

## Position of the [ERM Coalition](#) on the [Polluter Pays Principle – fitness check of its application to the environment](#)

ERM Coalition of drinking water suppliers' associations represent 170 water suppliers and 188 million people that depend on clean drinking water in the river basins of Rhine ([IAWR](#), [AWBR](#), [ARW](#), [RIWA-Rijn](#)) and Ruhr ([AWWR](#)), Danube ([IAWD](#)), Elbe ([AWE](#)), Meuse ([RIWA-Meuse](#)) and Scheldt ([RIWA-Scheldt](#)). We would like to contribute to the consultation by the European Commission by expressing our view on how the polluter pays principle is currently (not) being applied and how it could be applied across EU policies.

### 1. Legislative requirements referring to the Polluter Pays Principle (PPP) regarding water

- **EU treaties** state: *“Union policy (...) shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”* ([Art. 191 \(2\) TFEU](#)).

- The **Water Framework Directive** (WFD, [2000/60/EC](#)) states

- In Art. 4 (1) (a) (i): *“Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water (...)”*
- in Art. 4 (1) (b) (i): *“Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, (...)”* and (iii): *“Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.”*
- in Art. 7 (3): *“Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water.”*
- in Art. 9 (1): *“Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, (...), and in accordance in particular with the polluter pays principle.”*

### 2. Official statements on significant deficits on PPP regarding water

- The **European Court of Auditors** (ECA), in its [Special Report 12/2021](#) on the Polluter Pays Principle (PPP), examined how the EU integrated the PPP in key legislative areas (s. No 08). It examined the Industrial Emissions Directive (2010/75/EU) and the Water Framework Directive for water pollution as well as the Pesticides Directive (Sustainable Use of Pesticides Directive, SUD, 2009/128/EC) and the Nitrates Directive (91/676/EEC). It makes a number of observations, draws conclusions and provides the following as a first recommendation *„to assess the regulatory and administrative changes and the overall cost-benefit of better applying the Polluter Pays Principle, in particular:*  
*(a) lowering emissions limits to further reduce residual pollution;*  
*(b) dealing with diffuse water pollution from all sources, including agriculture“.*

The ECA observes that agriculture is *„the sector exerting most pressures on renewable freshwater resources“* and highlights that for the most affected localities, significant additional expenses due to agricultural pollution are paid by households (s. No 36).

The ECA states that *“(...) for many enterprises the price of water does not cover the costs imposed by the pollutants they release into the water”* (s. No 72).



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The ERM Coalition agrees with ECAs observations and supports its first recommendation as lowering emissions limits and addressing diffuse pollution benefits the quality of drinking water resources. The costs should be covered by the enterprises and sectors that cause the pollution of water rather than the costs being covered by the general public as in our view now occurs in most cases. In fact, we are not aware of any application of the PPP in which a drinking water supplier has received compensation from the polluter for the additional treatment costs to remove pollution and comply with the Drinking Water Directive. In our view it is unfair that drinking water consumers end up paying for treatment steps drinking water companies are forced to use because their resources are polluted.

- The **WFD fitness check** in 12/2019 concluded: *“The Directive’s implementation has been significantly delayed and less than half of the EU’s water bodies are in good status, even though the deadline for achieving this was 2015, (...)”*

The ERM Coalition is disappointed that the deadline for achieving good chemical status for many EU water bodies has not been met. It is unlikely that much improvement will be achieved by the end of 2027. This is not what the ERM Coalition expected when the WFD came into force.

- The **European Parliament in its resolution** of 12 February 2019 (P8\_TA(2019)0082) on the implementation of the SUD – correctly – *„regrets the fact that the deterioration of water resources has increasingly led to additional treatment by drinking water operators in order to ensure that water intended for human consumption complies with the pesticides limits as enshrined in Council Directive 98/83/EC on the quality of water intended for human consumption, with the costs being borne by consumers, not polluters;“* (Nr. 29). It *“calls on the Commission and the Member States to ensure that the ‘polluter pays’ principle is fully implemented and effectively enforced as regards the protection of water resources”* (Nr. 71) (own bold emphasis).

The ERM Coalition agrees with these parts of the EP resolution and supports the call on the European Commission and Member States (MS) to fully implement the polluter pays principle and the effective enforcement with regards to drinking water sources.

- **Questions and answers on Nitrates Directive Implementation Report** 10/2021 conclude: *“Nitrate pollution has also significant economic impacts in terms of cleaning the water for human consumption and for the communities who depend from the polluted waters, such as fisheries and the tourism sector. The overall environmental costs of all reactive nitrogen losses in Europe are estimated at EUR 70–EUR320 billion per year, much beyond the costs of reducing pollution at source.”* (own bold emphasis).

### **3. Current legislative EPR (Extended Producer Responsibility) scheme proposals indicating shortcomings of the PPP regarding water**

- In the recast proposal of the EU **Urban Wastewater Treatment Directive** (UWWTD) published in October 2022 by the European Commission, an EPR scheme was proposed for **medicinal products for human use** and **cosmetic products**. These two product groups were chosen as they represent the main sources of micropollutants found in urban wastewater requiring additional (quaternary) treatment. The EPR scheme obligates producers (including importers) to cover monitoring and quaternary treatment costs if they place medicinal and cosmetic products on the national market which pollute urban wastewater with micropollutants above two tonnes per year. The financial



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contribution of each producer will be established based on the quantities and toxicity of micropollutants found in wastewaters.

The ERM Coalition welcomes the proposals for the UWWTD for addressing the costs that polluters cause to them. We think the same should be done for **all sectors causing pollution**, not just medicinal products and cosmetics.

- The [draft report](#) of the EP committee responsible (ENVI) on the Commission's proposal for a [Sustainable Use of plant protection products Regulation](#) (SUR) proposes an EPR scheme in Art. 19a (new): "*Member States shall ensure that the producers of plant protection products cover the costs pursuant to the extended producer responsibility provisions in Directive 2008/98/EC and, insofar as not already included, cover the following costs:*

- (a) **the investment and operational costs incurred by drinking water suppliers to ensure compliance with the parametric values for pesticides and their metabolites defined in Annex 1, Part B of Directive 2020/2184;***
- (b) **the costs for gathering and verifying data on products placed on the market.**"*

The ERM Coalition supports the proposal that the costs incurred by drinking water suppliers and MS due to the presence of pollutants in their resources will be covered by the benefiting parties such as the producers of plant protection products.

- The draft (and adopted) [report](#) of the EP committee responsible (ENVI) on the Commission's proposal for a [revision of the WFD and its daughter directives \(EQSD, GWD\)](#) proposes considering an EPR scheme, cf. Art. 6b (new):

*"Member States shall take measures to ensure that producers that place on the market products containing any of the substances or compounds listed in Annex I to Directive 2006/118/EC, as well as substances of emerging concern included in the watch list under that Directive have extended producer responsibility.*

*Such measures shall ensure that those producers **contribute to the costs for monitoring programmes designed under Article 8 of Directive 2000/60/EC.**"* (own bold emphasis).

The ERM Coalition supports the proposal that the costs due to the presence of pollutants in water will be covered by the benefiting parties such as the producers that place products on the market containing priority substances, groundwater pollutants or substances of emerging concern.

#### **4. Shortcomings of the PPP regarding water – the PFAS example**

The new drinking water directive ([2020/2184](#)) sets a parametric value 'Sum of PFAS' of 0.1 µg/L for a selection of 20 compounds. In 2020, EFSA (European Food Safety Authority) calculated a tolerable weekly intake for food (incl. drinking water) of 4.4 ng/kg body weight per week for the sum of 4 PFAS which can result in even lower limit values, for which a considerable number of water suppliers would need to resort to extremely costly treatment. If the polluter pays principle is not applied it is questionable whether such investment can be financed by the public purse/consumers if such costly water treatment should eventually be required throughout Europe in order to comply with ever decreasing values. Therefore, as a remedy, costs of pollution must be covered by profits made from such pollution in line with the polluter pays principle. Currently, direct industrial emissions of PFAS into drinking water resources at levels that are numerous orders of magnitude



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higher than parametric values for drinking water occur. In addition, pesticides including PFAS (as the active substances as well as co-formulants) can be applied almost area-wide, and these substances/their degradation products are able to enter drinking water resources - without any form of restriction in sight. Here, the Polluter Pays Principle must be made a powerful instrument to de-incentivise pollution.

## **5. Conclusion**

The ERM Coalition observes numerous shortcomings regarding implementation of the Polluter Pays Principle (PPP) as do the European Court of Auditors, the European Commission and the European Parliament. In the ERM Coalition's view, full implementation/application and effective enforcement mechanisms of the PPP with regard to the protection of water resources must be viewed as overdue. When taking action following the PPP fitness check, we see current legislative EPR scheme proposals as a good start but effective PPP applications must be extended to other legislation affecting water resources (esp. [REACH](#), [IED](#), [Nitrates Directive](#)). However, the ERM Coalition is concerned that PPP alone will not solve the problem and therefore preventative measures as well as rectify-at-source measures must be taken in the first place.

## **6. Final note on responsibility**

The new [Drinking Water Directive](#) (2020/2184) of the European Parliament and of the Council requires Member States to carry out risk assessment and risk management for the catchments of abstraction points for water intended for human consumption. For risk management, member States shall ensure that polluters, in cooperation with water suppliers and other relevant stakeholders, take preventive and mitigation measures. Yet, some Member States like Germany intend to delegate the primary responsibility of polluters for taking risk management measures to drinking water suppliers. As drinking water suppliers don't have the powers, drinking water suppliers are not capable to do so and take preventive and mitigation measures. Due to the transboundary character of water pollution, due to EU-only competences and in order to guarantee a level playing field in the internal market, taking effective risk management measures in most sectors that are responsible for pollution can only be done at EU level, i.e. by the Commission as well as the Council and European Parliament as the co-legislators. Besides, this is required to achieve protection of human health and the environment according to the Treaties ([Art. 192 \(1\) TFEU](#)) and to ensure a supply of clean drinking water as a core task of every state and essential service under EU law.

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