should pay'. The polluter pays principle (PPP) means that polluters bear the costs of their pollution including the cost of measures taken to prevent, control and remedy pollution and the costs it imposes on society.

A 2021, European Court of Auditors special report on the application of the PPP concluded that it is not fully implemented. The Commission's Zero Pollution Action Plan proposed a 'recommendation on how to better implement the PPP on the basis of a fitness check in 2024'.

(B) Key issues

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains shortcomings. The Board gives a positive opinion with reservations because it expects the lead Service to rectify the following aspects:

(1) The conclusions do not adequately reflect the and limitations and robustness of the available evidence and underlying analysis.

(2) The report is not sufficiently clear on the cost and benefit analysis, in particular as regards benefit estimates and distributional effects, in particular the impact on vulnerable groups and cost pass-through.

(3) The analysis is not sufficiently developed on the impacts on competitiveness and SMEs.

(C) What to improve

(1) The report should be more cautious when drawing conclusions, including conclusions on the efficiency of the application of the PPP. It should be much clearer about how robust the conclusions are and on what specific evidence they are based, including by clarifying when this is a matter of assessment across the 76 policies and when it is about specific sectors/policies/areas. The conclusions should accurately reflect the underlying analysis,

This opinion concerns a draft fitness check which may differ from the final version.

the robustness of the related evidence and any other methodological limitations and uncertainties. When the outcome of the analysis identifies an area for possible policy action, the conclusion should be less prescriptive and instead confine itself to flagging the need for further analysis. For some of the findings, the supporting evidence and assessment is not sufficiently developed (e.g. on the lack of legal clarity over the scope of application of PPP and its operationalisation in the fitness check, or on the relevance of the principle at corporate level of a business, or on the role of carbon pricing in the food chain. On such issues, the report should express any forward-looking conclusions in a much more cautious way, reflecting the limitations and uncertainties of the collected evidence or omit conclusions. In cases where any evidence gaps are identified, the conclusion should make this clear.

(2) The report should improve the presentation of costs and benefits. If further analysis and estimates of costs and benefits cannot be provided on the basis of robust evidence, this should be explained. The report should further develop the analysis of distributional effects, in particular the impact on vulnerable groups and the cost pass-through. The report should provide analysis regarding which (combinations of) policy design elements and situations lead to progressive and regressive effects. It should clarify if any lessons can be drawn regarding the use of environmental taxes and to what extent those taxes have an effect on competitiveness.

(3) The presentation of the impacts of the PPP application on competitiveness and SMEs including administrative and adjustment costs for affected companies should be further developed by making better use of existing evaluation and recent research findings. The report should be clearer on which (combinations of) policy design elements and situations (areas/sectors/policies) bring about positive outcomes or negative outcomes. This should include looking more thoroughly at level playing field issues in the single market and under which conditions SMEs might be disproportionally affected compared to large companies. The report should also assess to what extent the PPP allocates costs on market actors that are exposed to international competition.

(4) The report should be clearer about the implementation of the PPP across different policies and should clarify if any lessons could be extrapolated between sectors and policies to improve the application of the principle. It should improve the presentation in the overview tables on the implementation of the principle, including by reviewing the usefulness of using any coloured grading system, to avoid simplistic readings and misunderstanding.

Some more technical comments have been sent directly to DG ENV.

(D) Conclusion

The lead Service should revise the report before launching the interservice consultation.

Full title	Fitness check of how the Polluter Pays Principle is applied to the environment
Reference number	PLAN/2022/1776
Submitted to RSB on	22 March 2024
Date of RSB meeting	24 April 2024