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From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)/Council
No. prev. doc.:	11775/2/21 REV 2
Subject:	Draft Council conclusions on the European Court of Auditors' Special Report No 12/2021 entitled "The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions" - Approval

1. On 5 July 2021, the European Court of Auditors published Special Report No 12/2021 entitled "The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions" ¹.
2. The Permanent Representatives Committee, at its meeting on 22 July 2021, instructed the Working Party on the Environment (WPE) to examine the report in accordance with the rules laid down in the Council conclusions on improving the examination of special reports drawn up by the Court of Auditors ².

¹ This special report is available in 23 EU languages on the Court's website:
<http://eca.europa.eu>.

² 7515/00 + COR 1.

3. On 3 September 2021, at an informal videoconference of the members of the WPE, the European Court of Auditors presented its report. The draft Council conclusions on the report, prepared by the Presidency on the basis of delegations' comments, were circulated to delegations on 13 September 2021. Following a discussion of the draft Council conclusions at an informal videoconference of the members of the WPE on 20 September 2021 and an additional round of written consultations, an agreement in principle on the text was reached through an informal silence procedure, which ended on 19 October 2021.
 4. Therefore, the Permanent Representatives Committee is invited to confirm the agreement reached at Working Party level and to submit to the Council the draft Council conclusions as set out in the Annex to this note for approval as an "A" item at one of its forthcoming meetings.
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**European Court of Auditors' Special Report No 12/2021 entitled "The Polluter Pays
Principle: Inconsistent application across EU environmental policies and actions"**

- Draft Council conclusions -

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING its conclusions on improving the examination of special reports drawn up by the Court of Auditors in the context of the discharge procedure ¹:

1. WELCOMES the Special Report No 12/2021 entitled "The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions" ("the special report");
2. TAKES NOTE of the conclusions and recommendations of the special report;
3. ACKNOWLEDGES the special report as a timely contribution to the EU's zero pollution ambition;
4. TAKES NOTE that while emissions of pollutants into the air, water and soil have fallen significantly in recent decades, pollution remains a significant challenge, posing risks to the health of citizens and the environment, including biodiversity;
5. UNDERLINES the important role of the Polluter Pays Principle in avoiding environmental damage and ensuring that polluters are held responsible for the pollution they cause;
UNDERLINES the important role of the Polluter Pays Principle to ensure recovery of the costs of damage to water, soil and ecosystems;

¹ 7515/00 + COR 1.

6. ACKNOWLEDGES that the Polluter Pays Principle is reflected and applied to varying degrees in different EU environmental policies and different Member States; STRESSES the need to strengthen the implementation and to improve the consistency of the application of the Polluter Pays Principle in order to achieve the EU's zero pollution ambition, especially with respect to water and soil; HIGHLIGHTS the importance of addressing harmful substances, considering current, emerging and novel chemical substances of concern, as appropriate;
7. WELCOMES the Commission's intention to revise the EU environmental legislation as set out in the Commission's Communications on the European Green Deal ², the Zero Pollution Action Plan ³, the Chemicals Strategy for Sustainability ⁴ and related initiatives; INVITES the Commission to take into account the findings and recommendations of the special report in this regard;
8. CALLS ON the Commission to ensure application of the Polluter Pays Principle, on which Union policy on the environment should be based and which should be integrated into other Union's policies and activities, particularly in the relevant EU legislation and its financing instruments, and to ensure that sectors causing pollution contribute their respective share; in this context HIGHLIGHTS the relevance of producer responsibility along global value chains and product life cycles and INVITES the Commission to consider such approaches in future legislative proposals, where applicable; STRESSES the importance of accompanying any legislative proposals with an impact assessment in accordance with agreed Better Regulation principles ⁵;

² 15051/19 + ADD 1 - COM(2019) 640 final.

³ 8753/21 + ADD 1 - COM(2021) 400 final.

⁴ 11976/20 + ADD 1 - COM (2020) 667 final.

⁵ Interinstitutional Agreement on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

9. TAKES NOTE of the difficulties to apply the Polluter Pays Principle in the case of pollution originating from diffuse sources; however, **UNDERLINES** the necessity to assess the scope for strengthening the integration of the Polluter Pays Principle with respect to diffuse water pollution from all sources, including from agricultural sources;
10. **STRESSES** the important role of the Polluter Pays Principle in the setting of pricing policies, such as waste and water pricing policies, to ensure recovery of the cost of waste management and water services in an efficient and just manner;
11. **RECOGNISES** that there are at present various EU directives and regulations that contribute to preventing and mitigating soil pollution, but no overarching EU legislative framework to protect against soil pollution;
12. **CALLS ON** the Commission to properly reflect the polluter pays principle in the upcoming soil strategy, as well as the precautionary principle and the principles that preventive action should be taken, and that environmental damage should as a priority be rectified at source;
13. **TAKES NOTE** that the application of the Environmental Liability Directive (ELD) varies significantly between Member States; **WELCOMES** the publication of the Commission's guidance on the definition of "environmental damage" ⁶, as well as actions taken under the European Union Network for Implementation and Enforcement of Environmental Law (IMPEL), aiming at sharing experience in this respect;

⁶ [Commission Notice Guidelines providing a common understanding of the term 'environmental damage' as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage 2021/C 118/01](#), C/2021/1860, (OJ C 118, 7.4.2021, p. 1–49).

14. WELCOMES the Commission's intention to evaluate, by 2023, the ELD's fitness for purpose and INVITES the Commission to consider, in its evaluation of the ELD and associated implementing acts, developing the ELD criteria for defining the environmental damage for which the ELD should apply, especially with respect to water and soil;
 15. WELCOMES the Court's recommendation and INVITES the Commission to examine the scope for legislative changes to require the use of financial security for environmental risks for operators;
 16. TAKES NOTE that EU funds have been used to clean up orphan pollution; NOTES that it is occasionally unavoidable to use public funds to remove orphan pollution in order to safeguard human health and the environment;
 17. CALLS ON Member States and the Commission to ensure that the use of national public and EU funds to finance cleaning pollution is conditional on having taken all the necessary steps to charge the polluter for the pollution they are responsible for; however, UNDERLINES that this should not lead to a reduction of EU funds to tackle environmental degradation or to test innovative solution in this respect, where justified.
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